



IOWA ADMINISTRATIVE BULLETIN

Published Biweekly

VOLUME XXVI
February 4, 2004

NUMBER 16
Pages 1257 to 1380

CONTENTS IN THIS ISSUE

Pages 1270 to 1379 include **ARC 3119B** to **ARC 3155B**

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

- Notice, Animal exhibition requirements—
county fairs, 4-H fairs or exhibitions or
similar exhibitions, 64.34, 64.35
ARC 3121B 1270
- Filed, Registration for Iowa-foaled horses
and Iowa-whelped dogs—disciplinary
actions; access to premises and records,
62.4, 62.5, 62.43, 62.44 **ARC 3152B** 1356

ALL AGENCIES

- Schedule for rule making 1260
- Publication procedures 1261
- Administrative rules on CD-ROM 1261
- Agency identification numbers 1267

ATTORNEY GENERAL[61]

- Filed, Quarterly escrow installments from
particular nonparticipating manufacturers,
ch 5 **ARC 3129B** 1356

CIVIL REPARATIONS TRUST FUND

- Notice 1271

DENTAL EXAMINERS BOARD[650]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

- Filed, Graduates of foreign dental schools,
11.2(2), 11.3(2), 11.4 **ARC 3139B** 1357
- Filed, Minimum standards for a dental
hygienist who monitors a patient under
nitrous oxide inhalation analgesia,
29.1, 29.6(5) to 29.6(7) **ARC 3140B** 1358
- Filed, Iowa practitioner review committee,
35.1 **ARC 3138B** 1358

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

- Notice, Iowa community development block
grant program, 23.6 **ARC 3151B** 1272

EDUCATION DEPARTMENT[281]

- Notice, Financial incentives for national
board certification, 84.2, 84.4, 84.5
ARC 3136B 1273
- Filed, Teacher quality program, 83.6
ARC 3137B 1359

ELDER AFFAIRS DEPARTMENT[321]

- Notice, Commission of elder affairs; waivers
or variances from administrative rules;
senior living coordinating unit; petition
for rule making; declaratory orders,
1.2; adopt chs 3, 11, 16; amend chs 17, 18
ARC 3145B 1273
- Notice Terminated, Assisted living
programs, ch 25 **ARC 3142B** 1277
- Notice, Assisted living programs, ch 25
ARC 3146B 1277
- Filed, Long-term care resident’s advocate/
ombudsman, amendments to ch 8
ARC 3143B 1359
- Filed, Resident advocate committees, 9.1(2),
9.2(4), 9.3(1), 9.4(3), 9.6(2), 9.8(2), 9.10(1),
9.13, 9.14 **ARC 3144B** 1363

EMERGENCY MANAGEMENT DIVISION[605]

PUBLIC DEFENSE DEPARTMENT[601]“umbrella”

- Notice of public funds availability 1269

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]

Professional Licensing and Regulation Division[193]

COMMERCE DEPARTMENT[181]“umbrella”

- Notice, Release of examination results,
4.1(8), 5.1(8) **ARC 3141B** 1288

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

- Notice, Uniformity in use of terms related
to construction permit programs, 20.2,
22.4(1), 22.5(1), 22.100, 22.120
ARC 3155B 1289

PREFACE

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

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

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

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

Subscriptions and Distribution	Telephone:	(515)281-3568
	Fax:	(515)281-8027
KATHLEEN K. BATES, Administrative Code Editor	Telephone:	(515)281-3355
STEPHANIE A. HOFF, Assistant Editor	Fax:	(515)281-8157
		(515)281-4424

SUBSCRIPTION INFORMATION

Iowa Administrative Bulletin

The Iowa Administrative Bulletin is sold as a separate publication and may be purchased by subscription or single copy. All subscriptions will expire on June 30 of each year. Subscriptions must be paid in advance and are prorated quarterly.

July 1, 2003, to June 30, 2004	\$300
October 1, 2003, to June 30, 2004	\$225
January 1, 2004, to June 30, 2004	\$150
April 1, 2004, to June 30, 2004	\$ 75

Single copies may be purchased for \$22.

Iowa Administrative Code

The Iowa Administrative Code and Supplements are sold in complete sets by subscription. Supplement (replacement pages) subscriptions must be for the complete year and will expire on June 30 of each year.

Prices for the Iowa Administrative Code and its Supplements are as follows:

Iowa Administrative Code - \$1,350

(Price includes complete set of rules and index, plus a one-year subscription to the Code Supplement and the Iowa Administrative Bulletin. Additional or replacement binders may be purchased for \$14.)

Iowa Administrative Code Supplement - \$475

(Subscription expires June 30, 2004)

All checks should be made payable to the Treasurer, State of Iowa. Send all inquiries and subscription orders to:

Attn: Stephanie Cox
Legislative Services Agency
Capitol Building
Des Moines, IA 50319
Telephone: (515)281-3568

ETHICS AND CAMPAIGN DISCLOSURE**BOARD, IOWA[351]**

- Filed, Clarification of definitions, 4.1
ARC 3120B 1364
- Filed, "Paid for by" attribution statement on political materials and political advertisements, 4.38(2), 4.39, 4.41 to 4.43 **ARC 3119B** 1365

HUMAN SERVICES DEPARTMENT[441]

- Filed, Medicaid coverage limitations for drugs—prior authorization, preferred drug list, 78.1(2), 78.28(1) **ARC 3154B** 1365
- Filed, Social services block grant and funding for local services, 153.52(1), 153.53(2), 153.54, 153.55(1), 153.57, 153.58
ARC 3153B 1366

INSPECTIONS AND APPEALS DEPARTMENT[481]

- Notice, Update and cleanup of rules; hospices and home health agencies—procedure for conducting criminal history and dependent adult abuse background checks, 50.1 to 50.3, 50.6 to 50.9, rescind ch 52 **ARC 3128B** 1294
- Notice, Paid nutritional assistants, 58.24(9)
ARC 3127B 1296
- Filed, Process for appeal of involuntary discharge or transfer of a resident from a long-term care facility; date, time, and place of hearing to be set by administrative law judge, 57.2(3), 57.36(1), 58.2(3), 58.40(1), 62.4(3), 62.14(4), 63.2(3), 63.34(1), 64.2(3), 64.36(1), 65.4(3), 65.16(6)
ARC 3125B 1368
- Filed, Declaration of resident's incompetency—adjudicated only by court of law or provisions in 42 CFR 483.10, 57.48(1), 58.52(1), 62.23(22), 63.46(1) **ARC 3126B** 1368

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

- Notice, Chiropractors, 40.4, 40.6, 41.2(1), 41.6(2), 41.8, 41.11 to 41.13, ch 45, 46.1 **ARC 3133B** 1297
- Notice, Nursing home administrators, 140.6, ch 144 **ARC 3124B** 1300
- Notice, Optometrists, 179.4, 179.6, 180.2(1)"d," 180.5, 180.8 to 180.10, ch 183, 184.1
ARC 3131B 1302
- Filed, Respiratory care practitioners, 260.4, 260.6, 261.8, 261.11 to 261.13, 262.3(2), ch 263, 264.1 **ARC 3132B** 1369

PUBLIC FUNDS—AVAILABILITY

- Emergency Management Division[605]
 Pre-disaster mitigation (PDM) grant 1269

PUBLIC HEALTH DEPARTMENT[641]

- Notice, Radiation, amendments to chs 38 to 42, 45, 46 **ARC 3147B** 1305
- Notice, Renovation, remodeling, and repainting—lead hazard notification process, 69.2, 69.3(2), 69.4(2), 69.9 to 69.11 **ARC 3148B** 1313
- Notice, Lead professional certification, amendments to ch 70 **ARC 3134B** 1316
- Filed, Reporting, investigation and surveys; quarantine and isolation, 1.1, 1.4, 1.9
ARC 3150B 1370
- Filed, Volunteer health care provider program, ch 88 **ARC 3149B** 1374

PUBLIC HEARINGS

- Summarized list 1262

RACING AND GAMING COMMISSION[491]

INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"

- Notice, Confidentiality of security plans, surveillance plans and internal controls of licensees; appointment of an employee to assist and advise the board of stewards; commission access to employees' drug testing results; licensing of farrier; hearing for individual whose license is effective after a 365-day suspension; when kennel/stable name license is required; close of wagering, amendments to chs 3 to 6, 8, 12
ARC 3130B 1347

TRANSPORTATION DEPARTMENT[761]

- Notice, Regulations applicable to carriers, 520.1(1) **ARC 3122B** 1348
- Notice, Driver education; motorcycle rider education (MRE); motorized bicycle rider education, 600.12 to 600.14, ch 634, 635.2(2), 635.6, 635.7, ch 636
ARC 3123B 1351

USURY

- Notice 1354

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]"umbrella"

- Notice, Electric energy adjustment clause, 20.9 **ARC 3135B** 1354

Schedule for Rule Making 2004

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Jan. 2 '04	Jan. 21 '04	Feb. 10 '04	Feb. 25 '04	Feb. 27 '04	Mar. 17 '04	Apr. 21 '04	July 19 '04
Jan. 16	Feb. 4	Feb. 24	Mar. 10	Mar. 12	Mar. 31	May 5	Aug. 2
Jan. 30	Feb. 18	Mar. 9	Mar. 24	Mar. 26	Apr. 14	May 19	Aug. 16
Feb. 13	Mar. 3	Mar. 23	Apr. 7	Apr. 9	Apr. 28	June 2	Aug. 30
Feb. 27	Mar. 17	Apr. 6	Apr. 21	Apr. 23	May 12	June 16	Sept. 13
Mar. 12	Mar. 31	Apr. 20	May 5	May 7	May 26	June 30	Sept. 27
Mar. 26	Apr. 14	May 4	May 19	May 21	June 9	July 14	Oct. 11
Apr. 9	Apr. 28	May 18	June 2	June 4	June 23	July 28	Oct. 25
Apr. 23	May 12	June 1	June 16	June 18	July 7	Aug. 11	Nov. 8
May 7	May 26	June 15	June 30	July 2	July 21	Aug. 25	Nov. 22
May 21	June 9	June 29	July 14	July 16	Aug. 4	Sept. 8	Dec. 6
June 4	June 23	July 13	July 28	July 30	Aug. 18	Sept. 22	Dec. 20
June 18	July 7	July 27	Aug. 11	Aug. 13	Sept. 1	Oct. 6	Jan. 3 '05
July 2	July 21	Aug. 10	Aug. 25	Aug. 27	Sept. 15	Oct. 20	Jan. 17 '05
July 16	Aug. 4	Aug. 24	Sept. 8	Sept. 10	Sept. 29	Nov. 3	Jan. 31 '05
July 30	Aug. 18	Sept. 7	Sept. 22	Sept. 24	Oct. 13	Nov. 17	Feb. 14 '05
Aug. 13	Sept. 1	Sept. 21	Oct. 6	Oct. 8	Oct. 27	Dec. 1	Feb. 28 '05
Aug. 27	Sept. 15	Oct. 5	Oct. 20	Oct. 22	Nov. 10	Dec. 15	Mar. 14 '05
Sept. 10	Sept. 29	Oct. 19	Nov. 3	Nov. 5	Nov. 24	Dec. 29	Mar. 28 '05
Sept. 24	Oct. 13	Nov. 2	Nov. 17	***Nov. 17***	Dec. 8	Jan. 12 '05	Apr. 11 '05
Oct. 8	Oct. 27	Nov. 16	Dec. 1	Dec. 3	Dec. 22	Jan. 26 '05	Apr. 25 '05
Oct. 22	Nov. 10	Nov. 30	Dec. 15	***Dec. 15***	Jan. 5 '05	Feb. 9 '05	May 9 '05
Nov. 5	Nov. 24	Dec. 14	Dec. 29	Dec. 31	Jan. 19 '05	Feb. 23 '05	May 23 '05
Nov. 17	Dec. 8	Dec. 28	Jan. 12 '05	Jan. 14 '05	Feb. 2 '05	Mar. 9 '05	June 6 '05
Dec. 3	Dec. 22	Jan. 11 '05	Jan. 26 '05	Jan. 28 '05	Feb. 16 '05	Mar. 23 '05	June 20 '05
Dec. 15	Jan. 5 '05	Jan. 25 '05	Feb. 9 '05	Feb. 11 '05	Mar. 2 '05	Apr. 6 '05	July 4 '05
Dec. 31	Jan. 19 '05	Feb. 8 '05	Feb. 23 '05	Feb. 25 '05	Mar. 16 '05	Apr. 20 '05	July 18 '05

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
18	Friday, February 13, 2004	March 3, 2004
19	Friday, February 27, 2004	March 17, 2004
20	Friday, March 12, 2004	March 31, 2004

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

*****Note change of filing deadline*****

PUBLICATION PROCEDURES

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

The Administrative Code Division uses QuickSilver XML Publisher, version 1.5.3, to publish the Iowa Administrative Bulletin and can import documents directly from most other word processing systems, including Microsoft Word, Word for Windows (Word 7 or earlier), and WordPerfect.

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

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

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

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

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

IOWA ADMINISTRATIVE RULES and IOWA COURT RULES on CD-ROM

2003 SUMMER EDITION

Containing: **Iowa Administrative Code** (updated through June 2003)
Iowa Administrative Bulletins (January 2003 through June 2003)
Iowa Court Rules (updated through July 2003)

For free brochures and order forms contact:

Legislative Services Agency
Attn: Ms. Stephanie Cox
State Capitol
Des Moines, Iowa 50319
Telephone: (515)281-3566 Fax: (515)281-8027
lsbinfo@staff.legis.state.ia.us

To All Agencies:

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

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
--------	------------------	--------------------------

ATTORNEY GENERAL[61]

Crime victim compensation, ch 9 div II, 9.25, 9.35(10), 9.37 IAB 1/21/04 ARC 3098B	Conference Room, Ground Floor Lucas State Office Bldg. Des Moines, Iowa	February 10, 2004 10 a.m.
Sexual abuse examination payment, ch 9 div IV, 9.80, 9.81, 9.83 IAB 1/21/04 ARC 3099B	Conference Room, Ground Floor Lucas State Office Bldg. Des Moines, Iowa	February 10, 2004 10 a.m.

CULTURAL AFFAIRS DEPARTMENT[221]

Cultural and entertainment districts, ch 9 IAB 1/21/04 ARC 3110B	Tone Board Room, Third Floor West Historical Bldg. 600 E. Locust Des Moines, Iowa	February 11, 2004 10 to 11 a.m.
---	--	------------------------------------

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Community development block grant—application review criteria, elimination of preapplication, 23.6 IAB 2/4/04 ARC 3151B	First Floor Northwest Conference Rm. 200 E. Grand Ave. Des Moines, Iowa	February 24, 2004 1:30 p.m.
---	---	--------------------------------

EDUCATIONAL EXAMINERS BOARD[282]

Code of professional conduct and ethics, rescind chs 12, 13; adopt ch 25 IAB 1/7/04 ARC 3089B	Room 3 North Third Floor Grimes State Office Bldg. Des Moines, Iowa	February 24, 2004 1 p.m.
Superintendent/AEA administrator endorsement, 14.142 IAB 1/21/04 ARC 3111B	Room 3 North Third Floor Grimes State Office Bldg. Des Moines, Iowa	February 10, 2004 1 p.m.
Evaluator endorsement and license, 20.1 to 20.60 IAB 1/21/04 ARC 3112B	Room 3 North Third Floor Grimes State Office Bldg. Des Moines, Iowa	February 10, 2004 2 p.m.
Code of rights and responsibilities, adopt ch 26 IAB 1/7/04 ARC 3090B	Room 3 North Third Floor Grimes State Office Bldg. Des Moines, Iowa	February 24, 2004 2 p.m.

EDUCATION DEPARTMENT[281]

Financial incentives for national board certification, 84.2, 84.4, 84.5 IAB 2/4/04 ARC 3136B	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	March 2, 2004 1 p.m.
---	---	-------------------------

ELDER AFFAIRS DEPARTMENT[321]

Agency procedures; senior living coordination unit, 1.2, ch 3; adopt ch 11; ch 16; amend chs 17, 18 IAB 2/4/04 ARC 3145B (ICN Network)	Public Library 21 E. Third St. Spencer, Iowa	February 25, 2004 9 to 11 a.m.
	Public Library 400 Willow Ave. Council Bluffs, Iowa	February 25, 2004 9 to 11 a.m.
	Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	February 25, 2004 9 to 11 a.m.
	Room 3 West-19C Veterans Administration Medical Ctr. 601 Hwy. 6 Iowa City, Iowa	February 25, 2004 9 to 11 a.m.
Assisted living programs, ch 25 IAB 2/4/04 ARC 3146B (ICN Network)	Public Library 21 E. Third St. Spencer, Iowa	February 25, 2004 9 to 11 a.m.
	Public Library 400 Willow Ave. Council Bluffs, Iowa	February 25, 2004 9 to 11 a.m.
	Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	February 25, 2004 9 to 11 a.m.
	Room 3 West-19C Veterans Administration Medical Ctr. 601 Hwy. 6 Iowa City, Iowa	February 25, 2004 9 to 11 a.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Terms used in determination of PSD permit review, 20.2, 22.4(1), 22.5(1), 22.100, 22.120 IAB 2/4/04 ARC 3155B	Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	April 1, 2004 1 p.m.
	Public Library 321 Main St. Davenport, Iowa	April 2, 2004 1 p.m.
Animal feeding operations—health effects value and health effects standard for hydrogen sulfide, 20.2, adopt ch 32 IAB 1/7/04 ARC 3092B	Gateway North Center 1900 N. Grand Ave. Spencer, Iowa	February 17, 2004 7 p.m.
	Iowa Western Community College 906 Sunnyside Ln. Atlantic, Iowa	February 25, 2004 7 p.m.
	Public Library 225 Second St. SE Mason City, Iowa	March 3, 2004 6 p.m.

ENVIRONMENTAL PROTECTION COMMISSION[567] (Cont'd)

Public Library
321 Main St.
Davenport, Iowa

March 8, 2004
6:30 p.m.

Public Library
3520 86th St.
Urbandale, Iowa

March 11, 2004
7 p.m.

INSURANCE DIVISION[191]

Use of credit information in personal
insurance, 20.12
IAB 1/21/04 **ARC 3106B**

330 Maple St.
Des Moines, Iowa

February 11, 2004
10 a.m.

PROFESSIONAL LICENSURE DIVISION[645]

Chiropractors,
40.4, 40.6, 41.2(1), 41.6(2), 41.8,
41.11 to 41.13, ch 45, 46.1
IAB 2/4/04 **ARC 3133B**

Fifth Floor Board Conference Room
Lucas State Office Bldg.
Des Moines, Iowa

February 28, 2004
9 to 10 a.m.

Nursing home administrators,
140.6, ch 144
IAB 2/4/04 **ARC 3124B**

Fifth Floor Board Conference Room
Lucas State Office Bldg.
Des Moines, Iowa

February 24, 2004
10 to 11 a.m.

Optometrists,
179.4, 179.6, 180.2(1), 180.5,
180.8 to 180.10, ch 183, 184.1
IAB 2/4/04 **ARC 3131B**

Fifth Floor Board Conference Room
Lucas State Office Bldg.
Des Moines, Iowa

February 24, 2004
9 to 10 a.m.

PUBLIC HEALTH DEPARTMENT[641]

Radiation,
amendments to chs 38 to 42, 45, 46
IAB 2/4/04 **ARC 3147B**

Conference Room, Suite D
401 SW Seventh St.
Des Moines, Iowa

February 24, 2004
8:30 a.m.

Renovation, remodeling, and
repainting—lead hazard
notification process,
amendments to ch 69
IAB 2/4/04 **ARC 3148B**
(ICN Network)

Room 550, Fifth Floor
411 Third St. SE
Cedar Rapids, Iowa

February 24, 2004
10 a.m.

Room 101, Dubuque Downtown
Northeast Iowa Community College
700 Main St.
Dubuque, Iowa

February 24, 2004
10 a.m.

Turner Room, Green Valley AEA
1405 N. Lincoln
Creston, Iowa

February 24, 2004
10 a.m.

Room 304, Kahl Educational Center
326 W. Third St.
Davenport, Iowa

February 24, 2004
10 a.m.

Loess Hills AEA
24997 Hwy 92
Council Bluffs, Iowa

February 24, 2004
10 a.m.

PUBLIC HEALTH DEPARTMENT[641] (Cont'd)
(ICN Network)

	Room 106, Activity Center NIACC 500 College Dr. Mason City, Iowa	February 24, 2004 10 a.m.
	Conference Room A Ottumwa Regional Health Center 1001 E. Pennsylvania Ottumwa, Iowa	February 24, 2004 10 a.m.
	Room 204, Library Bldg. Prairie Lakes AEA, ICCA 330 Avenue M Fort Dodge, Iowa	February 24, 2004 10 a.m.
	Public Library 529 Pierce St. Sioux City, Iowa	February 24, 2004 10 a.m.
	Public Library 21 E. Third St. Spencer, Iowa	February 24, 2004 10 a.m.
	ICN Room, Sixth Floor Lucas State Office Bldg. Des Moines, Iowa	February 24, 2004 10 a.m.
Lead professional certification; lead-based paint activities, amendments to ch 70 IAB 2/4/04 ARC 3134B (ICN Network)	Room 550, Fifth Floor 411 Third St. SE Cedar Rapids, Iowa	February 24, 2004 10 a.m.
	Room 101, Dubuque Downtown Northeast Iowa Community College 700 Main St. Dubuque, Iowa	February 24, 2004 10 a.m.
	Turner Room, Green Valley AEA 1405 N. Lincoln Creston, Iowa	February 24, 2004 10 a.m.
	Room 304, Kahl Educational Center 326 W. Third St. Davenport, Iowa	February 24, 2004 10 a.m.
	Loess Hills AEA 24997 Hwy 92 Council Bluffs, Iowa	February 24, 2004 10 a.m.
	Room 106, Activity Center NIACC 500 College Dr. Mason City, Iowa	February 24, 2004 10 a.m.
	Conference Room A Ottumwa Regional Health Center 1001 E. Pennsylvania Ottumwa, Iowa	February 24, 2004 10 a.m.

PUBLIC HEALTH DEPARTMENT[641] (Cont'd)
(ICN Network)

Room 204, Library Bldg. Prairie Lakes AEA, ICC 330 Avenue M Fort Dodge, Iowa	February 24, 2004 10 a.m.
Public Library 529 Pierce St. Sioux City, Iowa	February 24, 2004 10 a.m.
Public Library 21 E. Third St. Spencer, Iowa	February 24, 2004 10 a.m.
ICN Room, Sixth Floor Lucas State Office Bldg. Des Moines, Iowa	February 24, 2004 10 a.m.

PUBLIC SAFETY DEPARTMENT[661]

Fire fighting equipment revolving loan fund, 55.1 to 55.207 IAB 12/24/03 ARC 3051B	Fire Service Training Bureau 3100 Fire Service Road Ames, Iowa	February 5, 2004 11 a.m.
---	--	-----------------------------

RACING AND GAMING COMMISSION[491]

Agency procedures; licensing; jackpot, credit, and ticket payouts, 3.13(2), 4.6(5), 5.4(14), 6.2(3), 6.6(2), 6.17(2), 8.2(15), 12.14 IAB 2/4/04 ARC 3130B	Suite B 717 E. Court Ave. Des Moines, Iowa	February 24, 2004 9 a.m.
--	--	-----------------------------

TRANSPORTATION DEPARTMENT[761]

Regulations applicable to carriers, 520.1 IAB 2/4/04 ARC 3122B	DOT Conference Room Park Fair Mall 100 Euclid Ave. Des Moines, Iowa	February 26, 2004 10 a.m. (If requested)
Driver education; motorized bicycle rider education, 600.12 to 600.14; ch 634; 635.2(2), 635.6, 635.7; ch 636 IAB 2/4/04 ARC 3123B	DOT Conference Room Park Fair Mall 100 Euclid Ave. Des Moines, Iowa	February 26, 2004 1 p.m. (If requested)

UTILITIES DIVISION[199]

Electric energy adjustment clause, 20.9 IAB 2/4/04 ARC 3135B	Hearing Room 350 Maple St. Des Moines, Iowa	March 3, 2004 10 a.m.
---	---	--------------------------

VOLUNTEER SERVICE, IOWA COMMISSION ON[555]

Organization and operation; due process, 1.1, 1.2, 5.1 IAB 1/21/04 ARC 3107B	Main Conference Room, Second Floor 200 E. Grand Ave. Des Moines, Iowa	February 10, 2004 11 a.m.
---	---	------------------------------

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

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

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

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

The following list will be updated as changes occur:

ADMINISTRATIVE SERVICES DEPARTMENT[11]
 AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
 Agricultural Development Authority[25]
 Soil Conservation Division[27]
 ATTORNEY GENERAL[61]
 AUDITOR OF STATE[81]
 BEEF INDUSTRY COUNCIL, IOWA[101]
 BLIND, DEPARTMENT FOR THE[111]
 CAPITAL INVESTMENT BOARD, IOWA[123]
 CITIZENS’ AIDE[141]
 CIVIL RIGHTS COMMISSION[161]
 COMMERCE DEPARTMENT[181]
 Alcoholic Beverages Division[185]
 Banking Division[187]
 Credit Union Division[189]
 Insurance Division[191]
 Professional Licensing and Regulation Division[193]
 Accountancy Examining Board[193A]
 Architectural Examining Board[193B]
 Engineering and Land Surveying Examining Board[193C]
 Landscape Architectural Examining Board[193D]
 Real Estate Commission[193E]
 Real Estate Appraiser Examining Board[193F]
 Savings and Loan Division[197]
 Utilities Division[199]
 CORRECTIONS DEPARTMENT[201]
 Parole Board[205]
 CULTURAL AFFAIRS DEPARTMENT[221]
 Arts Division[222]
 Historical Division[223]
 ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]
 City Development Board[263]
 Grow Iowa Values Board[264]
 Iowa Finance Authority[265]
 EDUCATION DEPARTMENT[281]
 Educational Examiners Board[282]
 College Student Aid Commission[283]
 Higher Education Loan Authority[284]
 Iowa Advance Funding Authority[285]
 Libraries and Information Services Division[286]
 Public Broadcasting Division[288]
 School Budget Review Committee[289]
 EGG COUNCIL, IOWA[301]
 ELDER AFFAIRS DEPARTMENT[321]
 EMPOWERMENT BOARD, IOWA[349]
 ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]
 EXECUTIVE COUNCIL[361]
 FAIR BOARD[371]
 GENERAL SERVICES DEPARTMENT[401]
 HUMAN INVESTMENT COUNCIL[417]
 HUMAN RIGHTS DEPARTMENT[421]
 Community Action Agencies Division[427]
 Criminal and Juvenile Justice Planning Division[428]
 Deaf Services Division[429]
 Persons With Disabilities Division[431]
 Latino Affairs Division[433]
 Status of African-Americans, Division on the[434]
 Status of Women Division[435]

HUMAN SERVICES DEPARTMENT[441]
INFORMATION TECHNOLOGY DEPARTMENT[471]
INSPECTIONS AND APPEALS DEPARTMENT[481]
 Employment Appeal Board[486]
 Foster Care Review Board[489]
 Racing and Gaming Commission[491]
 State Public Defender[493]
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]
LAW ENFORCEMENT ACADEMY[501]
LIVESTOCK HEALTH ADVISORY COUNCIL[521]
LOTTERY AUTHORITY, IOWA[531]
MANAGEMENT DEPARTMENT[541]
 Appeal Board, State[543]
 City Finance Committee[545]
 County Finance Committee[547]
NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]
VOLUNTEER SERVICE, IOWA COMMISSION ON[555]
NATURAL RESOURCES DEPARTMENT[561]
 Energy and Geological Resources Division[565]
 Environmental Protection Commission[567]
 Natural Resource Commission[571]
 Preserves, State Advisory Board for[575]
PERSONNEL DEPARTMENT[581]
PETROLEUM UNDERGROUND STORAGE TANK FUND
 BOARD, IOWA COMPREHENSIVE[591]
PREVENTION OF DISABILITIES POLICY COUNCIL[597]
PUBLIC DEFENSE DEPARTMENT[601]
 Emergency Management Division[605]
 Military Division[611]
PUBLIC EMPLOYMENT RELATIONS BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
 Substance Abuse Commission[643]
 Professional Licensure Division[645]
 Dental Examiners Board[650]
 Medical Examiners Board[653]
 Nursing Board[655]
 Pharmacy Examiners Board[657]
PUBLIC SAFETY DEPARTMENT[661]
RECORDS COMMISSION[671]
REGENTS BOARD[681]
 Archaeologist[685]
REVENUE DEPARTMENT[701]
SECRETARY OF STATE[721]
SEED CAPITAL CORPORATION, IOWA[727]
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]
TRANSPORTATION DEPARTMENT[761]
 Railway Finance Authority[765]
TREASURER OF STATE[781]
TURKEY MARKETING COUNCIL, IOWA[787]
UNIFORM STATE LAWS COMMISSION[791]
VETERANS AFFAIRS COMMISSION[801]
VETERINARY MEDICINE BOARD[811]
VOTER REGISTRATION COMMISSION[821]
WORKFORCE DEVELOPMENT DEPARTMENT[871]
 Labor Services Division[875]
 Workers' Compensation Division[876]
 Workforce Development Board and
 Workforce Development Center Administration Division[877]

AGENCY	PROGRAM	SERVICE DELIVERY AREA	ELIGIBLE SUB-APPLICANTS	TYPE OF GRANT ASSISTANCE	APPLICATION DEADLINE
Iowa Homeland Security and Emergency Management Division	Pre-Disaster Mitigation (PDM) Grant (Consolidated Appropriations Resolution, 2003, Public Law 108-7)	Statewide	<ul style="list-style-type: none"> • State agencies, including State universities; • Federally recognized Indian Tribal governments; and • Local government, to include State-recognized Indian Tribes, authorized tribal organizations, and Alaska Native villages • Private universities are not eligible to apply as Sub-Applicants; however, they may request an eligible entity to submit an application for their proposed activity on their behalf 	<ul style="list-style-type: none"> • \$3.6M of PDM funds were made available for Disaster Resistant University (DRU) grants to State, local and Tribal governments for pre-disaster mitigation activities that benefit universities • Program guidance and application materials are available at http://www.fema.gov/fima/dru/shtm 	Applications are due into our office (NOT just postmarked) no later than February 26, 2004

For technical assistance, contact:

**Dennis Harper, State Hazard Mitigation Officer
Linda Roose, Pre-Disaster Mitigation Coordinator
Sandy Cox, Pre-Disaster Mitigation Planner
515-281-3231**

Send completed applications to:

**Bonnie Rieder, Grants Fiscal Specialist
Iowa Homeland Security and Emergency Management Division
Hoover State Office Building, Level A
Des Moines, Iowa 50319-0113
515-281-3231**

ARC 3121B

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Notice of Intended Action

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

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

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

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

Any interested persons may make written comments or suggestions on these proposed amendments on or before 4:30 p.m. on February 24, 2004. Such written materials should be directed to Dr. John Schiltz, State Veterinarian, Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319; or faxed to (515)281-4282. E-mail comments may be sent to John.Schiltz@idals.state.ia.us.

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

These amendments are intended to implement Iowa Code chapter 163.

The following amendments are proposed.

ITEM 1. Amend subrule **64.34(2)**, paragraph "a," as follows:

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

(1) *Have had a negative whole-herd test conducted within the last 12 months and an individual animal test conducted within 30 days of the exhibition, or*

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

ITEM 2. Amend subrule **64.34(4)**, paragraph "b," as follows:

b. Aujeszky's Disease (pseudorabies)—all swine.

(1) ~~All exhibitors~~ *Native Iowa swine. Exhibitors of native Iowa swine that originate from a Stage IV or lower-status county must present a test record and Certificate of Veterinary Inspection that indicate that each swine has had a negative test for pseudorabies within 30 days prior to the show (individual show regulations may have more restrictive time*

restrictions), regardless of the status of the herd, and that show individual official identification. *Exhibitors of native Iowa swine that originate from a Stage V county must present a Certificate of Veterinary Inspection that lists individual official identification. No pseudorabies testing requirements will be necessary for native Iowa swine that originate from Stage V counties.* Electronic identification will not be considered official identification for exhibition purposes.

(2) *Swine originating outside Iowa. All exhibitors must present a test record and Certificate of Veterinary Inspection that indicate that each swine has had a negative test for pseudorabies within 30 days prior to the show (individual show regulations may have more restrictive time restrictions), regardless of the status of the herd, and that show individual official identification. Electronic identification will not be considered official identification for exhibition purposes.*

(2 3) Swine that return from an exhibition to the home herd or that are moved to a purchaser's herd following an exhibition or consignment sale must be isolated and retested negative for pseudorabies not less than 30 and not more than 60 days after reaching their destination.

ITEM 3. Rescind subrule 64.34(10) and adopt the following **new** subrule in lieu thereof:

64.34(10) Cervidae. For the purposes of this subrule, "Cervidae" means all animals belonging to the Cervidae family, and "CWD susceptible Cervidae" means whitetail deer, blacktail deer, mule deer, red deer, and elk.

a. Native Iowa Cervidae. Native Iowa Cervidae from a herd not under quarantine may be exhibited without additional testing for brucellosis or tuberculosis. Native Iowa Cervidae may be exhibited without other testing requirements when the Cervidae are accompanied by a Certificate of Veterinary Inspection that lists individual official identification.

(1) All CWD susceptible Cervidae must have originated from a monitored or certified chronic wasting disease (CWD) cervid herd in which these animals have been kept for at least one year or to which the animals were natural additions. Cervidae that originate from a herd with a diagnosis, signs, or epidemiological evidence of CWD or from an area under quarantine for chronic wasting disease shall not be exhibited. The following statement must appear on the Certificate of Veterinary Inspection:

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

(2) Other Cervidae. For all other Cervidae, the following statement must appear on the Certificate of Veterinary Inspection:

"All Cervidae listed on this certificate have been part of the herd of origin for at least one year or were natural additions to this herd. There has been no diagnosis, sign, or epidemiological evidence of chronic wasting disease in this herd for the past year."

b. Cervidae originating outside Iowa. Cervidae that originate outside Iowa must obtain an entry permit from the state veterinarian's office prior to import into Iowa. Cervidae that originate outside Iowa which are six months of age or older must originate from a herd not under quarantine and have been tested negative for Tuberculosis (TB) by the Single Cervical Tuberculin (SCT) test (Cervidae) within 90 days of exhibition, or originate from an Accredited Herd

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

(Cervidae), or originate from a Qualified Herd (Cervidae), with test dates shown on the Certificate of Veterinary Inspection. Herd status and SCT test are according to USDA Tuberculosis Eradication in Cervidae Uniform Methods and Rules, effective January 22, 1999.

Cervidae that originate outside Iowa which are six months of age or older must also have been tested negative for brucellosis within 90 days of exhibition, or originate from a certified brucellosis-free cervid herd, or a cervid class-free status state (brucellosis). This negative test result must be determined by brucellosis tests approved for cattle and bison, and the test must have been conducted in a cooperative state-federal laboratory.

(1) All CWD susceptible Cervidae must have originated from a monitored or certified CWD cervid herd in which the animals have been kept for at least one year or to which the animals were natural additions. The originating herd must have achieved a CWD status equal to completion of three years in an approved CWD monitoring program, and the CWD herd number and enrollment date must be listed on the Certificate of Veterinary Inspection. Cervidae originating from a herd with a diagnosis, signs, or epidemiological evidence of CWD or from an area under quarantine for chronic wasting disease shall not be exhibited. The following statement must appear on the Certificate of Veterinary Inspection: "All Cervidae listed on this certificate originate from a chronic wasting disease monitored or certified herd in which these animals have been kept for at least one year or to which the animals were natural additions. There has been no diagnosis, sign, or epidemiological evidence of chronic wasting disease in this herd for the past year."

(2) Other Cervidae. For all other Cervidae, the following statement must appear on the Certificate of Veterinary Inspection:

"All Cervidae on this certificate have been part of the herd of origin for at least one year or were natural additions to this herd. There has been no diagnosis, sign, or epidemiological evidence of chronic wasting disease in this herd for the past year."

ITEM 4. Amend subrule 64.35(1) as follows:

64.35(1) Swine. Swine exhibitors shall present to the veterinarian the following: a signed affidavit stating that the swine did not originate from a quarantined herd and that, to the best of ~~their~~ *the exhibitor's* knowledge, swine dysentery has not been in evidence in ~~their~~ *the exhibitor's* herd for the past 12 months; and *for swine originating from a Stage IV or lower-status county*, a record of a negative pseudorabies test performed within 30 days before the exhibition, subject to 64.35(2). *No pseudorabies testing is required for swine that originate from a Stage 5 county.*

ITEM 5. Amend subrule 64.35(2) as follows:

64.35(2) Exceptions. No testing for pseudorabies shall be required at an exhibition that involves only market classes of swine, provided the animals are consigned directly to a slaughter establishment from the exhibition. The site from which the exhibited swine originate must have a current pseudorabies monitored status, *or the exhibited swine must originate from a Stage IV or higher county.* Swine leaving the exhibition from a market class must be consigned and move directly to a slaughtering establishment. All market swine from Stage II counties must be vaccinated against pseudorabies.

ITEM 6. Rescind subrule 64.35(6) and adopt the following **new** subrule in lieu thereof:

64.35(6) Cervidae. For the purposes of this subrule, "Cervidae" means all animals belonging to the Cervidae family, and "CWD susceptible Cervidae" means whitetail deer, blacktail deer, mule deer, red deer, and elk. Cervidae may be exhibited without other testing requirements when accompanied by a Certificate of Veterinary Inspection that lists individual official identification.

All Cervidae must have been part of the herd of origin for at least one year or were natural additions, or must have originated from a chronic wasting disease monitored or certified herd in which these animals have been kept for at least one year or were natural additions. Cervidae originating from a herd with a diagnosis, sign, epidemiological evidence, or area under quarantine for chronic wasting disease shall not be exhibited.

a. All CWD susceptible Cervidae must have originated from a monitored or certified CWD cervid herd in which the animals have been kept for at least one year or to which the animals were natural additions. The following statement must appear on the Certificate of Veterinary Inspection:

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

b. Other Cervidae. For all other Cervidae, the following statement must appear on the Certificate of Veterinary Inspection:

"All Cervidae on this certificate have been part of the herd of origin for at least one year or were natural additions to this herd. There has been no diagnosis, sign, or epidemiological evidence of chronic wasting disease in this herd for the past year."

NOTICE—CIVIL REPARATIONS TRUST FUND

Pursuant to Iowa Administrative Code 361—subrule 12.2(1), the Executive Council gives Notice that the Civil Reparations Trust Fund balance as of December 31, 2003, is approximately \$40,166.00. Money in the Civil Reparations Trust Fund is available for use for indigent civil litigation programs or insurance assistance programs. Application forms are available in the office of the State Treasurer by contacting GeorgAnna Madsen, Executive Secretary, State Capitol Room 114, Des Moines, Iowa 50319; telephone (515)281-5368. Applications must be filed on the thirtieth day after the date of publication of this Notice in the Iowa Administrative Bulletin, or on the thirtieth day after the date affixed to the Notice sent by first-class mail, whichever is later. Any person/company that would like to receive future notices should make request in writing to the above-mentioned contact. Rules regarding the Civil Reparations Trust Fund can be found at 361 IAC Chapter 12.

ARC 3151B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to amend Chapter 23, "Iowa Community Development Block Grant Program," Iowa Administrative Code.

The proposed amendments include listing of application review criteria and elimination of the preapplication process.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on February 24, 2004. Interested persons may submit written or oral comments to Roselyn McKie Wazny, Community Development Division, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4822.

A public hearing to receive comments about the proposed amendments will be held on February 24, 2004, at 1:30 p.m. at the above address in the first floor northwest conference room. Individuals interested in providing comments at the hearing should contact Roselyn McKie Wazny by 4 p.m. on February 23, 2004, to be placed on the hearing agenda.

These amendments are intended to implement Iowa Code section 15.108(1)"a."

The following amendments are proposed.

ITEM 1. Amend paragraph **23.6(2)"c"** as follows:

c. Applicants may apply for multiple activities under each fund for the amount up to the applicable ceilings. ~~IDED shall review multiple activities individually.~~

ITEM 2. Amend subrule 23.6(3) as follows:

23.6(3) Water and sewer fund application procedure. IDEED shall announce the availability of funds and instructions for applying for funds through direct mail, public notices, media releases, workshops or other means determined necessary by IDEED.

a. Application forms shall be available upon request from IDEED, Community Development Division, 200 East Grand Avenue, Des Moines, Iowa 50309; ~~telephone (515) 242-4711, or on the division's Web site at www.community.state.ia.us.~~

b. ~~Applicants shall submit a preapplication for review by IDEED staff by a deadline established by IDEED. Applications shall be submitted by the deadline established by IDEED.~~

c. ~~Applicants whose preapplications best meet the following application review criteria shall be invited to submit full applications for funds IDEED shall review applications and make funding decisions based on the following criteria:~~

- (1) Magnitude of need for the project.
- (2) Impact of the activity on standard of living or quality of life of proposed beneficiaries.
- (3) Readiness to proceed with the proposed activity and likelihood that the activity can be completed in a timely fash-

ion. Procurement of an engineer shall be considered evidence of readiness to proceed.

(4) Degree to which water and sewer fund assistance would be leveraged by other funding sources and documentation of applicant efforts to secure the maximum amount possible of local financial support for the activity.

(5) Capacity to operate and maintain the proposed activity.

(6) Capacity for continued viability of the activity after CDBG assistance.

(7) Scope of project benefit relative to the amount of CDBG funds invested.

(8) Degree to which the project promotes orderly, compact development supported by affordable public infrastructure.

~~d. Rescinded IAB 9/8/99, effective 10/13/99.~~

~~e. IDEED shall provide full application forms and instructions to the selected applicants.~~

~~f. Full applications shall be submitted by a deadline established by IDEED.~~

~~g. d. Applicants shall submit preliminary engineering reports with their full applications.~~

~~h. e. IDEED staff may consult on proposed activities with other state agencies responsible for water- and sewer-related activities and may conduct site evaluations of proposed activities.~~

~~i. f. Applicants selected to receive awards shall be notified by letter from the IDEED director by a date *date(s)* determined by IDEED.~~

ITEM 3. Amend subrule 23.6(4) as follows:

23.6(4) Community facilities and services fund application procedure. Each year, IDEED shall announce the availability of funds and instructions for applying for funds through direct mail, public notices, media releases, workshops or other means determined necessary by IDEED.

a. Application forms shall be available upon request from IDEED, Community Development Division, 200 East Grand Avenue, Des Moines, Iowa 50309; ~~telephone (515) 242-4711, or on the division's Web site at www.community.state.ia.us.~~

~~b. Applicants shall submit a preapplication for review by IDEED staff by a deadline established by IDEED. Applications shall be submitted by the deadline established by IDEED.~~

~~c. Applicants whose preapplications best meet the following application review criteria shall be invited to submit full applications for funds IDEED shall review applications and make funding decisions based on the following criteria:~~

- (1) Magnitude of need for the project.
- (2) Impact of the activity on standard of living or quality of life of proposed beneficiaries.
- (3) Readiness to proceed with the proposed activity and likelihood that the activity can be completed in a timely fashion.

(4) Degree to which community facilities and services fund assistance would be leveraged by other funding sources and documentation of applicant efforts to secure the maximum amount possible of local financial support for the activity.

(5) Capacity to operate and maintain the proposed activity.

(6) Capacity for continued viability of the activity after CDBG assistance.

(7) Scope of project benefit relative to the amount of CDBG funds invested.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

(8) Degree to which the project promotes orderly, compact development supported by affordable public infrastructure.

d. ~~IDED shall provide full application forms and instructions to the selected applicants.~~

e. ~~Full applications shall be submitted by a deadline established by IDEED.~~

f. *d.* IDEED staff may consult on proposed activities with other state agencies responsible for community facilities and services-related activities and may conduct site evaluations of proposed activities.

g. *e.* Applicants selected to receive awards shall be notified by letter from the IDEED director by a date *date(s)* determined by IDEED.

ARC 3136B

EDUCATION DEPARTMENT[281]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby gives Notice of Intended Action to amend Chapter 84, "Financial Incentives for National Board Certification," Iowa Administrative Code.

This chapter contains two financial incentive pilot programs for Iowa teachers receiving National Board Certification (NBC) and provides guidelines to administer both pilot programs. The proposed amendments are being made to address situations not anticipated and therefore not heretofore addressed.

Any interested party may make written or oral comments on the proposed amendments on or before March 2, 2004. Comments should be directed to Judy Jeffrey, Division Administrator, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515) 281-3333; fax (515)281-7700.

A public hearing will be held on March 2, 2004, at 1 p.m. in the State Board Room, Second Floor, Grimes State Office Building, Des Moines, Iowa.

Any person who intends to attend the public hearing and requires special accommodations for specific needs should contact the Department of Education at (515)281-3333.

These amendments are intended to implement Iowa Code section 256.44.

The following amendments are proposed.

ITEM 1. Amend rule **281—84.2(256)**, definition of "a person receives a salary as a classroom teacher," as follows:

"A person *who* receives a salary as a classroom teacher" means a teacher employed by a school district in Iowa who receives any salary compensation from the school district for providing classroom instruction to students in the school district. *The term also means a teacher employed by an area education agency in Iowa who receives all salary compensation through pooled school district funds provided to the area education agency to provide classroom instruction to elementary (including prekindergarten) or secondary students in one or more school districts.*

ITEM 2. Amend rule **281—84.4(256)** by adding the following **new** numbered paragraph "**3**":

3. An otherwise-eligible teacher who possesses a teaching contract that is for less than full-time shall receive an award prorated to reflect the type of contract (i.e., half-time, quarter-time, etc.).

ITEM 3. Amend rule **281—84.5(256)**, first unnumbered paragraph, as follows:

In the notice of appeal, *which shall be notarized*, the applicant shall give a short and plain statement of the reasons for the appeal.

ARC 3145B

ELDER AFFAIRS DEPARTMENT[321]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 231.23(10), the Elder Affairs Department hereby gives Notice of Intended Action to amend Chapter 1, "Introduction"; rescind Chapter 3, "Commission Established," and adopt a new Chapter 3, "Commission of Elder Affairs"; adopt new Chapter 11, "Waivers or Variances from Administrative Rules"; rescind Chapter 16, "Senior Living Coordinating Unit," and adopt a new Chapter 16 with the same title; and amend Chapter 17, "Petition for Rule Making," and Chapter 18, "Declaratory Rulings," Iowa Administrative Code.

These amendments eliminate obsolete language and update language to reflect current policy and procedures. Language regarding waivers in Chapter 1 is rescinded and a new Chapter 11 is established for waivers or variances from administrative rules. Chapter 3 is rescinded and a new chapter with updated language is established. New Chapter 16 establishes definitions related to the Senior Living Coordinating Unit and also establishes the Director of the Department of Elder Affairs as the chairperson for the coordinating unit. Amendments to Chapters 17 and 18 revise the mailing address for the Department and update the language for submitting materials to the Department.

These proposed amendments were reviewed by the Area Agencies on Aging and were presented to the Commission of Elder Affairs for initial review at the Commissioners' January 14, 2004, meeting.

Any interested person may make written suggestions or comments on these proposed amendments prior to February 25, 2004. Such written comments should be directed to the Department of Elder Affairs, 200 Tenth Street, Des Moines, Iowa 50309, or sent by E-mail to joel.wulf@iowa.gov or by fax to (515)242-3300.

There will be a public hearing on February 25, 2004, from 9 to 11 a.m. over the Iowa Communications Network, at which time persons may present their views either orally or in writing. Access to the public hearing will be available through the following locations:

ELDER AFFAIRS DEPARTMENT[321](cont'd)

Check sign for room location
Spencer Public Library
21 East Third Street
Spencer

South side main entrance; check sign for room location
Council Bluffs Public Library
400 Willow Avenue
Council Bluffs

Third Floor Conference Room
Wallace State Office Building
East Ninth and Grand
Des Moines

Main hospital front entrance; Room 3 West-19C
(3rd floor, west end)
Veterans Administration Medical Center
601 Highway 6
Iowa City

At the public hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

These amendments are intended to implement Iowa Code chapters 17A, 21 and 231 and Executive Order Number 11. The following amendments are proposed.

ITEM 1. Amend paragraph 1.2(1)“f” as follows:

f. Iowa aging ~~directives~~ *program instructions* signed by the executive director.

ITEM 2. Rescind and reserve subrule 1.2(3).

ITEM 3. Rescind 321—Chapter 3 and adopt the following new chapter in lieu thereof:

CHAPTER 3
COMMISSION OF ELDER AFFAIRS

321—3.1(231) Definitions.

“Commission” means the commission of elder affairs.

“Federal Act” means the Older Americans Act of 1965, 42 U.S.C. 3001 et seq., as amended.

321—3.2(231) Purpose of the commission. The purpose of the commission is to develop policy for the department of elder affairs for administration of the federal Act.

321—3.3(21,231) Organization of the commission and proceedings.

3.3(1) The commission shall hold at least four meetings annually and by the call of the chairperson.

3.3(2) The commission shall consist of eleven members. Voting members are the seven members appointed by the governor in accordance with Iowa Code section 231.11. Nonvoting members are the four members appointed by the general assembly in accordance with Iowa Code section 231.11.

3.3(3) Four voting members of the commission constitute a quorum.

3.3(4) The meeting agenda shall be given at least ten calendar days before the commission meeting.

3.3(5) The commission shall be governed in accordance with Iowa Code chapter 21, and the commission’s proceed-

ings shall be conducted in accordance with Robert’s Rules of Order, Revised.

3.3(6) The chairperson may call an emergency meeting with less than ten days’ notice in accordance with Iowa Code section 21.4.

3.3(7) All meetings shall be open to the public unless an open meeting is properly closed pursuant to Iowa Code section 21.5.

3.3(8) Dates and locations of commission meetings may be obtained from the department’s Web site at www.state.ia.us/elderaffairs or directly from the department by calling (515)242-3333.

321—3.4(231) Commission duties and authority. In addition to carrying out the duties outlined in Iowa Code Supplement section 231.14, the commission shall:

1. Serve in a judicial capacity relative to procedures developed by the department;

2. Review annually and approve an affirmative action plan for the department; and

3. Require area agencies on aging to follow procedures established by the department to implement commission policy.

These rules are intended to implement Iowa Code chapters 21 and 231.

ITEM 4. Adopt the following new chapter:

CHAPTER 11
WAIVERS OR VARIANCES FROM
ADMINISTRATIVE RULES

321—11.1(17A,231,ExecOrd11) Definitions. For purposes of this chapter:

“Department” means the department of elder affairs.

“Director” means the director of the department of elder affairs.

“Waiver or variance” means action by the department which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person/program on the basis of the particular circumstances of that person/program. For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”

321—11.2(17A,231,ExecOrd11) Scope of chapter. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the department 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. Specific waiver provisions are provided in 321—24.26(80GA,ch165); 321—25.24(231C); and 321—subrule 9.2(4).

321—11.3(17A,231,ExecOrd11) Applicability of chapter. The department may only grant a waiver from a rule if the department has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The department may not waive requirements created or duties imposed by statute.

321—11.4(17A,231,ExecOrd11) Criteria for waiver or variance. In response to a petition completed pursuant to rule 321—11.6(17A,231,ExecOrd11), the department may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the department finds, based on clear and convincing evidence, all of the following:

ELDER AFFAIRS DEPARTMENT[321](cont'd)

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 equal 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.

321—11.5(17A,231,ExecOrd11) Filing of petition. A petition for a waiver must be submitted in writing to the Director, Iowa Department of Elder Affairs, Clemens Building, Third Floor, 200 Tenth Street, Des Moines, Iowa 50309-3609, as follows:

11.5(1) Certificate application. If the petition relates to a certificate application, the petition shall be made in accordance with the filing requirements for the certificate in question and submitted to the department.

11.5(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, and submitted to the department.

11.5(3) Other. If the petition does not relate to a certificate application or contested case, the petition may be submitted to the department.

321—11.6(17A,231,ExecOrd11) 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.

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 321—11.4(17A,231,ExecOrd11). 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 department and the petitioner relating to the regulated activity or certificate affected by the proposed waiver, including a description of each affected certificate held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity or certificate within the last five years.

6. Any information known to the requester regarding the department'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 request to furnish the department with information relevant to the waiver.

321—11.7(17A,231,ExecOrd11) Additional information.

Prior to issuing an order granting or denying a waiver, the department 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 department may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the department's appropriate staff person, or a committee of the department.

321—11.8(17A,231,ExecOrd11) Notice. The department shall acknowledge a petition upon its receipt in the department's office. The department shall ensure that notice of the pending 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 department may give notice to other persons. To accomplish this notice provision, the department may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and to provide a written statement to the department attesting that notice has been provided.

321—11.9(17A,231,ExecOrd11) 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 department so provides by rule or order or is required to do so by statute.

321—11.10(17A,231,ExecOrd11) 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.

11.10(1) Department discretion. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the department, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the department based on the unique, individual circumstances set out in the petition.

11.10(2) Burden of persuasion. The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the department should exercise its discretion to grant a waiver from a department rule.

11.10(3) Narrowly tailored. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

11.10(4) Administrative deadlines. When the rule from which a waiver is sought establishes administrative deadlines, the department shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

11.10(5) Conditions. The department may place any condition on a waiver that the department finds desirable to protect the public health, safety, and welfare.

11.10(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 department, a waiver may be renewed if the department finds that grounds for a waiver continue to exist.

11.10(7) Time for ruling. The department 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

ELDER AFFAIRS DEPARTMENT[321](cont'd)

a contested case, the department shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

11.10(8) When deemed denied. Failure of the department to grant or deny a petition within the required time period shall be deemed a denial of that petition by the department. However, the department shall remain responsible for issuing an order denying a waiver.

11.10(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.

321—11.11(17A,22,231,ExecOrd11) 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 a waiver petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information that the department is authorized or required to keep confidential. The department may accordingly redact confidential information from petitions or orders prior to public inspection.

321—11.12(17A,22,231,ExecOrd11) Summary reports. Semiannually, the department 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 these rules, and a general summary of the reasons justifying the department'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.

321—11.13(17A,231,ExecOrd11) Cancellation of a waiver. A waiver issued by the department pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the department issues an order finding any of the following:

1. The petitioner or 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 alternative 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.

321—11.14(17A,231,ExecOrd11) 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.

321—11.15(17A,231,ExecOrd11) Defense. After the department 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.

321—11.16(17A,231,ExecOrd11) Judicial review. Judicial review of a department's decision to grant or deny a waiver

petition may be taken in accordance with Iowa Code chapter 17A. Any appeal to district court shall be taken within 30 days from the date of issuance of the decision by the department pursuant to Iowa Code section 17A.19.

These rules are intended to implement Iowa Code section 17A.9A and chapter 22 and Executive Order Number 11.

ITEM 5. Rescind 321—Chapter 16 and adopt the following **new** chapter in lieu thereof:

CHAPTER 16
SENIOR LIVING COORDINATING UNIT

321—16.1(231,249H) Definitions.

“Community-based adult services committee” or “CBAS committee” means the group that makes recommendations to the senior living coordinating unit and consists of representatives appointed by the departments of elder affairs, human services, inspections and appeals, and public health; Iowa Foundation for Medical Care, Iowa Association of Area Agencies on Aging, and Iowa State Association of Counties.

“Unit” means the senior living coordinating unit established in Iowa Code section 231.58.

321—16.2(231,249H) Organization of the unit and proceedings.

16.2(1) The senior living coordinating unit is created within the department of elder affairs.

16.2(2) The director of the department of elder affairs shall serve as chairperson.

16.2(3) The voting members of the unit shall elect a vice-chairperson from its membership at the first meeting following July 1 of each year.

16.2(4) Four voting members of the unit constitute a quorum.

16.2(5) The unit shall be governed in accordance with Iowa Code chapter 21, and the unit's proceedings shall be conducted in accordance with Robert's Rules of Order, Revised.

16.2(6) The technical and administrative functions of the unit shall be performed by staff of the department of elder affairs.

16.2(7) The community-based adult services committee shall serve as the work group to the unit regarding policies and programs.

321—16.3(231,249H) Chairperson and vice-chairperson duties.

- 16.3(1)** The chairperson's duties include:
- a. Convening and chairing unit meetings;
 - b. Ensuring that unit proceedings are recorded;
 - c. Ensuring that minutes of meetings are prepared and distributed;
 - d. Ensuring that tentative agendas for meetings are prepared and distributed; and
 - e. Ensuring that all notices to the public required by Iowa Code section 21.4 are given.

16.3(2) The vice-chairperson shall assume the chairperson's duties in the chairperson's absence.

321—16.4(21,231,249H) Meetings. The unit shall meet at least six times a year. Meeting dates shall be set by members of the unit at the first meeting following July 1 of each year. The chairperson may call a special meeting upon five days' notice.

321—16.5(231,249H) Communications. Communications to the unit may be addressed to the Department of Elder Af-

ELDER AFFAIRS DEPARTMENT[321](cont'd)

fairs, Clemens Building, 200 Tenth Street, Des Moines, Iowa 50309-3609.

These rules are intended to implement Iowa Code chapters 21, 231 and 249H.

ITEM 6. Amend **321—Chapter 17** as follows:

CHAPTER 17
PETITION FOR RULE MAKING

Insert the petition for rule making segment of the Uniform Administrative Rules on Agency Procedure which is printed in the front of Volume I first volume of the Iowa Administrative Code, with the following amendments:

321—17.1(17A) Petition for rule making. In lieu of the words “designate office”, insert “the Executive Director, Department of Elder Affairs, 914 Grand Avenue, Suite #236 Clemens Building, Third Floor, 200 Tenth Street, Des Moines, Iowa 50319 50309-3609”.

In lieu of the words “AGENCY NAME”, the heading on the petition should read:

BEFORE THE
DEPARTMENT OF ELDER AFFAIRS

321—17.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Executive Director, Iowa Department of Elder Affairs, 914 Grand Avenue Clemens Building, Third Floor, 200 Tenth Street, Des Moines, Iowa 50319 50309-3609.

These rules are intended to implement Iowa Code section 17A.7.

ITEM 7. Amend **321—Chapter 18** as follows:

CHAPTER 18
DECLARATORY RULINGS ORDERS

Insert the declaratory rulings orders segment of the Uniform Administrative Rules on Agency Procedure which is printed in the front of Volume I first volume of the Iowa Administrative Code, with the following amendments:

321—18.1(17A) Petition for declaratory ruling order. In lieu of the words “designate office”, insert “the Executive Director, Iowa Department of Elder Affairs, 914 Grand Avenue, Suite #236, Clemens Building, Third Floor, 200 Tenth Street, Des Moines, Iowa 50319 50309-3609”.

In lieu of the words “AGENCY NAME”, the heading on the petition should read:

BEFORE THE
DEPARTMENT OF ELDER AFFAIRS

Further amend 321—18.1(17A) by adding the following information required to be in the petition:

9. The petitioner’s state identification number, if applicable.

Further amend 321—18.1(17A) by substituting the following paragraph for the parenthetical sentence at the end:

For requests for an application of agency policy to specific facts, the request shall be in writing and may be submitted in letter format electronically or by mail. The letter request should recite all pertinent facts.

321—18.3(17A) Inquiries. Inquiries concerning the status of a petition for a declaratory ruling order may be made to the Executive Director, Iowa Department of Elder Affairs, 914 Grand Avenue, Suite #236, Clemens Building, Third Floor, 200 Tenth Street, Des Moines, Iowa 50319 50309-3609.

These rules are intended to implement Iowa Code section 17A.9.

ARC 3142B

**ELDER AFFAIRS
DEPARTMENT[321]**

Notice of Termination

Pursuant to the authority of Iowa Code section 231.23(10), the Elder Affairs Department terminates the rule making initiated by its Notice of Intended Action published in the December 10, 2003, Iowa Administrative Bulletin as **ARC 3001B**, to rescind Chapter 25, “Non-Facility-Based Respite Care,” and to adopt a new Chapter 25, “Assisted Living Programs,” Iowa Administrative Code.

The Notice proposed to adopt a new Chapter 25 establishing requirements for program certification and standards for assisted living programs. An appeal process for involuntary tenant transfer was also proposed.

The Department has made substantial changes to the rules published under Notice based on numerous written and oral comments from the general public and comments from the Administrative Rules Review Committee. Therefore, the Department is terminating the rule making commenced in **ARC 3001B** and is issuing a new Notice of Intended Action, published herein as **ARC 3146B**, regarding the proposed rules.

ARC 3146B

**ELDER AFFAIRS
DEPARTMENT[321]**

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 231.23(10), the Elder Affairs Department hereby gives Notice of Intended Action to rescind Chapter 25, “Non-Facility-Based Respite Care,” and adopt new Chapter 25, “Assisted Living Programs,” Iowa Administrative Code.

Chapter 25 establishes requirements for program certification and standards for assisted living programs. An appeal process for involuntary tenant transfer is established.

Any interested person may make written suggestions or comments on this proposed amendment prior to February 25, 2004. Such written comments should be directed to the Department of Elder Affairs, 200 10th Street, Des Moines, Iowa 50309, or E-mailed to joel.wulf@iowa.gov, or faxed to (515) 242-3300.

There will be a public hearing February 25, 2004, from 9 to 11 a.m. over the Iowa Communications Network, at which time persons may present their views either orally or in writing. Access to the public hearing will be available through the following locations:

ELDER AFFAIRS DEPARTMENT[321](cont'd)

Check sign for room location
Spencer Public Library
21 East Third Street
Spencer

South side main entrance; check sign for room location
Council Bluffs Public Library
400 Willow Avenue
Council Bluffs

Third Floor Conference Room
Wallace State Office Building
East Ninth and Grand
Des Moines

Main hospital front entrance; Room 3 West-19C
(3rd floor, west end)
Veterans Administration Medical Center
601 Highway 6
Iowa City

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

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

This amendment is intended to implement Iowa Code Supplement chapter 231C .

The following amendment is proposed.

Rescind 321—Chapter 25 and adopt the following **new** chapter in lieu thereof:

CHAPTER 25
ASSISTED LIVING PROGRAMS

321—25.1(231C) Definitions.

“Allied health care professional” means a person licensed through the department of public health, other than a physician, physician’s assistant, registered nurse or advanced registered nurse practitioner, who provides health care services to the tenant.

“Assistance” means aid to a tenant who self-directs or participates in the task or activity or who retains the mental or physical ability, or both, to participate in a task or activity. Cueing of the tenant regarding a particular task or activity shall not be construed to mean the tenant has not participated in the task or activity.

“Assisted living” means provision of housing with services, which may include but are not limited to health-related care, personal care, and assistance with instrumental activities of daily living, to three or more tenants in a physical structure, which provides a homelike environment. “Assisted living” also includes encouragement of family involvement, tenant self-direction, and tenant participation in decisions that emphasize choice, dignity, privacy, individuality, shared risk, and independence. “Assisted living” includes the provision of housing and assistance with instrumental activities of daily living only if personal care or health-related care is also included.

“CARF” means the Rehabilitation Accreditation Commission.

“Cognitive disorder” means a disorder characterized by cognitive dysfunction presumed to be the result of illness that does not meet criteria for dementia, delirium, or amnesic disorder.

“Dementia” means an illness characterized by multiple cognitive deficits which represent a decline from previous levels of functioning and include memory impairment and one or more of the following cognitive disturbances: aphasia, apraxia, agnosia, and disturbance in executive functioning.

“Dementia-specific assisted living program” means an assisted living program certified under this chapter that either serves five or more tenants with dementia between Stages 4 and 7 on the Global Deterioration Scale or holds itself out as providing specialized care for persons with dementia, such as Alzheimer’s disease, in a dedicated setting.

“Department” means the department of elder affairs.

“DIA” means the department of inspections and appeals.

“Dwelling unit” means an apartment, group of rooms, or single room that is occupied as a separate living quarter or, if vacant, that is intended for occupancy as a separate living quarter, in which the occupant(s) can live and sleep separately from any other persons in the building and that has direct access from the outside of the building or through a common hall.

“Global Deterioration Scale” means the seven-stage scale for assessment of primary degenerative dementia developed by Dr. Barry Reisberg.

“Health care” means services provided by a registered nurse or a licensed practical nurse, on a part-time or intermittent basis, and services provided by other licensed health care professionals, on a part-time or intermittent basis.

“Health care professional” means a physician, physician’s assistant, registered nurse or advanced registered nurse practitioner licensed through the department of public health.

“Human service professional” means an individual with at least a bachelor’s degree in a human service field including human services, gerontology, social work, sociology, psychology, and family science. Experience in a human service field may be substituted for up to two years of required education.

“Instrumental activities of daily living” means those activities that reflect the tenant’s ability to perform household and other tasks necessary to meet the tenant’s needs within the community, which may include but are not limited to shopping, housekeeping, chores, and traveling within the community.

“In the proximate area” means located within a less-than-five-minute response time.

“JCAHO” means the Joint Commission on Accreditation of Healthcare Organizations.

“Legal representative” means a person appointed by the court to act on behalf of the tenant, or a person acting pursuant to a power of attorney.

“Nurse-delegated assistance” means delegated tasks or activities for which a professional nurse has assumed responsibility for assessing, planning, implementing, or evaluating, and for which the nurse remains legally accountable.

“Occupancy agreement” means a written contract entered into between an assisted living program and a tenant that clearly describes the rights and responsibilities of the assisted living program and the tenant, and other information required by rule. The occupancy agreement may include a separate signed lease and signed service agreement.

“Part-time or intermittent care” means licensed nursing services and professional therapies that are provided no more than 5 days per week; or licensed nursing services and professional therapies that are provided 6 or 7 days per week for temporary periods of time with a predictable end within 21 days; or licensed nursing services and professional therapies

ELDER AFFAIRS DEPARTMENT[321](cont'd)

in combination with nurse-delegated assistance with medications or activities of daily living that do not exceed 28 hours per week.

“Personal care” means assistance with the essential activities of daily living which may include but are not limited to transferring, bathing, personal hygiene, dressing, grooming, housekeeping essential to the health and welfare of the tenant, and supervising of self-administered medications, but does not include the administration of medications.

“Program” means a program that provides assisted living services as defined in this rule.

“Qualified professional” means a licensed or registered safety engineer, a representative of a state or federal agency that provides an OSHA-type inspection, an engineer involved in industrial operations, a plant engineer familiar with the type of program being provided, a safety specialist familiar with the type of program being provided, an architect/designer familiar with the type of program being provided, a safety consultant who represents the organization’s fire insurance carrier, a safety consultant who represents the organization’s workers’ compensation carrier, a safety consultant who is in private practice, an industrial health specialist, a representative of the state fire marshal’s office, a local fire control authority, a state or federal technical assistance consultant in safety, a state or federal technical assistance consultant in health, or a risk management specialist.

“Recognized accrediting entity” means a nationally recognized accrediting entity that the department recognizes as having specific assisted living program standards equivalent to the standards established by the department.

“Remodeling” means modification of any part of an existing building, addition of a new wing or floor to an existing building, or conversion of an existing building. “Modification” means any addition to or change in dimensions or structure except as incidental to the customary maintenance of the program structure.

“Routine” means regular, customary or not occasional or intermittent.

“Self-administration” means a tenant’s taking personal responsibility for all medication needs, including ordering, refilling, remembering dosing schedule, and self-administering medications.

“Service plan” means the document that defines the services to meet the needs and preferences of a tenant.

“Supervision of self-administration” means a staff person’s activities such as routine prompting and reminding, opening of containers or packaging at the direction of the tenant, or reading instructions or other label information in order for a tenant to self-administer a medication.

“Tenant” means an individual who receives assisted living services pursuant to an occupancy agreement through a certified assisted living program.

“Tenant advocate” means the office of long-term care resident’s advocate established in Iowa Code section 231.42.

“Unmanageable incontinence” means a condition that requires staff provision of total care for an incontinent tenant who lacks the ability to assist in bladder or bowel continence care.

321—25.2(231C) Program certification. A program may become certified by meeting all the requirements in Iowa Code Supplement chapter 231C and the applicable rules of this chapter and:

1. Being accredited by either CARF or JCAHO; or
2. Meeting the requirements set forth in 321—25.3(231C).

For the purpose of these rules certification is the equivalent to licensure. A current certificate shall be visibly displayed within the designated area of the operation of the program.

321—25.3(231C) Certification of a nonaccredited program.

25.3(1) The applicant shall complete an approved application packet obtained from the department of inspections and appeals (DIA). Application materials may be obtained from the health facilities division Web site at www.dia-hfd.state.ia.us; by mail from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0083; or by telephone at (515)281-6325.

25.3(2) The applicant shall submit one copy of the completed application and all supporting documentation to DIA at the above address at least 60 calendar days prior to the expected date of beginning operation.

25.3(3) The appropriate fees, as stated in 321—Chapter 27, shall accompany each application and be payable by check or money order to the Department of Inspections and Appeals. The fees are nonrefundable.

25.3(4) DIA shall consider the application when all supporting documents and fees are received.

321—25.4(231C) Nonaccredited program application content. An application for certification or recertification of a nonaccredited program shall include the following:

25.4(1) A list that includes the names, addresses and percentage of stock, shares, partnership or other equity interest of all officers, members of the board of directors, and trustees and of the designated manager, as well as stockholders, partners or any individuals who have greater than a 10 percent equity interest in the program. The program shall notify DIA of any changes in the list within ten working days of the change;

25.4(2) A statement affirming that the individuals listed in 25.4(1) have not been convicted of a felony or serious misdemeanor or found in violation of the dependent adult abuse code in any state;

25.4(3) A statement disclosing whether any of the individuals listed in 25.4(1) have or have had an ownership interest in a program, elder group home, home health agency, or licensed health care facility as defined under Iowa Code section 135C.1 or licensed hospital as defined under Iowa Code section 135B.1 which has been closed in any state due to removal of program, agency, or facility licensure or certification or due to involuntary termination from participation in either the Medicaid or Medicare program; or have been found to have failed to provide adequate protection or services for participants to prevent abuse or neglect;

25.4(4) A copy of the current policy and procedure for evaluation of each tenant, which includes a copy of the evaluation tool or tools to be used to identify the functional, cognitive and health status of each tenant;

25.4(5) Identification of target population;

25.4(6) A copy of the current service plan format;

25.4(7) If the program contracts for personal care or health-related care services from a home health agency, mental health center or a licensed health care facility, a copy of that entity’s current license;

25.4(8) The current policy and procedure for addressing medication needs of tenants;

25.4(9) The current policy and procedure describing accident and emergency response;

ELDER AFFAIRS DEPARTMENT[321](cont'd)

25.4(10) A copy of the current tenant occupancy agreement;

25.4(11) The current policy and procedure for managing risk and upholding tenant autonomy when tenant decision making may result in poor outcomes for the tenant or others;

25.4(12) A copy of the current state license for the entity providing food service, whether it is the program or an outside entity or a combination of both;

25.4(13) A copy of the written policies and procedures for food service relating to staffing, nutrition, menu planning, therapeutic diets, preparation, service and storage.

321—25.5(231C) Initial certification process for a nonaccredited program.

25.5(1) DIA shall determine whether or not the proposed program meets applicable requirements contained in Iowa Code Supplement chapter 231C and this chapter within 20 working days of receiving all completed documentation, including state fire marshal approval and structural and evacuation review approval.

25.5(2) DIA shall notify the applicant within 5 working days of any preliminary certification determination.

a. If the determination is to certify, DIA shall issue a conditional certification not to exceed one year.

b. If the determination is to deny certification, DIA shall provide the applicant the opportunity for hearing in accordance with 321—26.4(17A,231C,80GA,ch165).

25.5(3) A conditional certification shall allow the applicant to begin operation and accept tenants into the program.

25.5(4) Within 90 calendar days following issuance of conditional certification, DIA shall conduct an on-site monitoring evaluation to determine compliance with the provisions of Iowa Code Supplement chapter 231C and this chapter.

25.5(5) If regulatory insufficiencies are identified as a result of the on-site monitoring evaluation, DIA shall issue a report of the findings to the program by certified mail within 20 working days following the monitoring evaluation. The program shall be required to submit a plan of correction to DIA within 10 working days following receipt of the report.

25.5(6) DIA shall make a final certification decision based on the results of the monitoring evaluation and review of an acceptable plan of correction.

25.5(7) DIA shall notify the program of a final certification decision within 10 working days following the finalization of the on-site monitoring evaluation report or receipt of an acceptable plan of correction, whichever is applicable.

25.5(8) If the decision is to continue certification, DIA shall issue a full two-year certification effective from the date of the original conditional certification.

25.5(9) If the decision is to discontinue certification through denial, DIA shall provide the program the opportunity for a hearing under 321—26.4(17A,231C,80GA,ch165).

321—25.6(231C) Recertification of a nonaccredited program.

25.6(1) Certification of a program, unless conditionally issued, suspended or revoked, shall expire at the end of the time period specified on the certificate.

25.6(2) DIA shall send recertification application materials to each program at least 120 calendar days prior to expiration of its certification.

321—25.7(231C) Recertification process for a nonaccredited program. To obtain recertification, a program shall:

25.7(1) Submit one copy of the completed application, associated documentation and the recertification fee as stated

in 321—Chapter 27 to DIA at the address stated in 25.3(1) at least 90 calendar days prior to the expiration of the program's certification.

25.7(2) Submit additional documentation that the following systems have been inspected by a qualified professional and are found to be maintained in conformance with manufacturer's recommendations and nationally recognized standards: heating, cooling, water heater, electricity, plumbing, sewage, artificial light, and ventilation; and, if located on site, garbage disposal, cooking, laundry, and elevators.

321—25.8(231C) Notification of recertification for a nonaccredited program.

25.8(1) DIA shall review the application and associated documentation and fees for completion, and notify the program of application status within 10 working days of receipt of the required application materials.

25.8(2) DIA shall conduct an on-site monitoring evaluation of the program between 60 and 90 days prior to expiration of the program's certification.

25.8(3) If regulatory insufficiencies are identified as a result of the monitoring evaluation, DIA shall issue a report of the findings to the program by certified mail within 20 working days following the monitoring evaluation. The program shall be required to submit a plan of correction to DIA within 10 working days following receipt of the report. Within 10 working days of receiving all finalized documentation, including state fire marshal approval and an acceptable plan of correction, DIA shall determine the program's compliance with applicable requirements contained in Iowa Code Supplement chapter 231C and this chapter and make a recertification decision.

25.8(4) If no regulatory insufficiencies are identified as a result of the monitoring evaluation, DIA shall issue a report of the findings with the final recertification decision. Within 15 working days of receiving all finalized documentation, including state fire marshal approval, DIA shall determine the program's compliance with applicable requirements contained in Iowa Code Supplement chapter 231C and this chapter and make a recertification decision.

25.8(5) If the decision is to recertify, DIA shall issue the program a two-year certification effective from the date of the expiration of the previous certification.

25.8(6) If the decision is to deny recertification, DIA shall provide the program the opportunity for a hearing under 321—26.4(17A,231C,80GA,ch165).

25.8(7) If DIA is unable to recertify a program through no fault of the program, DIA shall issue a time-limited extension to the program.

321—25.9(231C) Certification and recertification process for an accredited program.

25.9(1) An applicant program accredited by a recognized accrediting entity shall:

a. Submit a completed application packet obtained from DIA. Application materials may be obtained from the health facilities division Web site at www.dia-hfd.state.ia.us; by mail from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0083; or by telephone at (515)281-6325.

b. Submit a copy of the current accreditation outcome from a recognized accrediting entity.

c. Apply for certification within 30 calendar days following verification of compliance with life safety requirements pursuant to this chapter for a program in operation on or before [insert effective date of these rules].

ELDER AFFAIRS DEPARTMENT[321](cont'd)

d. Apply for recertification within 60 calendar days following verification of compliance with life safety requirements pursuant to this chapter.

e. Maintain compliance with life safety requirements pursuant to this chapter.

f. Submit an administrative fee as set forth in 321—27.2(231C).

25.9(2) DIA shall not consider an application until it is complete and received with all supporting documentation and fees.

321—25.10(231C) Accredited program certification or recertification application content. An application for certification or recertification of an accredited program shall include the following:

25.10(1) A list that includes the names, addresses and percentage of stock, shares, partnership or other equity interest of all officers, members of the board of directors, and trustees and of the designated manager, as well as stockholders, partners or any individuals who have greater than a 10 percent equity interest in the program. The program shall notify DIA of any changes in the list within ten working days of the change;

25.10(2) A statement affirming that the individuals listed in 25.10(1) have not been convicted of a felony or serious misdemeanor or found in violation of the dependent adult abuse code in any state;

25.10(3) A statement disclosing whether any of the individuals listed in 25.10(1) have or have had an ownership interest in a program, elder group home, home health agency, or licensed health care facility as defined under Iowa Code section 135C.1 or licensed hospital as defined under Iowa Code section 135B.1 which has been closed in any state due to removal of program, agency, or facility licensure or certification or due to involuntary termination from participation in either the Medicaid or Medicare program; or have been found to have failed to provide adequate protection or services for tenants to prevent abuse or neglect;

25.10(4) Identification of target population;

25.10(5) A copy of the current accreditation outcome from the recognized accrediting entity.

321—25.11(231C) Initial certification process for an accredited program.

25.11(1) DIA shall determine whether or not the accredited program meets applicable requirements contained in these rules within 20 working days of receiving all finalized documentation, including state fire marshal approval.

25.11(2) DIA shall notify the accredited program within 10 working days of the final certification decision.

a. If the decision is to certify, a full certification shall be issued for the term of the accreditation not to exceed three years, unless conditionally issued, suspended or revoked by either DIA or the recognized accrediting entity.

b. If the determination is to deny certification, DIA shall provide the applicant the opportunity for hearing in accordance with 321—26.4(17A,231C,80GA,ch165).

321—25.12(231C) Recertification process for an accredited program.

25.12(1) Certification for a program, unless conditionally issued, suspended or revoked, shall expire at the end of the time period specified on the certificate.

25.12(2) DIA shall send recertification application materials to each program at least 90 calendar days prior to expiration of its certification.

25.12(3) To obtain recertification, an accredited program shall submit one copy of the completed application and asso-

ciated documentation including the administrative fee as stated in 321—27.2(231C) to DIA at the address stated in 25.9(231C) at least 60 calendar days prior to the expiration of the program's certification.

25.12(4) The program shall submit to DIA a copy of the current accreditation outcome from the recognized accrediting entity.

25.12(5) Within 20 working days of receiving all finalized documentation, including state fire marshal approval, DIA shall determine the program's compliance with applicable requirements contained in these rules and make a recertification decision.

25.12(6) DIA shall notify the accredited program within 10 working days of the final recertification decision.

a. If the decision is to recertify, a full certification shall be issued for the term of the accreditation not to exceed three years, unless conditionally issued, suspended or revoked by either DIA or the recognized accrediting entity.

b. If the determination is to deny recertification, DIA shall provide the applicant the opportunity for hearing in accordance with 321—26.4(17A,231C,80GA,ch165).

25.12(7) If DIA is unable to recertify a program through no fault of the program, DIA shall issue a time-limited extension to the program.

321—25.13(231C) Duration of certification for all programs.

25.13(1) Certification as a nonaccredited program by DIA shall be applicable for two years, unless conditionally issued, suspended or revoked.

25.13(2) Certification as an accredited program by DIA shall be applicable for the term of the accreditation not to exceed three years, unless conditionally issued, suspended or revoked by either DIA or the recognized accrediting entity.

DIA shall maintain a list of all certified programs. The list shall be readily available at DIA upon request.

321—25.14(231C) Recognized accrediting entity.

25.14(1) The department designates CARF and JCAHO as recognized accrediting entities for programs.

25.14(2) To apply for designation by the department as a recognized accrediting entity for programs, an accrediting organization shall submit a letter of request and meet the accrediting entity requirements in this rule.

25.14(3) The designation shall remain in effect for so long as the accreditation standards continue to meet the minimum requirements of Iowa Code Supplement chapter 231C and this chapter.

25.14(4) The accrediting entity shall provide annually to DIA and the department, at no cost, a current edition of the applicable standards manual and survey preparation guide, and training thereon, within 20 working days after the publication is released.

321—25.15(231C) Requirements for an accredited program. Each accredited program shall:

25.15(1) Provide DIA a copy of all survey reports including outcomes, quality improvement plans and annual conformance to quality reports generated or received, as applicable, within ten working days of receipt of the reports.

25.15(2) Notify DIA by the most expeditious means possible of all credible reports of alleged improper or inappropriate conduct or conditions within the accredited program and any actions taken by the accrediting entity with respect thereto.

25.15(3) Notify DIA within two working days of the expiration, suspension, revocation or other loss of a program's accreditation.

ELDER AFFAIRS DEPARTMENT[321](cont'd)

321—25.16(231C) Maintenance of program accreditation.

25.16(1) An accredited program shall continue to be recognized for certification by DIA if both of the following requirements are met:

a. The program complies with the requirements outlined in 25.15(231C).

b. The program maintains its voluntary accreditation status for the duration of the time-limited certification period.

25.16(2) A program that does not maintain its voluntary accreditation status must become certified by DIA prior to any lapse in accreditation.

25.16(3) A program that does not maintain its voluntary accreditation status and is not certified by DIA prior to any lapse in voluntary accreditation shall be considered an uncertified program.

321—25.17(231C) Transfer of certification.

25.17(1) A certificate, unless conditionally issued, suspended or revoked, will be transferable to a new owner of a program.

25.17(2) The new owner is required to notify DIA in writing within 30 calendar days prior to the change in ownership. The notice shall include assurance that the new owner meets all requirements of Iowa Code Supplement chapter 231C and this chapter.

25.17(3) DIA may conduct an on-site monitoring evaluation within 90 days following a change in ownership or management corporation to ensure that the program complies with requirements and shall take any necessary enforcement action authorized by Iowa Code Supplement chapter 231C and this chapter.

321—25.18(231C) Structural and life safety reviews for a new program.

25.18(1) Prior to construction or remodeling of a building for use as a program, DIA shall review the blueprints for compliance with requirements pursuant to this chapter. Construction and remodeling shall include new construction, modification of any part of an existing building, addition of a new wing or floor to an existing building, or conversion of an existing building.

25.18(2) A program applicant shall submit to DIA blueprints wet-sealed by an Iowa-licensed architect or Iowa-licensed engineer and the blueprint plan review fee as stated in 321—Chapter 27 at Department of Inspections and Appeals, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0083.

25.18(3) Failure to submit the blueprint plan review fee with the blueprints shall result in delay of the blueprint plan review until the fee is received.

25.18(4) DIA shall review the blueprints within 20 working days of receipt and immediately notify the Iowa-licensed architect or Iowa-licensed engineer in writing regarding the status of compliance with requirements.

25.18(5) The Iowa-licensed architect or Iowa-licensed engineer shall respond to DIA within 20 working days to state how any noncompliance with requirements will be resolved.

25.18(6) Upon final notification by DIA that the blueprints meet structural and life safety requirements, construction or remodeling of the program may commence.

25.18(7) DIA shall schedule an on-site visit of the program with the contractor, or Iowa-licensed architect or Iowa-licensed engineer, during the construction or remodeling process to ensure compliance with the approved blueprints.

Any noncompliance with requirements must be resolved prior to approval for certification.

321—25.19(231C) Structural and life safety review prior to the remodeling of a building for a certified program.

25.19(1) Prior to the remodeling of a building for a certified program, DIA shall review the blueprints for compliance with requirements pursuant to 25.40(231C). Remodeling shall include modification of any part of an existing building, addition of a new wing or floor to an existing building, or conversion of an existing building.

25.19(2) A certified program shall submit to DIA blueprints wet-sealed by an Iowa-licensed architect or Iowa-licensed engineer and the blueprint plan review fee as stated in 321—Chapter 27 at Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0083.

25.19(3) Failure to submit the blueprint plan review fee with the blueprints shall result in delay of the blueprint plan review until the fee is received.

25.19(4) DIA shall review the blueprints within 20 working days of receipt and immediately notify the Iowa-licensed architect or Iowa-licensed engineer in writing regarding the status of compliance with requirements.

25.19(5) The Iowa-licensed architect or Iowa-licensed engineer shall respond to DIA within 20 working days to state how any noncompliance with requirements will be resolved.

25.19(6) Upon final notification by DIA that the blueprints meet structural and life safety requirements, remodeling of the program may commence.

25.19(7) DIA shall schedule an on-site visit of the program with the contractor, or Iowa-licensed architect or Iowa-licensed engineer, during the remodeling process to ensure compliance with the approved blueprints. Any noncompliance with requirements must be resolved prior to approval for continued certification or recertification.

321—25.20(231C) Emergency response policies and procedures review.

A program applicant or certified program shall submit emergency response policies and procedures with the application to DIA at the address stated in 25.3(1). Failure to submit the emergency response policies and procedures with the application shall delay the review of the application for certification until receipt of the information. The emergency response policies and procedures shall comply with the requirements of this chapter.

321—25.21(231C) Cessation of program operation.

25.21(1) If a certified program ceases operation at any time prior to expiration of the program's certification, the program shall submit the certificate to DIA. The program shall provide, at least 90 days in advance of closure unless there is some type of emergency, written notification to DIA, the department, and the tenant advocate of the date the operation will cease.

25.21(2) If a certified program will cease operation at the time the program's certification expires, the program shall provide written notice of this fact to DIA, the department and the tenant advocate at least 90 days prior to expiration of the certification.

25.21(3) At the time a program decides to cease operation, the program shall make arrangements and submit a plan to DIA for the safe and orderly transfer of all tenants.

25.21(4) DIA or another appropriate agency shall conduct on-site monitoring during the 90-day period to ensure safety of tenants during the transfer process.

ELDER AFFAIRS DEPARTMENT[321](cont'd)

25.21(5) DIA may conduct an on-site visit to verify that the program has ceased operations in accordance with the notice provided by the program.

321—25.22(231C) Occupancy agreement.

25.22(1) Prior to signing the occupancy agreement and the tenant's taking occupancy, the tenant and the program shall enter into an occupancy agreement that clearly describes the rights and responsibilities of the tenant and of the program.

25.22(2) Each tenant or legal representative, if applicable, shall sign an occupancy agreement and managed risk policy disclosure statement prior to occupancy.

25.22(3) The occupancy agreement shall be in 12-point type or larger, and be written in plain, commonly understood terms at or below a sixth-grade reading level.

25.22(4) The written occupancy agreement shall include, but not be limited to, the following information in the body of the agreement or in the supporting documents and attachments:

a. A description of all fees, charges, and rates describing tenancy and basic services covered, and any additional and optional services and their related costs.

b. A statement regarding the impact of the fee structure on third-party payments, and whether third-party payments and resources are accepted by the assisted living program.

c. The procedure followed for nonpayment of fees.

d. Identification of the party responsible for payment of fees and identification of the tenant's representative, if any.

e. The term of the occupancy agreement.

f. A statement that the assisted living program shall notify the tenant or the tenant's representative, as applicable, in writing at least 30 days prior to any change being made in the occupancy agreement with the following exceptions:

(1) When the tenant's health status or behavior constitutes a substantial threat to the health or safety of the tenant, other tenants, or others, including when the tenant refuses to consent to relocation.

(2) When an emergency or a significant change in the tenant's condition results in the need for the provision of services that exceed the type or level of services included in the occupancy agreement and the necessary services cannot be safely provided by the assisted living program.

g. A statement that all tenant information shall be maintained in a confidential manner to the extent required under state and federal law.

h. Occupancy, involuntary transfer, and transfer criteria and procedures, which ensure a safe and orderly transfer. The internal appeals process provided relative to an involuntary transfer.

i. The program's policies and procedures for addressing grievances between the assisted living program and the tenants, including grievances relating to transfer and occupancy.

j. A statement of the prohibition against retaliation as prescribed in Iowa Code Supplement section 231C.13.

k. The emergency response policy.

l. The staffing policy which specifies if the staff is available 24 hours per day, if nurse delegation will be used, and how staffing will be adapted to meet changing tenant needs.

m. In dementia-specific assisted living programs, a description of the services and programming provided to meet the life skills and social activities of tenants.

n. The refund policy.

o. A statement regarding billing and payment procedures.

p. The telephone number for filing a complaint with DIA.

q. The telephone number for the office of the tenant advocate.

r. A copy of the program's statement on tenants rights.

s. A statement that the tenant landlord law applies to assisted living programs.

25.22(5) A copy of the occupancy agreement shall be provided to the tenant or the tenant's legal representative, if any, and a copy shall be kept by the program.

25.22(6) The occupancy agreement shall be reviewed and updated as necessary to reflect the change in the services and financial arrangements.

25.22(7) A copy of the most current occupancy agreement form shall be made available to the general public upon request. The basic marketing material shall include a statement that a copy of the occupancy agreement is available to all persons upon request.

25.22(8) A tenant who is subject to an involuntary transfer shall have the right to an internal appeal of the transfer before the transfer occurs.

321—25.23(231C) Occupancy in and transfer from a program.

25.23(1) Evaluation prior to occupancy. A program shall evaluate each proposed tenant's functional, cognitive and health status prior to the tenant's signing the occupancy agreement and taking occupancy in order to determine the tenant's eligibility for the program, including whether needed services can be provided. The evaluation shall be conducted by a health care professional or a human service professional.

25.23(2) Evaluation within 30 days of occupancy. A program shall evaluate each tenant's functional, cognitive and health status within 30 days of occupancy and as needed, but not less than annually, to determine continued eligibility for the program and to determine any modifications to needed services. The evaluation shall be conducted by a health care professional or a human service professional.

25.23(3) Criteria for exclusion of tenants. A program shall not knowingly admit or retain a tenant who:

a. Is bed-bound; or

b. Requires routine two-person assistance with standing, transfer or evacuation; or

c. Is dangerous to self or other tenants or staff, including but not limited to a tenant who:

(1) Despite intervention chronically wanders into danger, is sexually or physically aggressive or abusive, or displays unmanageable verbal abuse or aggression; or

(2) Displays behavior that places another tenant at risk; or

d. Is in an acute stage of alcoholism, drug addiction, or uncontrolled mental illness; or

e. Is under the age of 18; or

f. Requires more than part-time or intermittent health-related care; or

g. On a routine basis, has unmanageable incontinence.

25.23(4) Disclosure of additional occupancy and transfer criteria. A program may have additional occupancy or transfer criteria if disclosed in the written occupancy agreement prior to occupancy.

25.23(5) Assistance with transfer. A program shall provide assistance to a tenant and the tenant's legal representative, if applicable, to ensure a safe and orderly transfer when the tenant meets program transfer requirements.

25.23(6) Right to appeal involuntary transfer. Under the occupancy agreement and Iowa Code Supplement section

ELDER AFFAIRS DEPARTMENT[321](cont'd)

231C.6, each tenant shall have the right to an internal appeal of an involuntary transfer.

321—25.24(231C) Waiver of occupancy and retention criteria.

25.24(1) Upon receipt of a waiver petition submitted by a program, DIA may grant a waiver of the occupancy and retention criteria under 25.25(231C) for an individual tenant on a time-limited basis.

25.24(2) Waiver procedures. The following procedures shall be used to request and to receive approval of a waiver from the occupancy and retention criteria:

a. A program shall submit a request on a form and in a manner designated by DIA for a waiver from the occupancy and retention criteria for an individual tenant as soon as it becomes apparent that a tenant meets the criteria;

b. DIA shall respond in writing to a request within two working days of receipt of required documentation;

c. The program shall provide written notification to DIA within five working days of any changes in the condition of the tenant as described in the waiver request.

321—25.25(231C) Criteria for granting occupancy and retention waivers. DIA shall use the following criteria in granting a waiver:

1. It is the informed choice of the tenant or the tenant's legal representative, if applicable, to remain in the program; and

2. The program is able to obtain the staff necessary to meet the tenant's service needs in addition to the service needs of the other tenants; and

3. The waiver shall not jeopardize the health, safety, security or welfare of the tenant for whom the waiver is being requested, program staff, or other program tenants.

321—25.26(231C) Involuntary transfer.

25.26(1) Program initiation of transfer. If a program initiates the involuntary transfer of a tenant and the action is not a result of a monitoring evaluation or complaint investigation by DIA, and if the tenant or tenant's legal representative contests the transfer, the following procedure shall apply:

a. The program shall notify the tenant or tenant's legal representative, in accordance with the occupancy agreement, of the need to transfer, the reason for the transfer, and the contact information for the tenant advocate.

b. The program shall immediately provide to the tenant advocate, by certified mail, a copy of the notification to the tenant.

c. The tenant advocate shall offer the notified tenant or tenant's legal representative assistance with the program's internal appeal process. The tenant or tenant's legal representative is not required to accept the assistance of the tenant advocate.

d. If, following the internal appeal process, the program upholds the transfer decision, the tenant or tenant's legal representative may utilize other remedies authorized by law to contest the transfer.

25.26(2) Transfer pursuant to results of monitoring evaluation or complaint investigation by DIA. If one or more tenants are identified as meeting the occupancy and transfer criteria and need to be transferred as a result of a monitoring evaluation or complaint investigation conducted by DIA, the following procedures shall apply:

a. DIA shall notify the program, in writing within 20 working days of the monitoring evaluation or complaint investigation, of the identification of any tenant(s) meeting occupancy and transfer criteria, as a part of the report of the findings.

b. The program, each tenant identified, the tenant's legal representative, if applicable, and other providers of services to the tenant shall have the opportunity to provide specific written comment, information and documentation directly addressing any agreement or disagreement with the identification.

c. The program shall notify each tenant identified, the tenant's legal representative if applicable, and other providers of services to the tenant of their opportunity to submit input.

d. The program shall submit one response, including all inputs received, to DIA. The response shall identify the tenant and others submitting input, and also identify with particularity their agreement or disagreement. The program's response shall be submitted to DIA within 10 working days of the receipt of the report of the findings. Submission of a response does not eliminate the requirement under this chapter or 321—Chapter 26 to submit a plan of correction to address the regulatory insufficiency.

e. Within 10 working days of receipt of the program's response for each identified tenant, DIA shall consider the response and make a determination regarding continued inclusion of a tenant.

f. If DIA's determination is to amend the regulatory insufficiency based on the response, DIA shall modify the report of findings and send an amended report to the program.

g. If the determination is to uphold the regulatory insufficiency, DIA shall review the plan of correction in accordance with this chapter and 321—Chapter 26. DIA shall notify the program of the opportunity for the program or the tenant or the tenant's legal representative, as applicable, to appeal the report findings as they relate to the occupancy and transfer decision. In addition, DIA shall provide to the tenant or the tenant's legal representative the contact information for the tenant advocate. A copy of the final report shall also be sent to the tenant advocate.

h. For each tenant identified in the final report, if the program is in agreement with the report and the tenant or the tenant's legal representative, if applicable, disagrees with the report, the tenant or the tenant's legal representative, if applicable, may appeal the decision to DIA in accordance with 321—subrule 26.3(2).

i. For each tenant identified in the final report, if the tenant or the tenant's legal representative, if applicable, and the program disagree with the report, both parties may appeal the decision to DIA in accordance with 321—subrule 26.3(2).

j. The tenant advocate shall offer the notified tenant or tenant's legal representative, if applicable, assistance with the appeal process. The tenant or the tenant's legal representative, if applicable, is not obligated to use the services of the tenant advocate.

k. Any appeal filed under this subrule shall stay the regulatory insufficiency related to the occupancy and transfer decision and shall be heard within 30 days of receipt of the appeal.

l. Actions regarding any regulatory insufficiency, other than the occupancy and transfer decision, shall follow procedures as provided in Iowa Code Supplement chapter 231C, this chapter and 321—Chapter 26.

m. An appeal under this subrule shall automatically extend the expiration date of the program's certification until such time as the administrative case is resolved.

n. In lieu of or in addition to the provisions of this subrule, the program may request a waiver from DIA within 10 working days of the receipt of the report to allow a tenant to

ELDER AFFAIRS DEPARTMENT[321](cont'd)

remain in the program. DIA may grant a waiver for a period not to exceed 90 calendar days.

321—25.27(231C) Tenant documents.

25.27(1) A file for each tenant shall be maintained at the program and shall contain:

- a. An occupancy record including the tenant's name, birth date, and home address; identification numbers; date of occupancy; name, address and telephone number of health professional(s); diagnosis; and names, addresses and telephone numbers of family members, friends or other designated people to contact in the event of illness or an emergency;
- b. Application forms;
- c. Initial evaluation and updates;
- d. Nutritional assessment as necessary;
- e. Initial individual service plan and updates;
- f. Signed authorizations for permission to release medical information, photos, or other media information as necessary;
- g. Signed authorization for the tenant to receive emergency medical care if necessary;
- h. When appropriate, medical information sheet, documentation of health professionals' order, treatment, therapy, medication and service notes;
- i. Advance health care directives as applicable;
- j. A complete copy of the tenant's occupancy agreement including any updates;
- k. Written acknowledgement that the tenant or the tenant's legal representative, if applicable, has been fully informed of the tenant's rights;
- l. A copy of guardianship, power of attorney, or conservatorship or other documentation of a legal representative as necessary.

25.27(2) The program records relating to a tenant shall be retained for a minimum of three years after the transfer or death of the tenant before the records are destroyed.

25.27(3) All records shall be protected from loss, damage and unauthorized use.

321—25.28(231C) Service plan.

25.28(1) A service plan shall be developed for each tenant based on the evaluations conducted in accordance with 25.23(1) and 25.23(2), and shall be designed to meet the specific service needs of the individual tenant.

25.28(2) Prior to the tenant's signing the occupancy agreement and taking occupancy, a preliminary service plan shall be developed by a health care professional or human service professional in consultation with the tenant and, at the tenant's request, with other individuals identified by the tenant, and, if applicable, with the tenant's legal representative. All persons who develop the plan and the tenant or the tenant's legal representative shall sign the plan. The service plan shall subsequently be updated at least annually and whenever changes are needed.

25.28(3) When a tenant needs personal care or health-related care, the service plan shall be updated within 30 days of occupancy and as needed, but not less than annually, by a multidisciplinary team that consists of no fewer than three individuals, including a health care professional and other staff appropriate to meet the needs of the tenant, in consultation with the tenant and, at the tenant's request, with other individuals identified by the tenant, and, if applicable, with the tenant's legal representative.

25.28(4) The service plan shall be individualized and shall indicate, at a minimum:

- a. The tenant's identified needs and the tenant's requests for assistance and expected outcomes;
- b. Any services and care to be provided pursuant to the agreement with the tenant;
- c. The service provider(s) if other than the program; and
- d. For tenants who are unable to plan their own activities, including tenants with dementia, planned and spontaneous activities based on the tenant's abilities and personal interests.

321—25.29(231C) Medications.

25.29(1) Each program shall follow a written medication policy that includes the following:

- a. Tenants shall self-administer medications unless:
 - (1) The prescription states that the tenant is not to self-administer the medication; or
 - (2) The tenant or the tenant's legal representative delegates administration of the medication to the program in the occupancy agreement or signed service plan. The program shall not prohibit a tenant from self-administering medications.
- b. Tenants shall keep their own medications in their possession unless:
 - (1) The prescription states that the medication is to be stored by the program; or
 - (2) The tenant or the tenant's legal representative, if applicable, delegates partial or complete control of medications to the program in the occupancy agreement or signed service plan.

c. The program shall list in the tenant's record any medications to be stored or administered by the program.

d. When partial or complete control of medication is delegated to the program by the tenant, appropriate staff may transfer medications from the original prescription containers into medication reminder boxes or medication cups within the tenant's unit or in the tenant's presence.

25.29(2) When medications are administered or stored by, or tenants' self-administration of medications is supervised by, the program, the following requirements shall apply:

- a. Supervision of self-administration and the administration of medications shall be provided by an Iowa-licensed registered nurse or advanced registered nurse practitioner registered in Iowa or the authorized agent in accordance with 655—subrule 6.2(5) and 655—subrule 6.3(1) and Iowa Code chapter 155A.
- b. The program shall document any medication the program has agreed to administer or supervise.
- c. Medication shall be kept in a locked place or container that is not accessible to persons other than employees responsible for the supervision of such medications.
- d. The medications shall be labeled and maintained in compliance with label instructions and state and federal laws.
- e. No person other than the dispensing pharmacist shall alter a prescription label.
- f. Each tenant's medication shall be stored in its originally received container.
- g. When partial or complete control of medication is delegated to the program by the tenant, appropriate staff may transfer medications from the original prescription containers into medication reminder boxes or medication cups within the tenant's unit.
- h. Each program shall follow written policies and procedures for narcotic medications in accordance with Iowa Code chapter 155A.

321—25.30(231C) Nurse review. A program that administers prescription medications or provides health care

ELDER AFFAIRS DEPARTMENT[321](cont'd)

professional-directed or health-related care shall provide for a registered nurse to:

25.30(1) Monitor, at least every 90 days, or after a change in condition, each tenant receiving program-administered prescription medications for adverse reactions to program-administered medications and make appropriate interventions or referral, and ensure that the prescription medication orders are current and that the prescription medications are administered consistent with such orders; and

25.30(2) Ensure that health care professionals' orders for tenants receiving health care professional-directed care from the program are current; and

25.30(3) Assess and document the health status of each tenant, make recommendations and referrals as appropriate, and monitor progress on previous recommendations at least every 90 days or if there are changes in health status; and

25.30(4) Provide the program with written documentation of the above activities, showing the time, date and signature.

321—25.31(231C) Nursing assistant work credit.

25.31(1) A person certified as a nursing assistant who is supervised by a licensed nurse may submit information to DIA to obtain credit toward maintaining certification for working in a program.

25.31(2) A program shall complete and submit to DIA a Nurse Aide Registry Application for each nursing assistant working in the program. A licensed nurse working in the program shall supervise the nursing assistant. The application may be obtained by telephone at (515)281-4077 or via the health facilities division Web site at <http://www.dia-hfd.state.ia.us/nurseaides> under the "Resource" tab.

25.31(3) A program shall complete and submit to DIA an Iowa Nurse Aide Registry Quarterly Employment Report whenever a change in employment for a certified nursing assistant occurs. The report may be obtained by telephone at (515)281-4077 or via the health facilities division Web site at <http://www.dia-hfd.state.ia.us/nurseaides> under the "Resource" tab.

321—25.32(231C) Food service.

25.32(1) The program shall provide or coordinate with other community providers to provide hot or other appropriate meals at least once a day or make arrangement for the availability of meals.

25.32(2) Meals and snacks provided by the program but not prepared on site shall be obtained from or provided by an entity that meets the standards of state and local health laws and ordinances concerning the preparation and serving of food.

25.32(3) Menus shall be planned to provide the following percentage of the daily recommended dietary allowances as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences based on the number of meals provided by the program:

- a. A minimum of 33 1/3 percent if the program provides one meal per day;
- b. A minimum of 66 2/3 percent if the program provides two meals per day; and
- c. One hundred percent if the program provides three meals per day.

25.32(4) Therapeutic diets are not required but may be provided by a program. If therapeutic diets are provided, they shall be prescribed by a physician, physician's assistant, or advanced registered nurse practitioner. A current copy of the Iowa Simplified Diet Manual published by Iowa State Press shall be available and used in the planning and serving

of therapeutic diets. A licensed dietitian shall be responsible for writing and approving the therapeutic menu and for reviewing procedures for preparation and service of food for therapeutic diets.

25.32(5) Personnel who are employed by or contracting with the program and who are responsible for preparing or serving food, or both preparing and serving food, shall have an orientation on sanitation and safe food handling prior to handling food and shall have annual in-service training on food protection. At a minimum, one person directly responsible for food preparation shall have successfully completed a state-approved food protection program.

25.32(6) Programs engaged in the preparation and serving of meals and snacks shall meet the standards of state and local health laws and ordinances pertaining to the preparation and serving of food, including the requirements imposed under Iowa Code chapter 137F.

321—25.33(231C) Staffing.

25.33(1) Sufficient trained staff shall be available at all times to fully meet tenants' identified needs.

25.33(2) A dementia-specific assisted living program shall have one or more staff persons who monitor tenants as indicated in each tenant's service plan. The staff shall be awake and on duty 24 hours a day in the proximate area, and check on tenants as indicated in the tenants' service plans.

25.33(3) Each tenant shall have access to a 24-hour personal emergency response system that automatically identifies the tenant in distress and can be activated with one touch.

25.33(4) A program serving one or more tenants with cognitive disorder or dementia shall follow a system, a program or written staff procedures in lieu of a personal emergency response system that address how the program will respond to the emergency needs of the tenant(s).

25.33(5) The owner or management corporation of the program is responsible for ensuring that all personnel employed by or contracting with the program receive training appropriate to assigned tasks and target population.

25.33(6) Any nursing services shall be available in accordance with Iowa Code chapter 152 and 655—Chapter 6.

25.33(7) The program shall have training and staffing plans on file, and shall maintain documentation of training received by program personnel.

25.33(8) All personnel of a program shall be able to implement the program's accident, fire safety and emergency procedures.

321—25.34(231C) Dementia-specific education for program personnel.

25.34(1) All personnel employed by or contracting with a dementia-specific program shall receive a minimum of six hours of dementia-specific education and training prior to or within 90 days of employment or the beginning date of the contract.

25.34(2) The dementia-specific education or training shall include, at a minimum, the following:

- a. An explanation of Alzheimer's disease and related disorders;
- b. The program's specialized dementia care philosophy and program;
- c. Skills for communicating with persons with dementia;
- d. Skills for communicating with family and friends of persons with dementia;
- e. An explanation of family issues such as role reversal, grief and loss, guilt, relinquishing the care-giving role, and family dynamics;

ELDER AFFAIRS DEPARTMENT[321](cont'd)

- f. The importance of planned and spontaneous activities;
- g. Skills in providing assistance with activities of daily living;
- h. The importance of the service plan and social history information;
- i. Skills in working with challenging tenants;
- j. Techniques for simplifying, cueing, and redirecting; and
- k. Staff support and stress reduction.

25.34(3) All personnel employed by or contracting with a dementia-specific program shall receive a minimum of two hours of dementia-specific continuing education annually. Direct-contact personnel shall receive a minimum of six hours of dementia-specific continuing education annually.

25.34(4) An employee who provides documentation of completion of a dementia-specific education or training program within the past 12 months shall be exempt from the education and training requirement of subrule 25.34(1).

321—25.35(231C) Another business or activity in an assisted living program.

25.35(1) A business or activity serving nonrecipients of a program is allowed in a designated part of the physical structure in which the program is provided, if the other business or activity meets the requirements of applicable state and federal codes, administrative rules, and federal regulations.

25.35(2) A business or activity conducted in the designated part of the physical structure in which the program is provided shall not interfere with the use of the program by tenants, interfere with services provided to tenants, or be disturbing to tenants.

25.35(3) A business or activity conducted in the designated part of the physical structure in which the program is provided shall not reduce space, services or staff available to tenants or necessary to meet the needs of the tenants.

321—25.36(231C) Managed risk statement. The program shall have a managed risk statement which includes the tenant's or, if applicable, the legal representative's signed acknowledgment of the shared responsibility for identifying and meeting the needs of the tenant and the process for managing risk and upholding tenant autonomy when tenant decision making may result in poor outcomes for the tenant or others.

321—25.37(231C) Life safety-emergency policies and procedures and structural safety requirements.

25.37(1) The program shall follow written emergency policies and procedures, which include the following elements:

- a. Emergency plan (identify where located for easy reference),
- b. Fire safety procedures,
- c. Other general or personal emergency procedures,
- d. Provisions for amending or revising the emergency plan,
- e. Provisions for periodic training of all employees,
- f. Procedures for fire drills,
- g. Regulations about smoking,
- h. Monitoring and testing of smoke-control systems,
- i. Evacuation of tenants,
- j. Procedures for reporting and documentation.

25.37(2) A program serving persons with cognitive impairment or dementia, whether in a general or dementia-specific setting, shall also include written procedures regarding appropriate staff response if a tenant with cognitive impairment or dementia is missing.

25.37(3) The program's structure and procedures shall meet the life safety standards as designated for this category in 661—Chapter 5.

25.37(4) The program shall have the means to control the maximum temperature of water at sources accessible by a tenant to prevent scalding, and shall do so for tenants with cognitive impairment or dementia or at tenant request.

321—25.38(231C) Transportation. When transportation services are provided directly or under contract with the program:

1. The vehicle shall be accessible and appropriate to the tenants using it, with consideration for any physical disabilities and impairments.

2. Every tenant who is being transported shall have a seat in the vehicle, except those tenants who remain in their wheelchairs.

3. Wheelchairs shall be secured when the vehicle is in motion.

4. Vehicles shall have adequate seat belts and securement devices for ambulatory and wheelchair-bound passengers.

5. During loading and unloading of a tenant, the driver shall be in the proximate area of the tenants in a vehicle.

6. The driver shall have a valid and appropriate Iowa driver's license. The driver shall meet any state requirements for licensure or certification for the vehicle operated.

7. Each vehicle shall have a first-aid kit, fire extinguisher, safety triangles and a device for two-way communication.

321—25.39(231C) Activities.

25.39(1) The program shall provide appropriate programming for each tenant. Programming shall reflect individual differences in age, health status, sensory deficits, lifestyle, ethnic and cultural beliefs, religious beliefs, values, experiences, needs, interests, abilities and skills by providing opportunities for a variety of types and levels of involvement.

25.39(2) Activities shall be planned to support the tenant's service plan and shall be consistent with the program statement and occupancy policies.

25.39(3) A written schedule of activities shall be developed at least monthly and made available to tenants and their legal representatives.

25.39(4) Tenants shall be given the opportunity to choose their levels of participation in all activities offered in the program.

321—25.40(231C) Structural requirements.

25.40(1) General requirements.

a. The structure of the program shall be designed and operated to meet the needs of the tenants.

b. The buildings and grounds shall be well-maintained, clean, safe and sanitary.

c. Programs shall have private dwelling units with a single-action lockable entrance door.

d. A program serving persons with cognitive impairment or dementia, whether in a general or dementia-specific setting, shall have the means to disable or remove the lock on an entrance door, and shall do so if the presence of the lock presents a danger to the health and safety of the tenant.

e. The structure in which a program is housed shall be built at a minimum of Type V (111) construction.

f. Programs may have individual cooking facilities within the private dwelling units. Any program serving persons with cognitive impairment or dementia, whether in a general or dementia-specific setting, shall have the means to disable or easily remove appliances, and shall do so if the

ELDER AFFAIRS DEPARTMENT[321](cont'd)

presence of cooking appliances presents a danger to the health and safety of the tenant.

25.40(2) Programs certified prior to July 4, 2001. Facilities for programs certified prior to July 4, 2001, shall meet the following requirements:

a. Each dwelling unit shall have at least one room that shall have not less than 120 square feet of floor area. Other habitable rooms shall have an area of not less than 70 square feet.

b. Each dwelling unit shall have not less than 190 square feet of floor area, excluding bathrooms.

c. A dwelling unit used for double occupancy shall have not less than 290 square feet of floor area, excluding bathrooms.

d. The program shall have a minimum common area of 15 square feet per tenant.

25.40(3) New construction built on or after July 4, 2001. Programs operated in new construction built on or after July 4, 2001, shall meet the following requirements:

a. Each dwelling unit shall have at least one room that shall have not less than 120 square feet of floor area. Other habitable rooms shall have an area of not less than 70 square feet.

b. Each dwelling unit used for single occupancy shall have a total square footage of not less than 240 square feet of floor area, excluding bathrooms and door swing.

c. A dwelling unit used for double occupancy shall have a total square footage of not less than 340 square feet of floor area, excluding bathrooms and door swing.

d. Each dwelling unit shall contain a bathroom, including but not limited to a toilet, sink and bathing facilities. A program serving persons with cognitive impairment or dementia, whether in a general or dementia-specific setting, shall have the means to disable or remove the water control, and shall do so if the presence of the water control presents a danger to the health and safety of the tenant.

e. The program shall have a minimum of 25 square feet of common space per tenant.

25.40(4) Structure being converted to or rehabilitated for use for a program on or after July 4, 2001. A program operating in a structure that was converted or rehabilitated for use for a program on or after July 4, 2001, shall meet the following requirements:

a. Each dwelling unit shall have at least one room that has not less than 120 square feet of floor area. Other habitable rooms shall have an area of not less than 70 square feet.

b. Each dwelling unit used for single occupancy shall have a total square footage of not less than 190 square feet of floor area, excluding bathrooms and door swing.

c. A dwelling unit used for double occupancy shall have a total square footage of not less than 290 square feet of floor area, excluding bathrooms and door swing.

d. The program shall have a minimum common area of 15 square feet per tenant dedicated for use by the program tenants.

e. Each dwelling unit shall have a bathroom, including but not limited to a toilet, sink and bathing facilities.

f. Each sleeping room shall have a minimum of 5.7 square feet of operable window in accordance with NFPA 101, 2000 edition, Chapter 7. Waiver of this requirement must be granted by the state fire marshal or designee.

321—25.41(231C) Dwelling units in dementia-specific programs. Dementia-specific programs are exempt from subrules 25.40(2) to 25.40(4) as follows:

25.41(1) For a program built in a family or neighborhood design:

a. Each dwelling unit used for single occupancy shall have total square footage of not less than 150 square feet of floor area, excluding a bathroom;

b. Each dwelling unit used for double occupancy shall have total square footage of not less than 250 square feet of floor area, excluding a bathroom; and

c. The common areas shall be increased by the equivalent of the waived square footage.

25.41(2) Self-closing doors are not required for individual dwelling units or bathrooms.

25.41(3) Dementia-specific programs may choose not to provide bathing facilities in the living units.

321—25.42(231C) Landlord and tenant Act. Iowa Code chapter 562A, the uniform residential landlord and tenant Act, shall apply to programs under this chapter.

321—25.43(231C) Interpretive guidelines. The department shall develop interpretive guidelines as situations arise requiring them.

These rules are intended to implement Iowa Code Supplement chapter 231C.

ARC 3141B**ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 542B.6, the Engineering and Land Surveying Examining Board gives Notice of Intended Action to amend Chapter 4, "Engineering Licensure," and Chapter 5, "Land Surveying Licensure," Iowa Administrative Code.

These amendments add information regarding the release of examination results.

Any interested person may make written or oral suggestions or comments on these proposed amendments on or before February 24, 2004. Comments should be directed to Gleen Coates, Executive Officer, Iowa Engineering and Land Surveying Examining Board at 1920 SE Hulsizer Road, Ankeny, Iowa 50021, telephone (515)281-7360.

These amendments are intended to implement Iowa Code section 542B.15.

The following amendments are proposed.

ITEM 1. Amend subrule **4.1(8)** by adding the following **new** paragraph "**g**":

g. Release of examination results. Results of any examination shall only be reported as pass or fail except that the candidate who fails an examination may be provided with the candidate's converted score and a diagnostic report indicating areas of weakness, as available.

ITEM 2. Amend subrule **5.1(8)** by adding the following **new** paragraph "**h**":

h. Release of examination results. Results of any examination shall only be reported as pass or fail except that the

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C](cont'd)

candidate who fails an examination may be provided with the candidate's converted score and a diagnostic report indicating areas of weakness, as available.

ARC 3155B**ENVIRONMENTAL PROTECTION
COMMISSION[567]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 20, "Scope of Title—Definitions—Forms—Rules of Practice," and Chapter 22, "Controlling Pollution," Iowa Administrative Code.

This rule making addresses some of the terms used by the Department to decide whether a construction permitting project is subject to Prevention of Significant Deterioration (PSD) construction permit program review. Several terms defined in this rule making currently are defined in two or more different places in the Department's rules. This rule making will make uniform the use of these terms for all the programs administered by the Department's Air Quality Bureau. The Department is proposing to establish in rule a single definition for each of the following terms for which definitions currently exist in the rules: "Act," "emissions unit," "facility," "hazardous air pollutant," "potential to emit," "significant," and "stationary source."

Additionally, the Department proposes to add definitions to clarify some of its present policy positions regarding thresholds for PSD program review. Many terms used in PSD review are not explicitly defined in the current federal or state rules. Without the changes proposed herein, the meaning of these terms must be determined by referring to various letters, memoranda, and other types of documents created by EPA and the Department. Most of these guidance documents have been developed for the purpose of deciding specific issues dealt with in past permit reviews. Applying the conclusions produced in past permit application reviews to current permitting actions can cause confusion and uncertainty regarding the outcome. The Department is proposing to create formal definitions for the following terms: "adjacent," "common control," "contiguous," "impact area," "secondary emissions," and "support facility."

In 1999, the Department asked Iowa public interest groups and Iowa industries concerned with PSD permitting issues to participate in a PSD Task Force. This task force focused on ways to simplify the PSD permit review process. Following discussions held by this task force, the Department began a PSD reform effort in 2000. As part of that reform effort, a PSD Advisory Group established by the Department met with Department representatives in late 2002 and early 2003. The PSD Advisory Group included representatives of PSD-affected Iowa businesses, the Iowa Association of Business and Industry (ABI), Iowa public interest groups, EPA, and Iowa's local air quality programs. The recommendations of the PSD Advisory Group included clarification of the De-

partment's existing rules by making changes to or creating definitions.

In Item 1, the Department proposes to make reference in its air quality definitions rule to the air quality terms defined in Iowa Code chapter 455B, Division II. This reference would provide in one location a complete list of the air quality terms defined in Iowa law.

A brief description of each of the definitions proposed in this rule making follows. To allow for ease of explanation, the definitions are presented in this preamble in the order in which the user would most likely encounter them, rather than in alphabetical order.

"Hazardous air pollutant." A definition of "hazardous air pollutant" is presently located in the Department's Title V operating permit program rules, at 567 IAC 22.100(455B). In Item 3, the Department proposes to place into its general air quality definitions, located at 567 IAC 20.2(455B), a slightly revised definition of "hazardous air pollutant." The Department proposes to revise the definition of "hazardous air pollutant" by clarifying that the definition includes only the air pollutants listed in Clean Air Act Section 112(b), rather than all the pollutants listed in Clean Air Act Section 112. In Item 7, the definition of "hazardous air pollutant" is removed from the Title V operating permit program definitions.

"Act" and "potential to emit." In Item 3, the Department proposes to place into its general air quality definitions, located at 567 IAC 20.2(455B), the definitions of "Act" and "potential to emit" presently located in the Title V operating permit program definitions. In Item 7, the definitions of "Act" and "potential to emit" are removed from the Title V program definitions found at 567 IAC 22.100(455B).

"Stationary source." Definitions of "stationary source" are currently found in three places in the Department's air quality rules. A general definition is found at 567 IAC 20.2(455B). A definition for PSD program purposes is adopted by reference from 40 CFR 52.21(b)(5) at 567 IAC 22.4(455B), and a definition for Title V operating permit program purposes is found at 567 IAC 22.100(455B). All three current definitions differ slightly.

The Department proposes to simplify the definition of "stationary source" by referring only to "facility or support facility." Pursuant to discussions with the PSD Advisory Group, the terms "building," "structure," and "installation," which also are a part of the current definition of "stationary source," will not be defined separately since it appears that these terms describe special cases of a "facility." The proposed change to the definition of "stationary source" is consistent with the Department's current policy.

Item 2 modifies the general definition of "stationary source" in rule 567 IAC 20.2(455B). Item 4 eliminates the definition of "stationary source" from the PSD program rules, and Item 7 eliminates the definition of "stationary source" from the Title V operating permit program rules.

"Facility." Definitions of "facility" are currently found in four places in the Department's air quality rules. A definition for PSD program purposes is adopted by reference from 40 CFR 52.21(b)(6) at 567 IAC 22.4(455B). A definition for Title V operating permit program purposes is found at 567 IAC 22.100(455B), and a definition for Title IV acid rain permitting purposes is found at 567 IAC 22.120(455B). A definition of "building, structure or facility" is found at 567 IAC 22.5(1)"s" and is intended for use in nonattainment areas. The Department proposes to adopt a single definition of "facility" at 567 IAC 20.2(455B) and to apply the definition to all air quality permitting programs. The use of a single definition will ensure that the same group of emitting activities

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

will be aggregated into the same facility, regardless of which air quality permitting program is applicable.

Item 3 establishes a general definition of "facility" in 567 IAC 20.2(455B). Items 4, 7, and 8 eliminate the definitions of "facility" from the PSD rules, the Title V operating permit rules, and the Title IV acid rain permitting rules, respectively. Item 6 eliminates the definition of "building, structure or facility" from the nonattainment rules.

"Support facility." The Department proposes, in Item 3, to define the previously undefined term "support facility." The term "support facility" is used in EPA preamble discussions, correspondence, and guidance documents. EPA air quality rules do not define "support facility." In the past, EPA has indicated that a "support facility" which either (1) supplies over 50 percent of its product to another "facility" or (2) is otherwise connected (by haul road, railroad or similar method of conveyance) to another "facility" is to be included with that facility when determining PSD applicability. A "support facility" which does not meet either of these criteria would be considered part of the "secondary emissions" associated with the facility and would be considered only in the impact analysis. The proposed definition of "support facility" formalizes, in rule, the criteria for including a "support facility" as part of the PSD source, but adds the requirement that each "support facility" also must be "contiguous or adjacent" to the facility served.

"Secondary emissions." The Department also proposes, in Item 3, to define the term "secondary emissions." This definition is proposed to eliminate confusion regarding the current use of the term "support facility" as discussed above. The proposed definition of "secondary emissions" will more accurately delineate those facilities which should not be considered as "support facilities," but which are to be included in impact analyses required for PSD permitting.

"Adjacent." The Department proposes, in Item 3, to define the term "adjacent." One part of the determination of what constitutes a "facility" is whether various parts of the operation are "contiguous or adjacent." The Department is proposing that "contiguous" and "adjacent" be defined separately, because they deal with two different aspects of how emitting activities are physically located with respect to each other.

The Department proposes to determine whether two locations are "adjacent" based on a dispersion modeling prediction that the air emissions of one group of pollutant-emitting activities have a meaningful impact on the air quality at the location of the other group of pollutant-emitting activities. The proposed definition would limit "adjacent" operations to instances in which one location environmentally impacts another, and it would establish a quantifiable method of determining this impact. The proposed definition would establish a predicted $5 \mu\text{g}/\text{m}^3$ impact of any pollutant, averaged over a 24-hour period, as the threshold level at which a meaningful impact occurs. This approach is consistent with current Department modeling procedures used in other environmental assessments.

The proposed definition of "adjacent" would also include any operations located within two miles of another operation. This change is proposed for two reasons. First, regulatory analyses performed by the Department have, without exception, indicated that operations located within two miles of each other have ambient impacts. To require dispersion modeling in these instances would unnecessarily complicate the permit application review process. Second, EPA guidance documents reviewed by the Department have indicated,

without exception, that operations located within two miles of each other have ambient impacts.

The proposed definition also includes as "adjacent" those operations which are physically linked by a transfer device used solely for product transport between two locations no more than ten miles apart. EPA officials have indicated to the Department during PSD Advisory Group meetings that the Department's rules may be unacceptable to EPA without the addition of this provision.

"Impact area." In Item 3, the Department proposes to define the term "impact area" because that term is used in the definition of "adjacent." The proposed definition of "impact area" is taken from EPA's "Draft New Source Review Workshop Manual (1990)."

"Contiguous." The Department proposes to define the term "contiguous" in Item 3. The proposed definition deals with the situation where emitting activities are on properties having common boundaries which are either physically touching or are separated only by roads, utility corridors or bodies of water.

"Common control." The Department is proposing, in Item 3, to define the term "common control." The proposed definition addresses three concepts. The first concept is based on a Securities and Exchange Commission (SEC) definition of "common control" affecting publicly traded companies, found at 17 CFR 240.12b-2. PSD decisions outside of Iowa have been made based on the SEC definition. The second concept involves operational or mechanical control of the equipment, and the third concept addressed in the "common control" definition involves contractual or other legal relationships giving control of the equipment to a person having no ownership rights. A discussion of these three concepts is contained in an October 1, 1999, letter from the EPA Air and Radiation Program Director to the Colorado Pollution Control Division Director. Copies of the letter are available from the Department.

"Emissions unit." Definitions of "emissions unit" are currently found in three places in the Department's air quality rules. A definition for PSD program purposes is adopted by reference from 40 CFR 52.21(b)(7) at 567 IAC 22.4(455B), and a definition for Title V operating permit program purposes is found at 567 IAC 22.100(455B). In addition, the current nonattainment rules define the term "emissions unit or installation" at 567 IAC 22.5(455B).

The Department proposes to place the current Title V program definition of "emissions unit" into the general air quality definitions found at 567 IAC 20.2(455B). The Title V program definition currently is applied by the Department to all air quality permitting programs, and no change in practice will occur. The word "installation" will be omitted, since "installation" is used in various places in the Clean Air Act to refer to an entire facility.

Item 3 includes the proposed definition of "emissions unit," and Items 4 and 7 eliminate the previous PSD program and Title V program definitions, respectively. Additionally, Item 5 eliminates the definition of "emissions unit or installation" from the nonattainment program rules.

"Significant." The Department's current rule at 567 IAC 22.4(455B) adopts by reference the definition of "significant" found at 40 CFR 52.21(b)(23). In Item 3, the Department proposes to adopt its own definition of "significant" solely for use in reference to the terms "net emissions increase" and "potential to emit" found in the definition of "major modification," which is also adopted by reference by the Department at 567 IAC 22.4(455B). Item 4 eliminates

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

the definition of "significant" adopted by reference at 567 IAC 22.4(455B).

The 1990 Clean Air Act Amendments (CAAA) eliminated the Clean Air Act (CAA) Section 112 pollutants from the list of emissions which could be taken into account in determining whether a construction permitting project is subject to PSD review. Although EPA transitional guidance has addressed the elimination of CAA Section 112(b) pollutants from this determination, EPA has not revised its rules to conform to the CAAA changes. The Department proposes to revise its own rules to account for the CAAA changes.

Since the issuance of the EPA transitional guidance, EPA has adopted into its rules an additional list of pollutants for purposes of CAA Section 112(r). The Department proposes to exempt Section 112(r) pollutants from the definition of "significant."

Further, the Department proposes to include in the exemption from the definition of "significant" the chemicals listed in Title VI, "Stratospheric Ozone Protection," of the CAA because those chemicals are otherwise subject to regulation by EPA. This proposal reflects Department policy.

Any interested persons may make written suggestions or comments regarding the proposed amendments on or before April 9, 2004. Written comments should be directed to George Welch, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Urbandale, Iowa 50322; telephone (515)281-8913; fax (515)242-5094. Comments may also be submitted by E-mail to George.Welch@dnr.state.ia.us.

A public hearing will be held on April 1, 2004, at 1 p.m. at the Air Quality Bureau offices located at 7900 Hickman Road, Urbandale, Iowa. A second public hearing will be held on April 2, 2004, at 1 p.m. at the Davenport Public Library, 321 Main Street, Davenport, Iowa. Comments may be submitted, orally or in writing, at the public hearings.

Any persons who wish to attend a public hearing and have special requirements such as hearing or mobility impairments should contact George Welch at (515)281-8913 to advise of any specific needs.

These amendments are intended to implement Iowa Code section 455B.133.

The following amendments are proposed.

ITEM 1. Amend rule 567—20.2(455B), introductory paragraph, as follows:

567—20.2(455B) Definitions. For the purpose of these rules, the following terms shall have the meaning meanings indicated in this chapter. The definitions of "air contaminant," "air contaminant source," "air pollution," "atmosphere," "earthen waste slurry storage basin," "emission," "major stationary source," "person," "political subdivision," "potential to emit," and "schedule and timetable of compliance" set out in Iowa Code section 455B.131 and the definitions set out in Iowa Code section 455B.411 shall be considered to be incorporated verbatim in these rules.

ITEM 2. Amend rule 567—20.2(455B), definition of "stationary source," as follows:

"Stationary source" means any building, structure, facility or installation support facility which emits or may emit any air pollutant.

ITEM 3. Amend rule 567—20.2(455B) by adopting the following new definitions in alphabetical order:

"Act" means the Clean Air Act, 42 U.S.C. Sections 7401, et seq.

"Adjacent," as used in the definitions of "facility" and "support facility," means located such that two or more groups of pollutant-emitting activities:

1. Are on properties within two miles of each other;
2. Have a 24-hour average $5\mu\text{g}/\text{m}^3$ impact area for any pollutant from one of the groups of pollutant-emitting activities overlapping the property on which another group of pollutant-emitting activities is located. Emissions from all pollutant-emitting activities shall be modeled at their potential to emit as defined in 40 CFR 52.21(b)(4) (adopted by reference in 567—22.4(455B)) as a nonreactive pollutant using the guidance described in 40 CFR Part 51, Appendix W, as adopted August 12, 1996; or
3. Are on properties located less than ten miles from each other and are connected by a product transfer device which is used solely for the transfer of product and which does not continue to a third group of pollutant-emitting activities.

"Common control," as used in the definitions of "facility" and "support facility," means:

1. The possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person at both locations whether through ownership of at least 25 percent of the voting shares, contract or other legal arrangement;
2. The physical or operational ability to operate or control the operation of equipment; or
3. The presence of a service arrangement where discretionary action taken at one location will, without discretion, trigger action at the other location.

"Contiguous," as used in the definitions of "facility" and "support facility," means that two or more properties touch along at least a portion of one side notwithstanding the presence of any transportation corridors, public thoroughfares, utility corridors or bodies of water.

"Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under Section 112(b) of the Act. This definition is not meant to alter or affect the definition of "unit" for purposes of Title IV of the Act or any related regulations.

"Facility" means all of the pollutant-emitting activities which:

1. Belong to the same "major group" (i.e., which have the same first two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively);
2. Are located on one or more contiguous or adjacent properties; and
3. Are under the control of the same person (or persons under common control).

"Hazardous air pollutant" means any of the following air pollutants listed in Section 112(b) of the Act:

cas #	chemical name
75343	1,1-Dichloroethane
57147	1,1-Dimethyl hydrazine
71556	1,1,1-Trichloroethane
79005	1,1,2-Trichloroethane
79345	1,1,2,2-Tetrachloroethane
106887	1,2-Butylene oxide
96128	1,2-Dibromo-3-chloropropane
106934	1,2-Dibromoethane
107062	1,2-Dichloroethane
78875	1,2-Dichloropropane
122667	1,2-Diphenylhydrazine

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

cas #	chemical name	cas #	chemical name
120821	1,2,4-Trichlorobenzene	510156	Chlorobenzilate
106990	1,3-Butadiene	75003	Chloroethane
542756	1,3-Dichloropropylene	67663	Chloroform
106467	1,4-Dichlorobenzene	74873	Chloromethane
123911	1,4-Dioxane	107302	Chloromethyl methyl ether
53963	2-Acetylaminofluorene	126998	Chloroprene
532274	2-Chloroacetophenone	0	Chromium Compounds
79469	2-Nitropropane	0	Cobalt Compounds
540841	2,2,4-Trimethylpentane	0	Coke Oven Emissions
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin (TC-DD)	1319773	Cresol/Cresylic acid (isomers & mixture)
94757	2,4-D salts and esters	98828	Cumene
95807	2,4-Diaminotoluene	0	Cyanide Compounds ¹
51285	2,4-Dinitrophenol	72559	DDE
121142	2,4-Dinitrotoluene	117817	Di(2-ethylhexyl) phthalate
95954	2,4,5-Trichlorophenol	334883	Diazomethane
88062	2,4,6-Trichlorophenol	132649	Dibenzofuran
91941	3,3'-Dichlorobenzidine	84742	Dibutyl phthalate
119904	3,3'-Dimethoxybenzidine	75092	Dichloromethane
119937	3,3'-Dimethylbenzidine	62737	Dichlorvos
92671	4-Aminobiphenyl	111422	Diethanolamine
60117	4-Dimethylaminoazobenzene	64675	Diethyl sulfate
92933	4-Nitrobiphenyl	68122	Dimethyl formamide
100027	4-Nitrophenol	131113	Dimethyl phthalate
101144	4,4'-Methylenebis(2-chloroaniline)	77781	Dimethyl sulfate
101779	4,4'-methylenedianiline	79447	Dimethylcarbanyl chloride
534521	4,6-Dinitro-o-cresol, and salts	106898	Epichlorohydrin
75070	Acetaldehyde	140885	Ethyl acrylate
60355	Acetamide	100414	Ethylbenzene
75058	Acetonitrile	107211	Ethylene glycol ³
98862	Acetophenone	75218	Ethylene oxide
107028	Acrolein	96457	Ethylene thiourea
79061	Acrylamide	151564	Ethyleneimine
79107	Acrylic acid	0	Fine Mineral Fibers ³
107131	Acrylonitrile	50000	Formaldehyde
107051	Allyl chloride	0	Glycol Ethers ²
62533	Aniline	76448	Heptachlor
0	Antimony Compounds	87683	Hexachloro-1,3-butadiene
0	Arsenic Compounds (inorganic including arsine)	118741	Hexachlorobenzene
1332214	Asbestos (friable)	77474	Hexachlorocyclopentadiene
71432	Benzene	67721	Hexachloroethane
92875	Benzidine	822060	Hexamethylene-1,6-diisocyanate
98077	Benzoic trichloride	680319	Hexamethylphosphoramide
100447	Benzyl chloride	110543	Hexane
0	Beryllium Compounds	302012	Hydrazine
57578	Beta-Propiolactone	7647010	Hydrochloric acid
92524	Biphenyl	7664393	Hydrogen fluoride
111444	Bis(2-chloroethyl) ether	123319	Hydroquinone
542881	Bis(chloromethyl) ether	78591	Isophorone
75252	Bromoform	0	Lead Compounds
74839	Bromomethane	58899	Lindane (all isomers)
0	Cadmium Compounds	108394	m-Cresol
156627	Calcium cyanamide	108383	m-Xylene
133062	Captan	108316	Maleic anhydride
63252	Carbaryl	0	Manganese Compounds
75150	Carbon disulfide	0	Mercury Compounds
56235	Carbon tetrachloride	67561	Methanol
463581	Carbonyl sulfide	72435	Methoxychlor
120809	Catechol	78933	Methyl ethyl ketone
133904	Chloramben	60344	Methyl hydrazine
57749	Chlordane	74884	Methyl iodide
7782505	Chlorine	108101	Methyl isobutyl ketone
79118	Chloroacetic acid	624839	Methyl isocyanate
108907	Chlorobenzene	80626	Methyl methacrylate
		1634044	Methyl tertbutyl ether
		101688	Methylene bis(phenylisocyanate)

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

cas #	chemical name
684935	N-Nitroso-N-methylurea
62759	N-Nitrosodimethylamine
59892	N-Nitrosomorpholine
91203	Naphthalene
0	Nickel Compounds
98953	Nitrobenzene
121697	N,N-Dimethylaniline
90040	o-Anisidine
95487	o-Cresol
95534	o-Toluidine
95476	o-Xylene
106445	p-Cresol
106503	p-Phenylenediamine
106423	p-Xylene
56382	Parathion
87865	Pentachlorophenol
108952	Phenol
75445	Phosgene
7803512	Phosphine
7723140	Phosphorus (yellow or white)
85449	Phthalic anhydride
1336363	Polychlorinated biphenyls
0	Polycyclic Organic Matter ⁴
1120714	Propane sultone
123386	Propionaldehyde
114261	Propoxur
75569	Propylene oxide
75558	Propyleneimine
91225	Quinoline
106514	Quinone
82688	Quintozene
0	Radionuclides (including Radon) ⁵
0	Selenium Compounds
100425	Styrene
96093	Styrene oxide
127184	Tetrachloroethylene
7550450	Titanium tetrachloride
108883	Toluene
584849	Toluene-2,4-diisocyanate
8001352	Toxaphene
79016	Trichloroethylene
121448	Triethylamine
1582098	Trifluralin
51796	Urethane
108054	Vinyl acetate
593602	Vinyl bromide
75014	Vinyl chloride
75354	Vinylidene chloride
1330207	Xylene (mixed isomers)

NOTE: For all listings above which contain the word "compounds" and for glycol ethers, the following applies: Unless otherwise specified, these listings are defined as including any unique chemical substance that contains the named chemical (i.e., antimony, arsenic, etc.) as part of that chemical's infrastructure.

¹ X'CN where X=H' or any other group where a formal dissociation may occur. For example, KCN or Ca(CN)².

² Includes mono- and di-ethers of ethylene glycol, diethylene glycol, and triethylene glycol R(OCH₂CH₂)_n-OR' where n=1,2, or 3; R=alkyl or aryl groups; R'=R,H, or groups which, when removed, yield glycol ethers with the structure R(OCH₂CH)_n-OH. Polymers are excluded from the glycol category.

³ Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or

other mineral-derived fibers) of average diameter 1 micrometer or less.

⁴ Includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100 degrees C.

⁵ A type of atom which spontaneously undergoes radioactive decay.

"Impact area" means a circular area with a radius extending from the group of pollutant-emitting activities in one general location to the most distant point where approved dispersion modeling predicts a specified ambient impact.

"Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the administrator. This term does not alter or affect the use of this term for any other purposes under the Act, or the term "capacity factor" as used in Title IV of the Act or the regulations relating to acid rain. For the purpose of determining potential to emit for country grain elevators, the "maximum capacity" means the greatest amount of grain received by the elevator during one year of the previous five-year period, multiplied by an adjustment factor of 1.2. For purposes of calculating potential to emit for emergency generators, "maximum capacity" means one of the following:

1. 500 hours of operation annually, if the generator has actually been operated less than 500 hours per year for the past five years;
2. 8,760 hours of operation annually, if the generator has actually been operated more than 500 hours in one of the past five years; or
3. The number of hours specified in a state or federally enforceable limit.

"Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but which do not come from the major stationary source or major modification itself. Secondary emissions include emissions from any off-site facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions that come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Significant," as used in reference to "net emissions increase" or "potential to emit" in the definition of "major modification" in 40 CFR 52.21(b)(2) (adopted by reference in 567—22.4(455B)), means:

1. A rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

Carbon monoxide: 100 tons per year (tpy)

Nitrogen oxides: 40 tpy

Sulfur dioxide: 40 tpy

Particulate matter:

25 tpy of particulate matter emissions;

15 tpy of PM₁₀ emissions

Ozone: 40 tpy of volatile organic compounds

Lead: 0.6 tpy

Fluorides: 3 tpy

Sulfuric acid mist: 7 tpy

Total reduced sulfur (including H₂S): 10 tpy

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

- Reduced sulfur compounds (including H₂S): 10 tpy
- Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): 3.2×10^{-6} megagrams per year (3.5×10^{-6} tons per year)
- Municipal waste combustor metals (measured as particulate matter): 14 megagrams per year (15 tons per year)
- Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): 36 megagrams per year (40 tons per year)
- Municipal solid waste landfill emissions (measured as nonmethane organic compounds): 45 megagrams per year (50 tons per year)

2. Any emissions of a pollutant subject to regulation under the Act that paragraph "1" does not list other than:

- Hazardous air pollutants specified in 567—20.2(455B), Substances listed pursuant to 40 CFR 68.130 as of March 13, 2000, and
- Class I and Class II substances under Title VI of the Clean Air Act.

3. Notwithstanding paragraph "1," any emissions rate or any net emissions increase associated with a major stationary source or major modification which would be constructed within 10 kilometers of a Class I area and have an impact on such area equal to or greater than $1 \mu\text{g}/\text{m}^3$, (24-hour average).

"Support facility" means a facility which is contiguous or adjacent and whose operation is integrally related to another facility's activities such as by:

1. Conveying, storing or performing one or more steps in the production of a principal product of the supported facility; or

2. Fifty percent or more of the facility's inputs or outputs being dedicated to activities at the other facility.

It is not necessary that the support facility be under common control or have the same Standard Industrial Classification.

ITEM 4. Amend subrule 22.4(1) as follows:

22.4(1) Federal rules 40 CFR 52.21(a) (Plan Disapproval), 52.21(b)(5) (*Stationary Source*), 52.21(b)(6) (*Building, Structure, Facility, or Installation*), 52.21(b)(7) (*Emission Unit*), 52.21(b)(18) (*Secondary Emissions*), 52.21(b)(23) (*Significant*), 52.21(q) (Public Participation), 52.21(s) (Environmental Impact Statement), and 52.21(u) (Delegation of Authority) are not adopted by reference. Also, for the purposes of 40 CFR 52.21(l), the department adopts by reference Appendix W to 40 CFR 51, Guideline on Air Quality Models (Revised), as adopted August 12, 1996.

ITEM 5. Amend subrule **22.5(1)** by rescinding and reserving paragraph "g."

ITEM 6. Amend subrule **22.5(1)** by rescinding and reserving paragraph "s."

ITEM 7. Amend rule **567—22.100(455B)** by rescinding the definitions of "Act," "emissions unit," "facility," "hazardous air pollutant," "potential to emit" and "stationary source."

ITEM 8. Amend rule **567—22.120(455B)** by rescinding the definitions of "facility" and "source."

ARC 3128B

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 50, "Health Care Facilities Administration," and to rescind Chapter 52, "Birth Centers," Iowa Administrative Code.

The proposed amendments to Chapter 50 eliminate obsolete references, update citations and definitions, and, due to the repeal of Iowa Code chapter 135G during the 2002 session of the Iowa General Assembly, strike references to birth centers. The proposed amendments also establish a procedure by which hospices and home health agencies shall conduct criminal history and dependent adult abuse background checks, as required by Iowa law.

As the proposed amendments are strictly technical in nature, the Department does not believe their adoption will financially impact the agency, regulated entities, or any other individual. Additionally, adoption of the proposed amendments will bring Chapter 50 into compliance with the Governor's Executive Order Number 8.

The proposed amendments were presented to the State Board of Health for initial review at the Board's January 14, 2004, meeting.

Any interested person may make written suggestions or comments on the proposed amendments on or before February 24, 2004. Such written materials should be directed to the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083; or faxed to (515)242-6863. E-mail may be sent to david.werning@dia.state.ia.us.

These amendments are intended to implement Iowa Code sections 10A.104(5) and 136C.19, as well as Executive Order Number 8.

The following amendments are proposed.

ITEM 1. Amend rule 481—50.1(10A) as follows:

481—50.1(10A) Inspections. The ~~division~~ of health facilities *division* inspects health care facilities, ~~and~~ hospitals, *and providers and suppliers of medical services* in Iowa. Standards ~~to be met~~ to obtain a license are explained in this chapter.

ITEM 2. Amend rule 481—50.2(10A) as follows:

481—50.2(10A) Definitions.

"Administrator" means the ~~chief inspector who coordinates person coordinating the activities administration~~ of the division.

"Department" means the department of inspections and appeals.

"Director" means the director of inspections and appeals.

"Division" means the ~~division~~ of health facilities *division*.

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

ITEM 3. Amend rule 481—50.3(135B,135C), introductory paragraph, as follows:

481—50.3(135B,135C) Licensing. All hospitals and health care facilities shall be licensed by the department of inspections and appeals. Applications are available from the Health Facilities Division, Lucas State Office Building, Des Moines, Iowa 50319-0114 50319-0083. Completed applications are returned to the division with the fee.

ITEM 4. Amend subrule 50.3(3) as follows:

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. Birth centers, 481—Chapter 52;~~
- c. Hospices, 481—Chapter 53;
- d. Residential care facilities, 481—Chapters 57 and 60;
- e. Nursing facilities, 481—Chapters 58, 59 and 61;
- (1) ~~Nursing facilities for intermediate care, 481—Chapters 58 and 61. Facilities that provide services to individuals who require nursing services which can be provided only under the direction of a registered nurse or a licensed practical nurse; or~~
- (2) ~~Nursing facilities for skilled care, 481—Chapter 59 and 61. Facilities that provide services to individuals who require continuous nursing care services and related medical services, but do not require hospital care.~~
- f. Residential care facilities for persons with mental illness, 481—Chapters 60 and 62;
- g. Residential care facilities for the mentally retarded, 481—Chapters 60 and 63; and
- h. Intermediate care facilities for the mentally retarded, 481—Chapter 64; and
- h. *Intermediate care facilities for persons with mental illness, 481—Chapter 65.*

This subrule is intended to implement Iowa Code sections 135B.7 and 135C.14.

ITEM 5. Amend rule 481—50.6(10A), introductory paragraph, as follows:

481—50.6(10A) Formal hearing. All decisions of the division may be contested. Appeals and hearings are controlled by Iowa Administrative Code 481—Chapter 4-10, “Contested Case Hearings.”

ITEM 6. Amend rule 481—50.7(10A,135C) as follows:

481—50.7(10A,135C) Additional notification. The director or the director’s designee shall be notified within 24 hours:

~~1. 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.

~~2. 50.7(2) When damage to the facility which impairs its ability to function is caused by fire, or natural, or other disaster.~~

~~A telephone call to the administrator is adequate notice. 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)~~

ITEM 7. Amend subrule 50.8(2), introductory paragraph, as follows:

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 Health Care 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.

ITEM 8. Rescind and reserve subrule **50.8(4)**.

ITEM 9. Amend subrule **50.8(5)**, first and second unnumbered paragraphs, as follows:

~~For no cost and a request by phone (515) 281-4115 or letter any member of the public may obtain a copy of the annual finding and citation report prepared for the legislature.~~

Requests are sent to Division of Health Facilities Division, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319.

ITEM 10. Amend 481—Chapter 50 by adding the following **new** rule:

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 includes, but is not limited to, person-to-person contact services provided by administration, home-maker 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.

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

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.

ITEM 11. Rescind and reserve **481—Chapter 52.**

ARC 3127B**INSPECTIONS AND APPEALS
DEPARTMENT[481]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 58, “Nursing Facilities,” Iowa Administrative Code.

The proposed amendment implements a paid nutritional assistant program for federally certified long-term care facilities in Iowa. In September 2003, the federal Centers for Medicare & Medicaid Services (CMS) published new rules allowing for the use of paid nutritional assistants in nursing facilities. The Department’s proposed amendment mirrors the federal action and allows nursing facilities in Iowa to use paid nutritional assistants. The proposed amendment further stipulates the minimum content for the paid nutritional assistant training program and outlines testing, record keeping, and working restrictions for paid nutritional assistants.

The proposed amendment was presented to the State Board of Health for initial review at the Board’s January 14, 2004, meeting.

Any interested person may make written suggestions or comments on the proposed amendment on or before February 24, 2004. Such written materials should be directed to the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083; or faxed to (515)242-6863. E-mail may be sent to david.werning@dia.state.ia.us.

The Department has determined that adoption of the proposed amendment may have a fiscal impact on those long-term care facilities desiring to use paid nutritional assistants. However, the Department is incapable of determining the fiscal impact, as use of paid nutritional assistants is completely voluntary on the part of the nursing facilities. Also, as adoption of the proposed amendment does not require facilities to comply with the federal rules governing paid nutritional assistants, the Department did not include a waiver option in its proposed amendment.

This amendment is intended to implement Iowa Code sections 10A.104(5) and 135C.14.

The following amendment is proposed.

Amend rule 481—58.24(135C) by adding the following **new** subrule:

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 fa-

cility 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 retake 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 retake.

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 deter-

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

mining 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)

ARC 3133B

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Chiropractic Examiners hereby gives Notice of Intended Action to amend Chapter 40, “Administrative and Regulatory Authority for the Board of Chiropractic Examiners,” and Chapter 41, “Licensure of Chiropractic Physicians,” rescind Chapter 45, “Discipline for Chiropractic Physicians,” and adopt a new Chapter 45 with the same title; and amend Chapter 46, “Fees,” Iowa Administrative Code.

These proposed amendments adopt new subrules for the conduct of persons who attend public meetings, requirements for notifying the Board of name and address changes, and criteria and fees for obtaining a duplicate or reissued license and wallet card. Licensees who regularly examine, attend, counsel or treat adults or children will be required to document at the time of renewal that they have completed the mandatory training on abuse identification and reporting.

These proposed amendments also adopt a new discipline chapter.

Any interested person may make written comments on the proposed amendments no later than February 28, 2004, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, E-mail pwilson@idph.state.ia.us.

A public hearing will be held on February 28, 2004, from 9 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 151 and 272C.

The following amendments are proposed.

ITEM 1. Amend subrules 40.4(2) and 40.4(3) as follows:

40.4(2) Notice of change of address. Each licensee shall notify the board ~~in writing~~ of a change of the licensee's current mailing address within 30 days after the change of address occurs.

40.4(3) Notice of change of name. Each licensee shall notify the board *in writing* of ~~any a~~ change of name within 30 days after changing the name. ~~Notification requires a notarized copy of a marriage license or a notarized copy of court documents.~~

ITEM 2. Amend the parenthetical implementation for rule 645—40.6(17A) as follows:

645—40.6(17A 21)

ITEM 3. Adopt **new** subrules 40.6(3) and 40.6(4) as follows:

40.6(3) The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

40.6(4) Cameras and recording devices may be used at open meetings provided the cameras and recording devices do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding at the meeting may request the user to discontinue use of the camera or device.

ITEM 4. Amend the implementation clause for **645—Chapter 40** as follows:

These rules are intended to implement Iowa Code chapters 17A, 21, 147, 151 and 272C.

ITEM 5. Amend paragraph **41.2(1)“d”** as follows:

d. No applicant shall be considered for licensure until official copies of academic transcripts are received by the board directly from a chiropractic school accredited by the CCE and approved by the board. *The transcript must display the date of graduation and the degree conferred.*

ITEM 6. Amend subrule **41.2(1)** by renumbering paragraphs **“e”** to **“g”** as **“f”** to **“h”** and adopting **new** paragraph **“e”** as follows:

e. An applicant shall submit an official certificate of completion of 120 hours of physiotherapy from a board-approved chiropractic college. The physiotherapy course must include a practicum component.

ITEM 7. Rescind paragraph **41.6(2)“f”** and adopt **new** paragraphs **“f”** and **“g”** as follows:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

f. Holds or has held a current license and provides evidence of one of the following requirements:

(1) Completion of 60 hours of board-approved continuing education during the immediately preceding two-year period as long as the applicant had an active practice within the last five years; or

(2) Practice as a licensed chiropractic physician for a minimum of one year during the immediately preceding two-year period; or

(3) The equivalent of one year as a full-time faculty member teaching chiropractic in an accredited chiropractic college for at least one of the immediately preceding two years; or

(4) Graduation from a board-approved chiropractic college within the immediately preceding two years from the date the application is received in the board office.

g. If the applicant does not meet the requirements of paragraph 41.6(2)"f," the applicant shall submit the following:

(1) Evidence of satisfactory completion of 60 hours of board-approved continuing education during the immediately preceding two-year period; and

(2) Evidence of successful completion of the SPEC examination within one year prior to receipt of the application in the board office.

ITEM 8. Rescind rule 645—41.8(151) and adopt the following **new** rule in lieu thereof:

645—41.8(151) License renewal.

41.8(1) The biennial license renewal period for a license to practice chiropractic shall begin on July 1 of an even-numbered year and end on June 30 of the next even-numbered year. The board shall notify the licensee at the address on record at least 60 days prior to expiration of the license.

41.8(2) An individual who was issued an initial license within six months of the license renewal date will not be required to renew the license until the subsequent renewal two years later.

41.8(3) A licensee shall:

a. Meet the continuing education requirements of rule 645—44.2(272C) and the mandatory reporting requirements of subrule 41.8(4); and

b. Submit the completed renewal application, continuing education report form and renewal fee before the license expiration date.

41.8(4) Mandatory reporter training requirements.

a. A licensee who, in the scope of professional practice or in the licensee's employment responsibilities, examines, attends, counsels or treats children in Iowa shall indicate on the renewal application completion of two hours of training in child abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."

b. A licensee who, in the course of employment, examines, attends, counsels or treats adults in Iowa shall indicate on the renewal application completion of two hours of training in dependent adult abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."

c. A licensee who, in the scope of professional practice or in the course of employment, examines, attends, counsels or treats both adults and children in Iowa shall indicate on the renewal application completion of training in abuse identification and reporting for dependent adults and children in the

previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."

Training may be completed through separate courses as identified in paragraphs "a" and "b" or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse. The course shall be a curriculum approved by the Iowa department of public health abuse education review panel.

d. The licensee shall maintain written documentation for five years after mandatory training as identified in paragraphs "a" to "c," including program date(s), content, duration, and proof of participation.

e. The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

(1) Is engaged in active duty in the military service of this state or the United States.

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in 645—Chapter 44.

f. The board may select licensees for audit of compliance with the requirements in paragraphs "a" to "e."

41.8(5) When all requirements for license renewal are met, the licensee shall be sent a wallet card by regular mail.

41.8(6) A person licensed to practice as a chiropractic physician shall keep the license certificate and wallet card(s) displayed in a conspicuous public place at the primary site of practice.

41.8(7) Late renewal. The license shall become late when the license has not been renewed by the expiration date on the wallet card. The licensee shall be assessed a late fee as specified in 645—subrule 46.1(4). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within 30 days following the expiration date on the wallet card.

ITEM 9. Renumber rule **645—41.11(17A,151,272C)** as **645—41.13(17A,151,272C)** and adopt the following **new** rules:

645—41.11(147) Duplicate certificate or wallet card.

41.11(1) A duplicate wallet card or duplicate certificate shall be required if the current wallet card or certificate is lost, stolen or destroyed. A duplicate wallet card or a duplicate certificate shall be issued only under such circumstances.

41.11(2) A duplicate wallet card or duplicate certificate shall be issued upon receipt of the completed application for duplicate license and payment of the fee as specified in rule 645—46.1(151).

41.11(3) If the board receives a completed application for duplicate license stating that the wallet card or certificate was not received within 60 days after being mailed by the board, no fee shall be required for issuing the duplicate wallet card or duplicate certificate.

645—41.12(147) Reissued certificate or wallet card. The board shall reissue a certificate or current wallet card upon receipt of a written request from the licensee, return of the original document and payment of the fee as specified in rule 645—46.1(151).

ITEM 10. Rescind 645—Chapter 45 and adopt the following **new** chapter in lieu thereof:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

CHAPTER 45
DISCIPLINE FOR CHIROPRACTIC PHYSICIANS

645—45.1(151) Definitions.

“Board” means the board of chiropractic examiners.

“Discipline” means any sanction the board may impose upon licensees.

“Licensee” means a person licensed to practice as a chiropractic physician in Iowa.

645—45.2(151,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645—45.3(147,272C) when the board determines that the licensee is guilty of any of the following acts or offenses.

45.2(1) Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice in this state, which includes the following:

a. False representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state, or

b. Attempting to file or filing with the board or the department of public health any false or forged diploma or certificate or affidavit or identification or qualification in making an application for a license in this state.

45.2(2) Professional incompetency. Professional incompetency includes, but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice.

b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other practitioners in the state of Iowa acting in the same or similar circumstances.

c. A failure to exercise the degree of care which is ordinarily exercised by the average practitioner acting in the same or similar circumstances.

d. Failure to conform to the minimal standard of acceptable and prevailing practice of a chiropractic physician in this state.

e. Mental or physical inability reasonably related to and adversely affecting the licensee’s ability to practice in a safe and competent manner.

f. Being adjudged mentally incompetent by a court of competent jurisdiction.

45.2(3) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. This includes representations utilizing the term “physical therapy” when informing the public of the services offered by the chiropractic physician unless a licensed physical therapist is performing such services. Nothing herein shall be construed as prohibiting a chiropractic physician from making representations regarding physiotherapy that may be the same as, or similar to, physical therapy or physical medicine as long as treatment is appropriate as authorized in Iowa Code chapter 151. Proof of actual injury need not be established.

45.2(4) Practice outside the scope of the profession.

45.2(5) Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation.

45.2(6) Habitual intoxication or addiction to the use of drugs.

a. The inability of a licensee to practice with reasonable skill and safety by reason of the excessive use of alcohol on a continuing basis.

b. The excessive use of drugs which may impair a licensee’s ability to practice with reasonable skill or safety.

45.2(7) Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

45.2(8) Falsification of client records.

45.2(9) Acceptance of any fee by fraud or misrepresentation.

45.2(10) Negligence by the licensee in the practice of the profession. Negligence by the licensee in the practice of the profession 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 which impair the ability to safely and skillfully practice the profession.

45.2(11) Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee’s ability to practice within the profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

45.2(12) Violation of a regulation or law of this state, another state, or the United States, which relates to the practice of the profession.

45.2(13) Revocation, suspension, or other disciplinary action taken by a licensing authority of this state, another state, territory, or country; or failure by the licensee to report in writing to the board revocation, suspension, or other disciplinary action taken by a licensing authority within 30 days of the final action. 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.

45.2(14) Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the practice of the profession in another state, district, territory or country.

45.2(15) Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

45.2(16) Failure to notify the board within 30 days after occurrence of any judgment or settlement of malpractice claim or action.

45.2(17) Engaging in any conduct that subverts or attempts to subvert a board investigation.

45.2(18) Failure to comply with a subpoena issued by the board, or otherwise fail to cooperate with an investigation of the board.

45.2(19) Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order.

45.2(20) Failure to pay costs assessed in any disciplinary action.

45.2(21) Submission of a false report of continuing education or failure to submit the biennial report of continuing education.

45.2(22) Failure to report another licensee to the board for any violations listed in these rules, pursuant to Iowa Code section 272C.9.

45.2(23) Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice as a chiropractic physician.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

45.2(24) Failure to report a change of name or address within 30 days after it occurs.

45.2(25) Representing oneself as a chiropractic physician when one's license has been suspended or revoked, or when one's license is lapsed or has been placed on inactive status.

45.2(26) Permitting another person to use the licensee's license for any purposes.

45.2(27) Permitting an unlicensed employee or person under the licensee's control to perform activities requiring a license.

45.2(28) Unethical conduct. In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct may include, but need not be limited to, the following:

a. Verbally or physically abusing a patient, client or co-worker.

b. Improper sexual contact with, or making suggestive, lewd, lascivious or improper remarks or advances to a patient, client or coworker.

c. Betrayal of a professional confidence.

d. Engaging in a professional conflict of interest.

45.2(29) Failure to comply with universal precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

645—45.3(147,272C) Method of discipline. The board has the authority to impose the following disciplinary sanctions:

1. Revocation of license.

2. Suspension of license until further order of the board or for a specific period.

3. Prohibit permanently, until further order of the board, or for a specific period the licensee's engaging in specified procedures, methods, or acts.

4. Probation.

5. Require additional education or training.

6. Require a reexamination.

7. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.

8. Impose civil penalties not to exceed \$1000.

9. Issue a citation and warning.

10. Such other sanctions allowed by law as may be appropriate.

645—45.4(272C) Discretion of board. The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

1. The relative serious nature of the violation as it relates to ensuring a high standard of professional care to the citizens of this state;

2. The facts of the particular violation;

3. Any extenuating facts or other countervailing considerations;

4. The number of prior violations or complaints;

5. The seriousness of prior violations or complaints;

6. Whether remedial action has been taken; and

7. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

These rules are intended to implement Iowa Code chapters 147, 151 and 272C.

ITEM 11. Amend subrule 46.1(6) as follows:

46.1(6) Duplicate or reissued license *certificate* fee is \$10.

ITEM 12. Renumber subrules **46.1(7)** to **46.1(9)** as **46.1(8)** to **46.1(10)** and adopt the following **new** subrule:
46.1(7) Duplicate or reissued wallet card fee is \$10.

ARC 3124B**PROFESSIONAL LICENSURE
DIVISION[645]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Iowa Board of Examiners for Nursing Home Administrators hereby gives Notice of Intended Action to amend Chapter 140, “Administrative and Regulatory Authority for the Board of Examiners for Nursing Home Administrators,” and rescind Chapter 144, “Discipline for Nursing Home Administrators,” Iowa Administrative Code, and adopt new Chapter 144 with the same title.

The proposed amendments amend the rule regarding public meetings by adopting subrules covering the conduct of persons who attend public meetings. The proposed amendments also adopt a new Chapter 144, which contains updated discipline rules.

The Division sent a draft of the proposed amendments to selected associations and licensees. The Board received comments on the proposed amendments and modified the amendments to address concerns.

Any interested person may make written comments on the proposed amendments no later than February 24, 2004, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, E-mail pwilson@idph.state.ia.us.

A public hearing will be held on February 24, 2004, from 10 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 17A, 21, 147, 155 and 272C.

The following amendments are proposed.

ITEM 1. Adopt **new** subrules 140.6(3) and 140.6(4) as follows:

140.6(3) The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

140.6(4) Cameras and recording devices may be used at open meetings provided they do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding at the meeting may request the user to discontinue use of the camera or device.

ITEM 2. Amend the implementation clause for **645—Chapter 140** as follows:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

These rules are intended to implement Iowa Code chapters 17A, 21, 147, 155 and 272C.

ITEM 3. Rescind 645—Chapter 144 and adopt the following **new** chapter in lieu thereof:

CHAPTER 144
DISCIPLINE FOR NURSING HOME
ADMINISTRATORS

645—144.1(155) Definitions.

“Board” means the board of examiners for nursing home administrators.

“Licensee” means a person licensed to practice as a nursing home administrator in Iowa.

“Licensee discipline” means any sanction the board may impose upon a licensee.

645—144.2(155,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645—144.3(155,272C) when the board determines that the licensee is guilty of any of the following acts or offenses:

144.2(1) Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice in this state which includes the following:

a. False representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state, or

b. Attempting to file or filing with the board or the department of public health any false or forged diploma or certificate or affidavit or identification or qualification in making an application for a license in this state.

144.2(2) Any falsification or misrepresentation contained in any report or document attesting to the facts, conditions and activities of the internship or work experience and submitted by the applicant, administrator/preceptor or other participants may be grounds for denial of license or for suspension or revocation of the nursing home administrator license in addition to the imposition of fines and any other penalties provided by law.

144.2(3) Professional incompetency. Professional incompetency includes, but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice.

b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other nursing home administrators in the state of Iowa acting in the same or similar circumstances.

c. A failure to exercise the degree of care which is ordinarily exercised by a nursing home administrator acting in the same or similar circumstances.

d. Failure to conform to the minimal standard of acceptable and prevailing practice of a licensed nursing home administrator in this state.

144.2(4) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of nursing home administration or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

144.2(5) Use of untruthful or improbable statements in advertisements. The use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation.

144.2(6) Practice outside the scope of the profession.

144.2(7) Habitual intoxication or addiction to the use of drugs.

a. The inability of a licensee to practice with reasonable skill and safety by reason of the excessive use of alcohol on a continuing basis.

b. The excessive use of drugs which may impair a licensee’s ability to practice with reasonable skill or safety.

144.2(8) Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

144.2(9) Falsification of client or patient records.

144.2(10) Acceptance of any fee or property by fraud or misrepresentation.

144.2(11) Misappropriation of resident funds or facility funds.

144.2(12) Negligence by the licensee in the practice of the profession. Negligence by the licensee in the practice of the profession includes a failure to exercise due care including improper delegation of duties or supervision of employees or other individuals, whether or not injury results, or any conduct, practice or conditions which impair the ability to safely and skillfully practice the profession.

144.2(13) Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee’s ability to practice as a nursing home administrator. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

144.2(14) Violation of a regulation, rule or law of this state, another state, or the United States, which relates to the practice of nursing home administrators.

144.2(15) Revocation, suspension, or other disciplinary action taken by the professional licensing authority of this state, another state, territory, or country; or failure of the licensee to report such action within 30 days of the final action by the 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, such report shall be expunged from the records of the board.

144.2(16) Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the individual’s practice of nursing home administration in another state, district, territory or country.

144.2(17) Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

144.2(18) Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action which arises out of the practice of the nursing home administrator.

144.2(19) Engaging in any conduct that subverts or attempts to subvert a board investigation.

144.2(20) Failure to comply with a subpoena issued by the board, or failure to cooperate with an investigation of the board.

144.2(21) Failure to respond within 30 days to a communication of the board which was sent by registered or certified mail.

144.2(22) Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order.

144.2(23) Failure to pay costs assessed in any disciplinary action.

144.2(24) Submission of a false report of continuing education.

144.2(25) Failure to report another licensee to the board for any suspected violations listed in these rules.

144.2(26) Knowingly aiding, assisting, or advising a person to unlawfully practice as a nursing home administrator.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

144.2(27) Failure to report a change of name or address within 30 days after the occurrence.

144.2(28) Representing oneself as a licensed nursing home administrator when one's license has been suspended or revoked, or when one's license is lapsed or has been placed on inactive status.

144.2(29) Permitting another person to use the licensee's license for any purpose.

144.2(30) Permitting an unlicensed employee or person under the licensee's control to perform activities that require a license.

144.2(31) Unethical conduct. In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct may include, but is not limited to, the following:

a. Verbally or physically abusing a patient, client or co-worker.

b. Improper sexual contact with or making suggestive, lewd, lascivious or improper remarks or advances to a patient, client or coworker.

c. Betrayal of a professional confidence. A licensee shall not disclose professional or personal information regarding recipients of service to unauthorized personnel unless required by law or to protect the public welfare.

d. Engaging in a professional conflict of interest.

e. Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.

f. Being adjudged mentally incompetent by a court of competent jurisdiction.

144.2(32) Repeated failure to comply with universal precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

645—144.3(155,272C) Method of discipline. The board has the authority to impose the following disciplinary sanctions:

1. Revocation of license.
2. Suspension of license until further order of the board or for a specific period.
3. Prohibit permanently, until further order of the board, or for a specific period the licensee's engaging in specified procedures, methods, or acts.
4. Probation.
5. Require additional education or training.
6. Require a reexamination.
7. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.
8. Impose civil penalties not to exceed \$1000.
9. Issue a citation and warning.
10. Such other sanctions allowed by law as may be appropriate.

645—144.4(272C) Discretion of board. The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

1. The relative serious nature of the violation as it relates to ensuring a high standard of professional care to the citizens of this state;
2. The facts of the particular violation;
3. Any extenuating facts or other countervailing considerations;
4. The number of prior violations or complaints;
5. The seriousness of prior violations or complaints;
6. Whether remedial action has been taken; and

7. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

These rules are intended to implement Iowa Code chapters 147, 155 and 272C.

ARC 3131B**PROFESSIONAL LICENSURE
DIVISION[645]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Optometry Examiners hereby gives Notice of Intended Action to amend Chapter 179, “Administrative and Regulatory Authority for the Board of Optometry Examiners,” and Chapter 180, “Licensure of Optometrists”; to rescind Chapter 183, “Discipline for Optometrists,” and adopt a new Chapter 183 with the same title; and to amend Chapter 184, “Fees,” Iowa Administrative Code.

These proposed amendments amend Board contact procedures for address and name changes, adopt subrules regarding conduct of persons attending public meetings, amend license renewal requirements, set the fees charged for duplicate and reissued wallet cards and license certificates, adopt criteria for obtaining a reissued certificate or wallet card license, and adopt a new discipline chapter. Licensees who regularly examine, attend, counsel or treat adults or children will be required at the time of license renewal to have completed a course approved by the Iowa Department of Public Health abuse education review panel regarding abuse identification and reporting.

Any interested person may make written comments on the proposed amendments no later than February 24, 2004, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, E-mail pwilson@idph.state.ia.us.

A public hearing will be held on February 24, 2004, from 9 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

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

The following amendments are proposed.

ITEM 1. Amend subrules 179.4(2) and 179.4(3) as follows:

179.4(2) Notice of change of address. Each licensee shall notify the board ~~in writing~~ of a change of the licensee's current mailing address within 30 days after the change of address occurs.

179.4(3) Notice of change of name. Each licensee shall notify the board ~~in writing~~ of ~~any a~~ change ~~in of~~ name within 30 days after changing the name. ~~Notification requires a no-~~

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

tarized copy of a marriage license or a notarized copy of court documents.

ITEM 2. Amend the parenthetical implementation for rule 645—179.6(17A) as follows:

645—179.6(17A 21)

ITEM 3. Adopt new subrules 179.6(3) and 179.6(4) as follows:

179.6(3) The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

179.6(4) Cameras and recording devices may be used at open meetings provided the cameras and recording devices do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding at the meeting may request the user to discontinue use of the camera or device.

ITEM 4. Amend the implementation clause for **645—Chapter 179** as follows:

These rules are intended to implement Iowa Code chapters 17A, 21, 147, 154 and 272C.

ITEM 5. Rescind paragraph **180.2(1)“d”** and adopt the following new paragraph in lieu thereof:

d. No application will be considered complete until official copies of academic transcripts sent directly to the board from an accredited school or college of optometry are received by the board and the applicant submits proof of satisfactory completion of all educational requirements contained in Iowa Code chapter 154.

ITEM 6. Rescind rule 645—180.5(154) and adopt the following new rule in lieu thereof:

645—180.5(154) License renewal.

180.5(1) The biennial license renewal period for a license to practice optometry shall begin on July 1 of an even-numbered year and end on June 30 two years later. The board shall notify the licensee at the address on record at least 60 days prior to expiration of the license.

180.5(2) An individual who was issued an initial license within six months of the license renewal date will not be required to renew the license until the subsequent renewal two years later.

180.5(3) A licensee shall:

a. Meet the continuing education requirements of rule 645—181.2(154) and the mandatory reporting requirements of subrule 180.5(4); and

b. Submit the completed renewal application, continuing education report form and renewal fee before the license expiration date.

180.5(4) Mandatory reporter training requirements.

a. A licensee who, in the scope of professional practice or in the licensee's employment responsibilities, examines, attends, counsels or treats children in Iowa shall indicate on the renewal application completion of two hours of training in child abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."

b. A licensee who, in the course of employment, examines, attends, counsels or treats adults in Iowa shall indicate on the renewal application completion of two hours of training in dependent adult abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."

c. A licensee who, in the scope of professional practice or in the course of the licensee's employment responsibilities,

examines, attends, counsels or treats both adults and children in Iowa shall indicate on the renewal application completion of training in abuse identification and reporting for dependent adults and children in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."

Training may be completed through separate courses as identified in paragraphs "a" and "b" or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse. The course shall be a curriculum approved by the Iowa department of public health abuse education review panel.

d. The licensee shall maintain written documentation for five years after mandatory training as identified in paragraphs "a" to "c," including program date(s), content, duration, and proof of participation.

e. The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

(1) Is engaged in active duty in the military service of this state or the United States.

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in 645—Chapter 181.

f. The board may select licensees for audit of compliance with the requirements in paragraphs "a" to "e."

180.5(5) When all requirements for license renewal are met, the licensee shall be sent a wallet card by regular mail.

180.5(6) A person licensed to practice optometry shall keep the license certificate and wallet card(s) displayed in a conspicuous public place at the primary site of practice.

180.5(7) Late renewal. The license shall become late when the license has not been renewed by the expiration date on the wallet card. The licensee shall be assessed a late fee as specified in 645—subrule 184.1(3). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within 30 days following the expiration date on the wallet card.

ITEM 7. Renumber rule **645—180.8(17A,147,272C)** as **645—180.10(17A,147,272C)** and adopt the following new rules:

645—180.8(147) Duplicate certificate or wallet card.

180.8(1) A duplicate wallet card or duplicate certificate shall be required if the current wallet card or certificate is lost, stolen or destroyed. A duplicate wallet card or a duplicate certificate shall be issued only under such circumstances.

180.8(2) A duplicate wallet card or duplicate certificate shall be issued upon receipt of the completed application for duplicate license and payment of the fee as specified in rule 645—184.1(147,154).

180.8(3) If the board receives a completed application for duplicate license stating that the wallet card or certificate was not received within 60 days after being mailed by the board, no fee shall be required for issuing the duplicate wallet card or duplicate certificate.

645—180.9(147) Reissued certificate or wallet card. The board shall reissue a certificate or current wallet card upon receipt of a written request from the licensee, return of the original document and payment of the fee as specified in rule 645—184.1(147,154).

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 8. Rescind 645—Chapter 183 and adopt the following **new** chapter in lieu thereof:

CHAPTER 183
DISCIPLINE FOR OPTOMETRISTS

645—183.1(154) Definitions.

“Board” means the board of optometry examiners.

“Discipline” means any sanction the board may impose upon licensees.

“Licensee” means a person licensed to practice as an optometrist in Iowa.

645—183.2(154,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645—183.3(147,272C) when the board determines that the licensee is guilty of any of the following acts or offenses:

183.2(1) Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice in this state which includes the following:

a. False representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state, or

b. Attempting to file or filing with the board or the department of public health any false or forged diploma or certificate or affidavit or identification or qualification in making an application for a license in this state.

183.2(2) Professional incompetency. Professional incompetency includes, but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice.

b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other practitioners in the state of Iowa acting in the same or similar circumstances.

c. A failure to exercise the degree of care which is ordinarily exercised by the average practitioner acting in the same or similar circumstances.

d. Failure to conform to the minimal standard of acceptable and prevailing practice of optometry in this state.

e. Mental or physical inability reasonably related to and adversely affecting the licensee’s ability to practice in a safe and competent manner.

f. Being adjudged mentally incompetent by a court of competent jurisdiction.

183.2(3) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

183.2(4) Practice outside the scope of the profession.

183.2(5) Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation.

183.2(6) Habitual intoxication or addiction to the use of drugs.

a. The inability of a licensee to practice with reasonable skill and safety by reason of the excessive use of alcohol on a continuing basis.

b. The excessive use of drugs which may impair a licensee’s ability to practice with reasonable skill or safety.

183.2(7) Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

183.2(8) Falsification of client records.

183.2(9) Acceptance of any fee by fraud or misrepresentation.

183.2(10) Negligence by the licensee in the practice of the profession. Negligence by the licensee in the practice of the profession 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 which impair the ability to safely and skillfully practice the profession.

183.2(11) Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee’s ability to practice within the profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

183.2(12) Violation of a regulation or law of this state, another state, or the United States, which relates to the practice of the profession.

183.2(13) Revocation, suspension, or other disciplinary action taken by a licensing authority of this state, another state, territory, or country; or failure by the licensee to report in writing to the board revocation, suspension, or other disciplinary action taken by a licensing authority within 30 days of the final action. 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.

183.2(14) Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the practice of the profession in another state, district, territory or country.

183.2(15) Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

183.2(16) Failure to notify the board within 30 days after occurrence of any judgment or settlement of malpractice claim or action.

183.2(17) Engaging in any conduct that subverts or attempts to subvert a board investigation.

183.2(18) Failure to comply with a subpoena issued by the board, or otherwise fail to cooperate with an investigation of the board.

183.2(19) Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order.

183.2(20) Failure to pay costs assessed in any disciplinary action.

183.2(21) Submission of a false report of continuing education or failure to submit the biennial report of continuing education.

183.2(22) Failure to report another licensee to the board for any violations listed in these rules, pursuant to Iowa Code section 272C.9.

183.2(23) Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice optometry.

183.2(24) Failure to report a change of name or address within 30 days after it occurs.

183.2(25) Representing oneself as an optometry practitioner when one’s license has been suspended or revoked, or when one’s license is lapsed or has been placed on inactive status.

183.2(26) Permitting another person to use the licensee’s license for any purposes.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

183.2(27) Permitting an unlicensed employee or person under the licensee's control to perform activities requiring a license.

183.2(28) Unethical conduct. In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct may include, but need not be limited to, the following:

- a. Verbally or physically abusing a patient, client or co-worker.
- b. Improper sexual contact with, or making suggestive, lewd, lascivious or improper remarks or advances to a patient, client or coworker.
- c. Betrayal of a professional confidence.
- d. Engaging in a professional conflict of interest.

183.2(29) Failure to comply with universal precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

645—183.3(147,272C) Method of discipline. The board has the authority to impose the following disciplinary sanctions:

1. Revocation of license.
2. Suspension of license until further order of the board or for a specific period.
3. Prohibit permanently, until further order of the board, or for a specific period, the engaging in specified procedures, methods, or acts.
4. Probation.
5. Require additional education or training.
6. Require a reexamination.
7. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.
8. Impose civil penalties not to exceed \$1000.
9. Issue a citation and warning.
10. Such other sanctions allowed by law as may be appropriate.

645—183.4(272C) Discretion of board. The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

1. The relative serious nature of the violation as it relates to ensuring a high standard of professional care to the citizens of this state;
2. The facts of the particular violation;
3. Any extenuating facts or other countervailing considerations;
4. The number of prior violations or complaints;
5. The seriousness of prior violations or complaints;
6. Whether remedial action has been taken; and
7. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

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

ITEM 9. Amend subrule 184.1(5) as follows:

184.1(5) Duplicate or reissued license *certificate* fee is \$10.

ITEM 10. Renumber subrules **184.1(6)** to **184.1(8)** as **184.1(7)** to **184.1(9)** and adopt the following **new** subrule:

184.1(6) Duplicate or reissued wallet card fee is \$10.

ARC 3147B**PUBLIC HEALTH
DEPARTMENT[641]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 136C.3, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 38, "General Provisions for Radiation Machines and Radioactive Materials," Chapter 39, "Registration of Radiation Machine Facilities, Licensure of Radioactive Materials and Transportation of Radioactive Materials," Chapter 40, "Standards for Protection Against Radiation," Chapter 41, "Safety Requirements for the Use of Radiation Machines and Certain Uses of Radioactive Materials," Chapter 42, "Minimum Certification Standards for Diagnostic Radiographers, Nuclear Medicine Technologists, and Radiation Therapists," Chapter 45, "Radiation Safety Requirements for Industrial Radiographic Operations," and Chapter 46, "Minimum Requirements for Tanning Facilities," Iowa Administrative Code.

The following itemize the proposed changes.

Items 1, 4, 7, 12, 22, 37, and 52 amend the rules to reflect current federal regulations.

Items 2 and 23 amend the definitions to meet NRC compatibility requirements.

Item 3 adds an inspection fee for mammography units not covered under the current inspection fee schedule.

Items 5, 8, 10, 14, 17, 18, 19, 24, 48, and 49 correct and clarify terminology.

Item 6 adds requirements for a well logging license to meet NRC compatibility requirements.

Item 9 adds wording to eliminate the requirement for certain X-ray rooms to be posted with caution signs in order to meet national standards.

Items 11, 28, 29, and 30 add language to address new technology.

Item 13 corrects wording from a previous amendment, which was not submitted correctly.

Item 15 rescinds a subparagraph whose substance has been appropriately incorporated elsewhere.

Item 16 adds a time requirement for maintaining records, removes items that are no longer necessary because of new technology, and renumbers the subparagraphs.

Item 20 changes wording to require that the patient's physician do a follow-up instead of the surgeon who may not see the patient on a regular basis.

Item 21 incorporates language appropriate to the rule and expands it for clarity.

Items 25, 26, 27, and 42 amend the rules to meet NRC compatibility requirements.

Item 31 adds language to allow probation for disciplinary actions.

Item 32 expands the criteria for disciplinary actions to include all modalities in the chapter.

Item 33 adds a penalty for working without a permit issued under Chapter 42. The purpose of the penalty is to encourage new graduates to get the permit before they start working as is currently required.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Item 34 adds a new category for disciplinary actions because of the increase in the number of individuals who are not submitting proper documentation.

Item 35 adopts new language for limited radiographers who wish to be trained in pediatric radiography. This change was recommended by many doctors.

Item 36 clarifies that the required test is for the general radiography category.

Item 38 corrects references.

Items 39, 45, 47, and 51 change the number of years that records must be maintained in order to meet NRC compatibility requirements.

Items 40 and 44 delete language referring to forms the agency no longer issues.

Items 41, 43 and 50 rescind the original paragraphs and replace them with revised paragraphs to meet NRC compatibility requirements.

Item 46 adopts a new subrule to meet NRC compatibility requirements.

Item 53 adopts new requirements for tanning facility operators. The first paragraph will affect operators of in-home tanning facilities. The second will require training every five years instead of the current one-time training. This change should create a good periodic review of the rules for operators.

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

Any interested person may make written suggestions or comments on these proposed amendments prior to the close of business on February 24, 2004. Such written materials should be directed to Donald A. Flater, Chief, Bureau of Radiological Health, Department of Public Health, 401 SW 7th Street, Suite D, Des Moines, Iowa 50309-4611; fax (515)725-0318; or E-mail: dflater@idph.state.ia.us.

A public hearing will be held on February 24, 2004, at 8:30 a.m. in the Conference Room, Department of Public Health, 401 SW 7th Street, Suite D, Des Moines, Iowa, at which time persons may present their views orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any person who plans to attend the public hearing and has special requirements such as those related to hearing or mobility impairments should contact the Department to advise of specific needs.

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

The following amendments are proposed.

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

38.1(2) All references to Code of Federal Regulations (CFR) in this chapter are those in effect as of May 1, 2003 May 5, 2004.

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

Amend the following definitions:

“A2” means the maximum activity of radioactive material, other than special form radioactive material, permitted in a Type A package. These values are either listed in Appendix E of 641—Chapter 39, Table I, or may be derived in accordance with the procedure prescribed in Appendix E of 641—Chapter 39 49 CFR 173.435.

“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.

“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.

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

“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.

“Diagnostic imaging system” means an assemblage of components for the generation, emission, reception, transformation, storage and visual display of the resultant image.

“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.

“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.

“Manual brachytherapy” 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.

“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.

ITEM 3. Amend subrule **38.8(1)**, paragraph “**b**,” subparagraph (1), by adopting the following **new** bulleted paragraph:

- \$850 for each stereotactic breast biopsy unit.

ITEM 4. Amend subrule 39.1(3) as follows:

39.1(3) All references to any Code of Federal Regulations (CFR) in this chapter are those in effect as of May 1, 2003 May 5, 2004.

ITEM 5. Amend subrule **39.4(29)**, paragraph “**j**,” introductory paragraph, as follows:

j. Manufacture, preparation, or transfer for commercial distribution of radioactive drugs containing by-product material for ~~material~~ *medical* use under 641—41.2(136C).

ITEM 6. Amend subrule **39.4(31)** by adopting **new** paragraph “**d**” as follows:

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

PUBLIC HEALTH DEPARTMENT[641](cont'd)

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.

ITEM 7. Amend subrule 40.1(5) as follows:

40.1(5) All references to Code of Federal Regulations (CFR) in this chapter are those in effect on or before ~~May 1, 2003~~ *May 5, 2004*.

ITEM 8. Amend subrule 40.60(4) as follows:

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

ITEM 9. Amend subrule 40.62(4) as follows:

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.

ITEM 10. Amend **641—Chapter 40**, Appendix D, title, as follows:

CHAPTER 40
APPENDIX D

REQUIREMENTS FOR TRANSFERS *AND MANIFESTS*
OF LOW-LEVEL RADIOACTIVE WASTE
INTENDED FOR DISPOSAL AT LICENSED LAND
DISPOSAL FACILITIES *AND MANIFESTS*

ITEM 11. Amend subrule 41.1(1), introductory paragraph, as follows:

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.

ITEM 12. Amend subrule **41.1(1)**, paragraph "**b**," as follows:

b. All references to any Code of Federal Regulations (CFR) in this chapter are those in effect as of ~~May 1, 2003~~ *May 5, 2004*.

ITEM 13. Amend subrule **41.1(3)**, paragraph "**a**," subparagraph (7), introductory paragraph, as follows:

(7) Individuals shall not be exposed to the useful beam unless (1) ~~there is a previously established professional relationship with 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 it is such examination is not otherwise clinically appropriate indicated*; and (2) ~~a written order for the radiation exposure has been issued by the individual in (1) such practitioner issues a written order for the radiation exposure.~~ The written order ~~may be issued after the exposure that is the result of shall be issued prior to the exposure unless the exposure results from care provided in an emergency or surgery setting.~~ This provision specifically prohibits deliberate exposure for the following purposes:

ITEM 14. Amend subrule **41.1(3)**, paragraph "**a**," subparagraph (9), numbered paragraph "**5**," second bulleted paragraph, as follows:

- If *the grid is* of the focused type, be at the proper focal distance for the SIDs being used.

ITEM 15. Rescind subrule **41.1(3)**, paragraph "**a**," subparagraph (12).

ITEM 16. Amend subrule **41.1(3)**, paragraph "**b**," as follows:

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) ~~Model and serial numbers of all major components and user's User's manual for those components the X-ray system;~~

(2) ~~Tube rating charts and cooling curves;~~

(3) (2) Records of surveys, calibrations, maintenance, and modifications performed on the X-ray system(s) with the names of persons who performed such services;

(4) (3) A copy of all correspondence with this agency regarding that X-ray system.

ITEM 17. Amend subrule **41.1(3)**, paragraph "**f**," subparagraph (1), numbered paragraph "**2**," as follows:

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.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 18. Amend subrule **41.1(3)**, paragraph “**f**,” subparagraph (2), numbered paragraph “**1**,” as follows:

1. Film shall be processed in accordance with the time-temperature relationships recommended by the film *developer* manufacturer.

ITEM 19. Amend subrule **41.1(5)**, paragraph “**a**,” subparagraph (2), numbered paragraph “**2**,” as follows:

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 ~~minimum~~ *maximum* SID available but at no less than 20 centimeters from the tabletop to the film plane distance.

ITEM 20. Amend subrule **41.1(5)**, paragraph “**k**,” subparagraph (2), as follows:

(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 ~~performing the procedure~~ 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.

ITEM 21. Amend subrule **41.1(5)** by adopting **new** paragraph “**p**” as follows:

1. 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.

ITEM 22. Amend subrule **41.2(1)**, paragraph “**b**,” as follows:

b. All references to any Code of Federal Regulations (CFR) in this chapter are those in effect as of ~~May 1, 2003~~ *May 5, 2004*.

ITEM 23. Amend subrule **41.2(2)** as follows:

Amend the following definition:

“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 ~~more than~~ *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.”

ITEM 24. Amend subrule **41.2(14)**, paragraph “**a**,” as follows:

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.

ITEM 25. Amend subrule 41.2(69) as follows:

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:

a. (1) Is certified by:

(1) 1. The American Board of Nuclear Medicine; or

(2) 2. The American Board of Radiology in radiology, therapeutic radiology, or radiation oncology; or

(3) 3. ~~Nuclear medicine by the~~ *The Royal College of Physicians and Surgeons of Canada in nuclear medicine*; or

(4) 4. The American Osteopathic Board of Radiology after 1984; or

b. (2) ~~Has completed 80 hours of instruction 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:*

PUBLIC HEALTH DEPARTMENT[641](cont'd)

~~(1) 1. To satisfy the requirement for instruction, 80 hours of classroom and laboratory training shall include 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) 2. To satisfy the requirement for supervised clinical experience, training shall be Supervised clinical experience under the supervision of an authorized user at a medical institution and shall include:~~

- ~~1. •Use of iodine-131 for diagnosis of thyroid function and the treatment of hyperthyroidism or cardiac dysfunction in ten individuals;~~
- ~~2. •Use of soluble phosphorus-32 for the treatment of ascites, polycythemia vera, leukemia, or bone metastases in three individuals;~~
- ~~3. •Use of iodine-131 for treatment of thyroid carcinoma in three individuals;~~
- ~~4. •Use of colloidal chromic phosphorus-32 or of colloidal gold-198 for intracavitary treatment of malignant effusions in three individuals;~~
- ~~5. •Use of strontium-89 or samarium-153 for relief of pain in metastatic disease in three individuals; and~~
- ~~6. •Use of iodine-131 radiolabeled monoclonal antibody for treatment of non-Hodgkin's lymphoma in three patients; or~~

~~e. Be identified on a current Agreement State or NRC license as an authorized user for these uses in 41.2(37).~~

~~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.~~

ITEM 26. Amend subrule 41.2(73) as follows:

41.2(73) Training for ~~teletherapy use of therapeutic medical devices.~~ The licensee shall require the authorized user of a sealed source specified in 41.2(49) in a ~~teletherapy unit~~ 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 ~~completed 200 hours of instruction classroom and laboratory training~~ in basic radionuclide techniques applicable to the use of a sealed source in a ~~teletherapy unit~~ *therapeutic medical device*, ~~500 hours of supervised work experience, and a minimum of three years of supervised clinical experience.~~ *as follows:*

~~(1) To satisfy the requirement for instruction, the 200 hours of classroom and laboratory training shall 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) To satisfy the requirement for 500 hours of supervised work experience, training shall be under the supervision of an authorized user at an 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 ~~misadministrations~~ *medical events*;
4. Implementing emergency procedures to be followed in the event of the abnormal operation of a ~~teletherapy unit~~ *medical device* or console; and
5. Checking and using survey meters. ; and

~~(3) To satisfy the requirement for a period Three years of supervised clinical experience, training shall include 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.~~ *The supervised clinical experience shall include 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 ~~teletherapy~~ doses and collaborating with the authorized user in the review of patients' or human research subjects' progress and consideration of the need to

PUBLIC HEALTH DEPARTMENT[641](cont'd)

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;

~~e. Be identified on a current Agreement State or NRC license as an authorized user for teletherapy.~~

ITEM 27. Amend subrule 41.2(74) as follows:

41.2(74) Training for ~~teletherapy authorized medical~~ physicist. The licensee shall require the ~~teletherapy 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

5. (2) The American Board of Medical Physics in radiation oncology physics; or

~~(2) Reserved; 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 also one *additional* year of full-time work experience under the supervision of a ~~teletherapy medical~~ physicist at a medical institution. ~~To meet this requirement, the individual shall have performed that includes the tasks listed in 41.2(21), 41.2(58), 41.2(59), and 41.2(60) under the supervision of a teletherapy physicist during the year of work experience, as applicable.~~

~~c. Be identified on a current Agreement State or NRC license as a teletherapy physicist.~~

ITEM 28. Amend subrule **41.6(1)** by adopting the following **new** definition in alphabetical order:

"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.

ITEM 29. Amend subrule **41.6(3)**, paragraph "a," subparagraph (2), numbered paragraph "3," as follows:

3. Before an interpreting physician may begin independently interpreting mammograms produced by a ~~new screen-film or full field digital~~ mammographic modality modalities, that is, a mammographic modality in which the physician has not previously been trained, the interpreting physician shall have at least 8 hours of ~~training category 1 continuing medical education credits~~ in the ~~new~~ 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.*

ITEM 30. Amend subrule **41.6(3)**, paragraph "b," subparagraph (2), numbered paragraphs "1," and "3," as follows:

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;*

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*

ITEM 31. Amend subrule 42.2(2), introductory paragraph, as follows:

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

ITEM 32. Amend subrule **42.2(2)**, paragraph "e," subparagraphs (1) and (3), as follows:

(1) Any medical condition which may impair or limit the individual's ability to perform radiography, *nuclear medicine procedures, or radiation therapy;*

(3) A misdemeanor or felony which may impair or limit the individual's ability to perform radiography, *nuclear medicine procedures, or radiation therapy;*

ITEM 33. Amend subrule **42.2(2)**, paragraph "g," as follows:

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.*

ITEM 34. Amend subrule **42.2(2)** by adopting **new** paragraph "h" as follows:

h. Failure to respond to an audit request or failure to provide proper documentation.

ITEM 35. Amend subrule **42.3(1)**, paragraph "b," by adopting **new** subparagraph (2) as follows:

(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.

ITEM 36. Amend subrule **42.3(3)**, paragraph "c," as follows:

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).

ITEM 37. Amend subrule **45.1(1)**, paragraph "b," introductory paragraph, as follows:

b. All references to any Code of Federal Regulations (CFR) in this chapter are those in effect as of ~~May 1, 2003~~ *May 5, 2004.*

ITEM 38. Amend subrule **45.1(2)**, definitions of "certifying entity" and "independent certifying organization," as follows:

"Certifying entity" means an independent certifying organization meeting the requirements ~~in Appendix E of this~~

PUBLIC HEALTH DEPARTMENT[641](cont'd)

chapter or Agreement State meeting the requirements of Appendix E or the requirements of Appendix A in 10 CFR Part 34.

“Independent certifying organization” means an independent organization that meets all of the criteria of Appendix E to this chapter *Appendix A in 10 CFR Part 34*.

ITEM 39. Amend subrule 45.1(6) as follows:

45.1(6) Quarterly inventory. Each licensee shall conduct a physical inventory at intervals not to exceed three months to account for all sealed sources and radiography exposure devices received and possessed. Sources of radiation include radiographic exposure devices containing depleted uranium. The records of the inventories shall be maintained for ~~two~~ *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.

ITEM 40. Amend subrule **45.1(7)**, paragraph “c,” as follows:

c. Utilization logs may be kept on ~~IDPH Form 588-2693, Utilization Log, or 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.

ITEM 41. Amend subrule **45.1(8)** by rescinding paragraphs “a” and “c” and adopting the following **new** paragraphs in lieu thereof:

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.

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.

ITEM 42. Amend subrule **45.1(8)**, paragraph “b,” as follows:

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, and 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. Records of inspection and maintenance shall be maintained for inspection by the agency for two years from the date of the recorded event.* This program shall cover, as a minimum, the items in Appendix B *of this chapter*.

ITEM 43. Amend subrule **45.1(8)** by adopting **new** paragraphs “d” and “e” as follows:

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.

ITEM 44. Amend subrule **45.1(10)**, paragraph “e,” as follows:

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 kept on IDPH Form 588-2692 or on clear, legible records containing all the information required by IDPH Form 588-2692.~~ 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.*

ITEM 45. Amend subrule **45.1(12)**, paragraph “c,” as follows:

c. Records of pocket dosimeter readings of personnel exposures and yearly operability checks required in 45.1(12)“d” shall be maintained for ~~two~~ *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 until the agency authorizes disposal. 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.

ITEM 46. Adopt **new** subrule 45.1(19) as follows:

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.

ITEM 47. Amend subrule **45.3(5)**, paragraph “c,” as follows:

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 ~~six months~~ *three years* after the next required leak test is performed or until the sealed source is transferred or disposed of.

ITEM 48. Amend subrule **45.6(9)**, paragraph “e,” subparagraph (5), as follows:

(5) Sources of alpha- or neutron-emitting radioactive material with an activity of 10 microcuries (0.370 MBq) or less.

ITEM 49. Amend subrule **45.6(15)**, paragraph “a,” subparagraph (1), as follows:

(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 Ap-

PUBLIC HEALTH DEPARTMENT[641](cont'd)

pendix D E of this chapter and demonstrated an understanding thereof;

ITEM 50. Rescind subrule 45.6(16) and adopt the following **new** subrule in lieu thereof:

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).

ITEM 51. Amend **641—Chapter 45**, Appendix C, as follows:

**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(4)	Leak tests.	≥ 3 years.
45.1(6)	Quarterly inventory.	≥ 3 years.
45.1(7)	Utilization logs.	Until disposal is authorized by the agency.
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.	Until disposal is authorized by the agency.
45.1(12)	Pocket dosimeter readings.	≥ 3 years or until disposal is authorized by the agency if dosimeters were used to determine external radiation dose.
	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)	<i>Current operating and emergency procedures. Superseded material.</i>	<i>Until disposal is authorized by the agency. 3 years after change.</i>
45.3(6)	Internal audit program.	3 years.
40.81(1)		
45.1(11)	Radiographer audits.	≥ 3 years.
45.2(5)	Radiation surveys.	2 years or until disposal is authorized by the agency if a survey was used to determine an individual's exposure.
and 45.3(7)		
45.1(16)	Records at temporary job sites.	During temporary job site operations.
45.2(6)	Annual evaluation of enclosed X-ray systems.	2 years.
and 45.3(8)		

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Specific

Section	Name of Record	Time Interval Required for Record Keeping
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.

ITEM 52. Amend rule **641—46.1(136D)**, first unnumbered paragraph, as follows:
 All references to Code of Federal Regulations (CFR) in this chapter are those in effect as of ~~July 1, 2002~~ *May 5, 2004*.

ITEM 53. Amend subrule **46.5(10)** by adopting **new** paragraphs “e” and “f” as follows:

- e. Operators shall be at least 16 years of age.
- f. Operators shall complete the required training and testing every five years.

ARC 3148B

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 135.105C, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 69, “Renovation, Remodeling, and Repainting—Lead Hazard Notification Process,” Iowa Administrative Code.

This chapter implements a program to require individuals who perform renovation, remodeling, and repainting of target housing for compensation to provide an approved lead hazard information pamphlet to the owner and occupant of the housing prior to commencing the work. Iowa law stipulates that the rules can take effect only after the Department of Public Health has obtained authorization from the U.S. Environmental Protection Agency (EPA) for the Department’s program to require lead hazard notification prior to renovation, remodeling, and repainting of target housing. Iowa’s program was authorized by the EPA on July 13, 1999.

The proposed amendments incorporate into subrules 69.3(2) and 69.4(2) changes required by the EPA and add procedures for administrative enforcement.

The Department has determined that these rules are not subject to waiver or variance because Iowa’s program must be as protective as EPA regulations, which do not allow variances or waivers.

Consideration will be given to all written suggestions or comments on the proposed amendments received on or before February 24, 2004. Such written materials should be sent to the Lead Poisoning Prevention Program, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319; E-mail to rgergely@idph.state.ia.us; fax (515) 281-4529.

Also, there will be a public hearing on February 24, 2004, at 10 a.m. over the Iowa Communications Network (ICN), at which time persons may present their views. The sites for the public hearing are as follows:

Department of Human Services
 Room 550, Fifth Floor
 411 3rd Street SE
 Cedar Rapids

- Northeast Iowa Community College
 Room 101, Dubuque Downtown
 700 Main Street
 Dubuque
- Green Valley Area Education Agency 14
 Turner Room
 1405 N. Lincoln
 Creston
- Kahl Educational Center
 Room 304
 326 W. 3rd Street
 Davenport
- Loess Hills Area Education Agency 13
 24997 Highway 92
 Council Bluffs
- North Iowa Area Community College
 Room 106, Activity Center
 500 College Drive
 Mason City
- Ottumwa Regional Health Center
 Conference Room A
 1001 E. Pennsylvania
 Ottumwa
- Prairie Lakes Area Education Agency
 Iowa Central Community College Campus
 Room 204, Library Building
 330 Avenue M
 Fort Dodge
- Sioux City Public Library
 529 Pierce Street
 Sioux City
- Spencer Public Library
 21 East Third Street
 Spencer
- Iowa Department of Public Health
 ICN Room, Sixth Floor
 Lucas State Office Building
 321 E. 12th Street
 Des Moines

These amendments are intended to implement Iowa Code section 135.105C.

The following amendments are proposed.

ITEM 1. Amend rule **641—69.2(135)** by adding the following **new** definition in alphabetical order:
 “Regulated entity” means any individual or company that is regulated by the department by virtue of these rules, the

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Iowa Code, or other official regulatory promulgation.

ITEM 2. Amend subrule 69.3(2) as follows:

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. ~~If a written acknowledgment 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, name of the person delivering the pamphlet, 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.~~

a. The acknowledgment shall include the owner's and occupant's names and the address of the residential dwelling undergoing renovation, remodeling, or repainting.

a 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.

b 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 e. The type shall be clear and legible.

f 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 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.

ITEM 3. Amend subrule 69.4(2) as follows:

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.

a 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.

b c. Below the statement, the acknowledgment shall require the signature of the owner, along with the date of signature.

d d. The type shall be clear and legible.

e 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 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 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 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 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.

ITEM 4. Amend rule 641—69.9(135), catchwords, as follows:

641—69.9(135) Enforcement Compliance inspections.

ITEM 5. Rescind and reserve subrule **69.9(2)**.

ITEM 6. Adopt the following **new** rule:

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

PUBLIC HEALTH DEPARTMENT[641](cont'd)

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 de-

PUBLIC HEALTH DEPARTMENT[641](cont'd)

nial, 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.

ITEM 7. Adopt the following **new** rule:

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.

ARC 3134B**PUBLIC HEALTH
DEPARTMENT[641]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 135.105A, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 70, "Lead Professional Certification," Iowa Administrative Code.

Iowa Code section 135.105A directs the Department of Public Health to establish a program for the training and certification of lead inspectors and lead abaters and states that a person shall not perform lead abatement or lead inspections unless the person has completed a training program approved by the Department and has obtained certification. Property owners are required to be certified only if the property in which they will perform lead inspections or lead abatement is occupied by a person other than the owner or a member of the owner's immediate family while the measures are being performed. A person may be certified as both a lead inspector and a lead abater. However, a person who is certified as both shall not provide both lead inspection 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. Iowa's law stipulates that rules could take effect only after the Department obtained authorization from the U.S. Environmental Protection Agency (EPA) for its program to train and certify lead inspectors and abaters. Iowa's program was authorized by the EPA on July 13, 1999.

The proposed amendments make a number of changes to incorporate into Iowa rules guidance issued by the Department and the federal government and material that is covered in approved training programs. In addition, the Department has added a new rule to specify administrative enforcement procedures. Finally, the Department has added a requirement that lead-safe work practices training programs be approved by the Department and provisions for the voluntary registration of individuals who have successfully completed these courses.

The Department has added definitions for "approved lead-safe work practices training program," "component type," "inconclusive classification," "lead-free inspection," "lead-safe work practices," "lead-safe work practices training program," "lead-safe work practices contractor," "multifamily housing," "negative classification," "NIST 1.02 standard film," "paint testing," "performance characteristics sheet (PCS)," "positive classification," "random selection," "registered lead-safe work practices contractor," "regulated entity," "substrate," "substrate correction," "substrate correction value," "targeted selection," "testing combination," "worst case selection," and "XRF reading." The definitions of "clearance level," "clearance testing," "common area,"

PUBLIC HEALTH DEPARTMENT[641](cont'd)

“component” or “building component,” “containment,” “dust-lead hazard,” “elevated blood lead (EBL) inspection,” “firm,” “hazardous lead-based paint,” “lead abatement,” “lead-based paint,” “lead-based paint activities,” “lead hazard screen,” “lead inspection,” “ongoing lead-based paint maintenance,” “paint stabilization,” “reduction,” “risk assessment,” “room,” “soil-lead hazard,” “standard treatments,” “visual risk assessment,” and “wipe sample” have been modified.

Work practice standards for conducting lead-free inspections and paint testing have been added. The work practice standards for conducting lead inspections, elevated blood lead (EBL) inspections, risk assessments, lead hazard screens, lead abatement, and clearance testing have been modified. The Department has clarified the minimum surface area for taking dust wipe samples, the records that a training provider must keep for each course offered and for each student taking a course, the time that a student taking a course may miss before the time must be made up, that the eight hours of case management training for EBL inspectors is to be provided by the Department’s childhood lead poisoning prevention program, and the method for offering the state certification examination.

There are no substantial changes from these new definitions, modified definitions, modifications to work practice standards, and other clarifications because they have all been included in guidance documents issued by the Department and the federal government and have been covered in the courses that individuals must take to become certified lead professionals. These items have been changed in Chapter 70 to allow certified lead professionals to find in one place all of the information that they need to comply with Iowa rules.

There are also no substantial changes from adding the administrative enforcement procedures to Chapter 70.

The requirement that lead-safe work practices training programs be approved by the Department and provisions for the voluntary registration of individuals who have successfully completed these courses is a substantial change. The Department has added these provisions to Chapter 70 at the request of the organizations that are offering these training programs and the individuals who have taken them. Agencies that must comply with the lead-safe housing regulation promulgated by the U.S. Department of Housing and Urban Development (HUD) must use contractors who have completed these courses to perform work in HUD-assisted housing. The voluntary registration will make it easier for these agencies to locate contractors who can do this work. In addition, the voluntary registration will provide recognition for those who have completed the course and will make it easier for the public to locate contractors who have had specific training in lead-safe work practices.

The Department has determined that these rules are not subject to waiver or variance because Iowa’s program must be as protective as the EPA regulations which do not allow variances or waivers.

Consideration will be given to all written suggestions or comments on the proposed amendments received on or before February 24, 2004. Such written materials should be sent to the Lead Poisoning Prevention Program, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319; E-mail to rgergely@idph.state.ia.us; fax (515) 281-4529.

Also, there will be a public hearing on February 24, 2004, at 10 a.m. over the Iowa Communications Network (ICN) at which time persons may present their views. The sites for the public hearing are as follows:

Department of Human Services
Room 550, Fifth Floor
411 3rd Street SE
Cedar Rapids

Northeast Iowa Community College
Room 101, Dubuque Downtown
700 Main Street
Dubuque

Green Valley Area Education Agency 14
Turner Room
1405 N. Lincoln
Creston

Kahl Educational Center
Room 304
326 W. 3rd Street
Davenport

Loess Hills Area Education Agency 13
24997 Highway 92
Council Bluffs

North Iowa Area Community College
Room 106, Activity Center
500 College Drive
Mason City

Ottumwa Regional Health Center
Conference Room A
1001 E. Pennsylvania
Ottumwa

Prairie Lakes Area Education Agency
Iowa Central Community College Campus
Room 204, Library Building
330 Avenue M
Fort Dodge

Sioux City Public Library
529 Pierce Street
Sioux City

Spencer Public Library
21 East Third Street
Spencer

Iowa Department of Public Health
ICN Room, Sixth Floor
Lucas State Office Building
321 E. 12th Street
Des Moines

These amendments are intended to implement Iowa Code section 135.105A.

The following amendments are proposed.

ITEM 1. Amend **641—Chapter 70**, title, as follows:

CHAPTER 70
LEAD PROFESSIONAL CERTIFICATION
LEAD-BASED PAINT ACTIVITIES

ITEM 2. Amend rule 641—70.1(135) as follows:

641—70.1(135) Applicability. Prior to March 1, 2000, this chapter applies to all persons who are 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 pro-*

PUBLIC HEALTH DEPARTMENT[641](cont'd)

grams in Iowa and those who are registered lead-safe work practices contractors in Iowa. ~~While this~~ 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.

ITEM 3. Amend rule **641—70.2(135)** as follows:

Amend the following definitions:

“Clearance level” means the value that indicates the maximum at which the amount of lead permitted in dust on a surface following completion of an abatement activity 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 value clearance level for a single-surface dust sample from a floor is greater than or equal to 40 micrograms per square foot. The value clearance level for a single-surface dust sample from an interior windowsill is greater than or equal to 250 micrograms per square foot. The value 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 and that no soil-lead hazards or dust-lead hazards exist in the dwelling unit or worksite. 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.

“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.

“Containment” means a process to protect workers and the environment by controlling exposures to the dust-lead hazards and debris created during an lead abatement.

“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 or ex-

ceeding 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 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.

“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.

“Firm” means a company, partnership, corporation, sole proprietorship, association, or other business entity, other than an elevated blood lead (EBL) inspection agency, that performs or offers to perform lead-based paint activities.

“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 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.

“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. Abatement 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 post-abatement clearance testing activities associated with such measures. Lead abatement specifically includes, but is not limited to, (1) projects for which there is a written contract or other documentation, which provides that an individual will be conducting lead abatement activities in or to 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 elimi-

PUBLIC HEALTH DEPARTMENT[641](cont'd)

nation 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 ~~an~~ a lead abatement order. *Abatement* 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* ~~or in excess of~~ 1.0 milligram per square centimeter or ~~more~~ *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* ~~or in excess of~~ 1.0 milligram per square centimeter or ~~more~~ *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, ~~and~~ 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 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*.

“Ongoing lead-based paint maintenance” means the maintenance of housing ~~assisted by the U.S. Department of Housing and Urban Development~~ pursuant to 24 CFR Part 35.1355.

“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*.

“Reduction” means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and *lead abatement*.

“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* ~~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 *greater than or equal to* ~~or greater than~~ 400 parts per million.

“Standard treatments” means a series of hazard reduction measures designed to reduce all lead-based paint hazards in a *residential dwelling* ~~and~~ without the benefit of a risk assessment or other evaluation pursuant to 24 CFR 35.1335.

“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*.

“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*.

Further amend rule 641—70.2(135) by adopting the following **new** definitions in alphabetical sequence:

“Approved lead-safe work practices training program” means a lead-safe work practices training program that has been approved by the department.

“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.

“Inconclusive classification” means any XRF reading falling within the inconclusive range on the performance

PUBLIC HEALTH DEPARTMENT[641](cont'd)

characteristic sheet, including the boundary values defining the range.

“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-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.

“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.

“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.

“Positive classification” means any value defined by the performance characteristics sheet as indicating the presence of lead-based paint.

“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.

“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.

“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.

“Testing combination” means the unique combination of the room, component, substrate, and distinct painting history.

“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.

“XRF reading” means the number obtained when a surface is tested with an X-ray fluorescence analyzer.

ITEM 4. Amend rule 641—70.3(135) as follows:

641—70.3(135) Certification. Prior to March 1, 2000, lead professionals ~~may could~~ be certified by the department. Beginning March 1, 2000, lead professionals and firms must be certified by the department in the appropriate discipline before they 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, ~~except~~ 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 rule 641—70.5(135) and been issued a *current* certificate by the department. Prior to March 1, 2000, elevated blood lead (EBL) inspection agencies ~~may 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 rule 641—70.5(135) and been issued a *current* certificate by the department.

ITEM 5. Amend rule 641—70.4(135), introductory paragraph and subrules 70.4(1) to 70.4(4), as follows:

641—70.4(135) Course approval and standards. Prior to March 1, 1999, lead professional training courses for initial certification and refresher training ~~may 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 un-

PUBLIC HEALTH DEPARTMENT[641](cont'd)

less they have met the requirements of ~~rule 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. to d. No change.

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(9)~~ 70.4(16).

f. and g. No change.

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. and j. No change.

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) to (5) No change.

(6) ~~Results of the students' hands-on skills assessments and course tests and a record of each student's course completion certificate. 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)~~ (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) No change.

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 ~~must~~ *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. to u. No change.

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 ~~Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (1995, U.S. Department of Housing and Urban Development)~~ *work practice standards in 641—70.6(135)*, and methods to determine if lead-based paint hazards are present in a property.*

c. to k. No change.

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.*

ITEM 6. Rescind and reserve subrules **70.4(5)** to **70.4(7)**.

ITEM 7. Amend subrules 70.4(8) to 70.4(15) as follows:

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):

PUBLIC HEALTH DEPARTMENT[641](cont'd)

- a. to c. No change.
- d. Liability and insurance issues relating to lead-based paint abatement.
- e. and f. No change.
- g. Development and implementation of an occupant protection plan and *lead* abatement report.
- h. and i. No change.
- 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. to q. No change.
- 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. No change.
- b. Liability and insurance issues relating to lead-based paint abatement.
- c. to h. No change.
- 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. to l. No change.
- 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 ~~must~~ *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. to i. No change.
- 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. 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. to q. No change.
- 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. to c. No change.
- d. Liability and insurance issues relating to lead-based paint abatement.
- e. Identification of lead-based paint and lead-based paint hazards.*
- f. No change.
- g. Development and implementation of an occupant protection plan and *lead* abatement report.
- h. to q. No change.
- r. Development and implementation of an occupant protection plan for large-scale *lead* abatement projects.
- s. Lead-based paint abatement and lead-based paint 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-based paint abatement methods with modernization and rehabilitation projects for large-scale *lead* abatement projects.
- w. No change.
- 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. and b. No change.
- c. Lead-based paint abatement and lead-based paint 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-based paint 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):

PUBLIC HEALTH DEPARTMENT[641](cont'd)

- a. No change.
- b. Liability and insurance issues relating to lead-based paint abatement.
- c. No change.
- d. Development and implementation of an occupant protection plan and *lead* abatement report.
- e. to h. No change.
- i. Development and implementation of an occupant protection plan for large-scale *lead* abatement projects.
- j. Lead-based paint abatement and lead-based paint 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-based paint abatement methods with modernization and rehabilitation projects for large-scale *lead* abatement projects.
- n. No change.
- 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 regarding 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 or elevated blood lead (EBL) inspector/risk assessors who completed an approved 32-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. to e. No change.

ITEM 8. Amend rule 641—70.5(135) as follows:

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. and b. No change.
- c. ~~A person~~ *If wishing to become a certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor, shall provide 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 ex-*

amination. The applicant must achieve a score of at least 80 percent on the examination to successfully complete the training.

~~d 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) and (2) No change.

~~e 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.

- ~~f g.~~ A \$50 nonrefundable fee.

~~g 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 "d" "e" and "f" "g" to the department. If the applicant completed an approved course prior to September 1, 1999, the interim certification shall expire ~~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 must be upgraded 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)"e."* *70.5(1)"f."* Interim certification is equivalent to certification.

- 70.5(2)** No change.

70.5(3) Certifications issued prior to September 1, 1999, shall ~~expire~~ *expired* on February 29, 2000. By March 1, 2000, lead professionals certified prior to September 1, 1999, ~~must 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. ~~For 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(4) and the completion of an 8-hour refresher course. Reserved.~~

- d. to g. No change.

70.5(4) By September 15, 2000, sampling technicians certified prior to July 1, 2000, ~~must were required to~~ be recertified by submitting a certificate showing the completing 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. to c. No change.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

d. ~~The A statement that the certified elevated blood lead (EBL) inspection agency must will maintain all records required by rule 70.6(135) 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. and b. No change.

c. Every three years, a certificate showing that the applicant has successfully completed an approved refresher training course for the appropriate discipline. ~~If the applicant completed an approved training program prior to March 1, 2000, the~~ 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 may not be administered by the provider of an approved course. 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. and b. No change.

70.5(8) No change.

ITEM 9. Amend rule 641—70.6(135), introductory paragraph, as follows:

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.*

ITEM 10. Rescind subrule 70.6(1) and adopt the following new subrule:

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. 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 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

PUBLIC HEALTH DEPARTMENT[641](cont'd)

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/cm² 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/cm², which could create lead dust or lead-contaminated soil hazards if the paint is turned into dust

PUBLIC HEALTH DEPARTMENT[641](cont'd)

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.

b. 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

PUBLIC HEALTH DEPARTMENT[641](cont'd)

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
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
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

PUBLIC HEALTH DEPARTMENT[641](cont'd)

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 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 test-

ing 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 resi-

PUBLIC HEALTH DEPARTMENT[641](cont'd)

dential 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/cm² 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/cm², 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.

ITEM 11. Amend subrules 70.6(2) to 70.6(8) as follows:

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 ~~an~~ 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 ~~documented methodologies, including selection of rooms and components for sampling or testing, specified in Chapter 7 of the Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (1995, U.S. Department of Housing and Urban Development).~~ 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.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

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 sampled 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 sampling by X-ray fluorescence, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use the documented methodologies 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).~~ If sampling 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 provide a copy of this report 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 fewer less than three years. The inspection report shall include, at least:*

PUBLIC HEALTH DEPARTMENT[641](cont'd)

(1) A statement that the inspection was conducted to identify lead-based paint and lead-based paint hazards in the residential dwelling;

(1) (2) Date of each inspection;

(2) (3) Address of building;

(3) (4) Date of construction;

(4) (5) Apartment numbers (if applicable);

(5) (6) The name, address, and telephone number of the owner or owners of each residential dwelling or child-occupied facility;

(6) (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;

(7) (8) Name, address, and telephone number of each laboratory conducting an analysis of collected samples;

(8) (9) Each testing method and device 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 analyzer;

(10) XRF readings taken for calibration and calculations to demonstrate that the XRF is properly calibrated;

(9) (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;

(10) The results of the inspection 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;

(11) (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; and

(12) (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(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 documented methodologies, including selection of rooms and components for sampling or testing, specified in Chapter 7 of the Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing

(1995, U.S. Department of Housing and Urban Development), 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. If a testing combination is not tested, it shall be assumed to be painted with lead-based paint.

b. Paint shall be sampled 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 sampling by X-ray fluorescence, the certified elevated blood lead (EBL) inspector/risk assessor shall use the documented methodologies 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). If sampling 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,

PUBLIC HEALTH DEPARTMENT[641](cont'd)

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. A 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 device and sampling procedure employed for paint analysis, including quality control data and, if used, the manufacturer, the serial number, software, and operating mode of any X-ray fluorescence (XRF) device 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 re-

sults for each component expressed in terms appropriate to the sampling method used;

~~(10) The results of the inspection 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;

~~(11) (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; and~~

(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. No change.

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. to e. No change.

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. No change.

h. Paint shall be sampled 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 sampling by X-ray fluorescence, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use the documented methodologies 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). If sampling 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

PUBLIC HEALTH DEPARTMENT[641](cont'd)

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) No change.

(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) No change.

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

PUBLIC HEALTH DEPARTMENT[641](cont'd)

(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 mi-

crograms 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 not 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.

j 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 ~~and~~ shall send a copy of the report to the property owner and ~~provide a copy of this report~~ 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 fewer ~~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 ~~device~~ 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~~; analyzer.
- (10) If used, XRF readings taken for calibration and calculations to demonstrate that the XRF is properly calibrated.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

(10) (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; .

(11) (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."

(12) (13) Any other sampling results; .

(13) (14) A statement that all painted or finished components that were not tested must be assumed to contain lead-based paint.

(14) (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; and .

(15) (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.

(16) (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.

(17) (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. to h. No change.

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, 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 sampled 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

PUBLIC HEALTH DEPARTMENT[641](cont'd)

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.

k 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 provide a copy of this report 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 fewer less than three years. The report shall include, at least:

- (1) to (5) No change.
- (6) Name, signature, and certification number of each certified lead inspector/risk assessor or certified elevated

PUBLIC HEALTH DEPARTMENT[641](cont'd)

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) No change.

(9) Each testing method and ~~device~~ 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~~ analyzer;

(10) *If used, XRF readings taken for calibration and calculations to demonstrate that the XRF is properly calibrated*;

~~(10)~~ (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;

~~(11)~~ (12) All results of laboratory analysis of collected paint, dust, and soil samples;

~~(12)~~ (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*;

~~(13)~~ (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;

~~(14)~~ (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;

~~(15)~~ (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*; and

~~(16)~~ (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. and b. No change.

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, and Iowa certification number, *and the signature of the contact for* of the certified firm that will conduct the work.

(4) The name, address, telephone number, and Iowa certification number, *and the signature of* for the certified lead abatement contractor who will serve as the contact person for the project.

(5) to (8) No change.

(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) to (5) No change.

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 ~~no greater~~ 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 an a lead abatement, the certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor a visual inspection shall review the report of the lead inspection, risk assessment, or visual*

PUBLIC HEALTH DEPARTMENT[641](cont'd)

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 ~~be performed~~ 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 and 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 post-abatement cleanup, the certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor shall conduct clearance sampling for lead in dust ~~shall be conducted~~. Clearance sampling may be conducted by employing single-surface sampling or composite dust sampling.

(3) No change.

(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 an 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 the 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 an 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. Following an exterior abatement, a visual inspection shall be conducted. All horizontal surfaces in the outdoor living area closest to the abated surface shall be found to be cleaned of visible dust and debris. 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 abated. 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. 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) The rooms, hallways, and stairwells selected for sampling shall be selected using the documented methodologies 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). 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 exceeds is greater than or equal to the applicable clearance level for a floor, interior windowsill, or window trough, then all the components the failed component in each room with a represented by the failed single-surface dust sample and that type of component in each room that was not tested shall be re-cleaned and retested until clearance levels are met. 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 re-cleaned components meet the clearance level. The components must be re-cleaned 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 exceeds 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 re-cleaned and retested until clearance levels are met.

h k. In a multifamily dwelling with housing consisting of at least 20 similarly constructed and maintained residential dwellings, random sampling selection for the purpose of

PUBLIC HEALTH DEPARTMENT[641](cont'd)

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 sampling 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. A sufficient number of residential dwellings are selected for dust sampling to 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 exceed 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 shall be sampled and evaluated evaluate them for clearance according to the procedures found in paragraph 70.6(6)“g.” 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, and address, and signature of each 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)“d.” 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 postabatement 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, and address, and telephone number of each recognized laboratory that conducted the 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. *No change.*

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.*

c. *A certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor, or a certified*

PUBLIC HEALTH DEPARTMENT[641](cont'd)

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 and shall send a copy of the report to the property owner and provide a copy of the report 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 fewer less than three years. The report shall include, at least:

(1) to (6) No change.

(7) *A statement that all painted or finished components must be assumed to contain lead-based paint;*

(7) (8) *Specific locations of painted or finished components identified as likely to contain lead-based paint and likely to be lead-based paint hazards; and*

(8) (9) *Information for the owner and occupants on how to reduce lead hazards in the residential dwelling or child-occupied facility;*

(10) *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*

(11) *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 paragraph 70.6(6)“g.” 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 dwelling units residential dwellings and associated common areas in a multiunit property multifamily housing. A certified sampling technician shall not perform clearance testing using random sampling selection of dwelling units residential dwellings or common areas in multifamily housing properties unless the clearance testing is approved by a certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor and the report is signed by a certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor.

(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 A visual inspection shall be performed 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. Both exterior and interior painted surfaces shall be examined for the presence of deteriorated paint. 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 of the ground and any 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. Visual If visible dust, or debris, or paint chips are present, in living areas shall be cleaned up and visible paint chips on the ground shall they must be removed from the site and properly disposed of according to all applicable federal, state, and local standards.

(3) and (4) No change.

(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

PUBLIC HEALTH DEPARTMENT[641](cont'd)

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 the 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 rooms, hallways, and stairwells selected for sampling shall be selected using the documented methodologies 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). 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 exceeds is greater than or equal to the applicable clearance level for a floor, interior windowsill, or window trough, then all the components the failed component in each room with a represented by the failed single-surface dust sample and that type of component in each room that was not tested shall be re-cleaned and re-tested until clearance levels are met. 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 re-tested. 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 re-cleaned components meet the clearance level. The components must be re-cleaned and re-tested 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 exceeds 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 re-cleaned and re-tested until clearance levels are met.

c. In a multifamily dwelling housing consisting of at least 20 with similarly constructed and maintained residential dwellings, random sampling 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 sampling 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 A sufficient number of residential dwellings are selected for dust sampling to 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 exceed 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 shall be sampled and evaluated evaluate them for clearance according to the procedures found in paragraph 70.6(6)“g.” 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 an a lead abatement report in accordance with paragraph 70.6(6)“h.” 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) No change.

(2) The following information regarding the clearance testing:

1. and 2. No change.

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.

3 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,

PUBLIC HEALTH DEPARTMENT[641](cont'd)

or rehabilitation were conducted pursuant to 24 CFR Part 35.

4-6. 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."

5 8. The name, and address, and telephone number of each recognized laboratory that conducted the 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. and 2. No change.

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, and any suggested monitoring or encapsulants or enclosures.

4. No change.

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) "h" 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.

ITEM 12. Renumber subrules 70.6(9) to 70.6(12) as 70.6(10) to 70.6(13) and adopt the following **new** subrule 70.6(9):

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

PUBLIC HEALTH DEPARTMENT[641](cont'd)

(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.

ITEM 13. Amend renumbered subrules 70.6(10) to 70.6(12) as follows:

PUBLIC HEALTH DEPARTMENT[641](cont'd)

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(2) 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 ~~paint chip, 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 conducted collected~~ only by certified sampling technicians, certified lead inspector/risk assessors, or certified elevated blood lead (EBL) ~~inspectors~~ inspector/risk assessors. Any paint chip, dust, or soil samples collected pursuant to the work practice standards contained in rule 641—70.6(135) shall be analyzed by a recognized laboratory.

ITEM 14. Amend rule 641—70.7(135) as follows:

641—70.7(135) Firms. All firms that perform or offer to perform lead-based paint activities ~~other than elevated blood lead (EBL) inspections~~ 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. and b. No change.

c. The certified firm must maintain all records required by rule 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.

ITEM 15. Renumber rules **641—70.8(135)** to **641—70.10(135)** as **641—70.9(135)** to **641—70.11(135)** and adopt the following new rule:

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

PUBLIC HEALTH DEPARTMENT[641](cont'd)

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 they are not.

ITEM 16. Amend renumbered rules 641—70.9(135) and 641—70.10(135) as follows:

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.

The following are considered to be in violation of this chapter:

a. ~~Failure or refusal to comply with any requirements of rules 70.3(135) to 70.6(135).~~

b. ~~Failure or refusal to establish, maintain, provide, copy, or permit access to records or reports as required by rules 70.3(135) to 70.6(135).~~

c. ~~Failure or refusal to permit entry or inspection as described in subrules 70.8(1) to 70.8(3).~~

d. ~~Obtaining certification through fraudulent representation.~~

e. ~~Failing to obtain certification from the department and performing work requiring certification at a job site.~~

f. ~~Fraudulently obtaining certification and engaging in any lead-based paint activities requiring certification.~~

g. ~~Violators are subject to civil penalties pursuant to Iowa Code section 135.105A.~~

641—70.10(135) Denial, suspension, or revocation of certification; and denial, suspension, revocation, or modification of course approval; and application 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(1)**~~ **70.10(2)** The department may deny an application for certification, ~~or~~ may suspend or revoke a certification, ~~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 applicant, certified lead professional, certified elevated blood lead (EBL) inspection agency, or certified firm has committed any of the following acts:

a. No change.

b. Gained admission to ~~and completed~~ an accredited training program through misrepresentation of admission requirements.

c. Obtained certification through misrepresentation of certification requirements or related documents ~~dealing with~~ *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 ~~has had~~ not been received.

g. Failed to follow the standards of conduct required by ~~rule 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 ~~individuals employees or persons under the control of the certified elevated blood lead (EBL) inspection agency or certified firm~~ who ~~are~~ 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.*

PUBLIC HEALTH DEPARTMENT[641](cont'd)

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(2)~~ **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. to f. No change.

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(3) Complaints.** 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 sponsoring person or organization of an approved course and the specific way(s) that an approved course did not comply with the rules.~~

~~**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~~

PUBLIC HEALTH DEPARTMENT[641](cont'd)

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 paragraphs 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(4) 70.10(6) Appeals.

a. to d. No change.

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 70.9(4) 70.10(6)“f.”

f. to k. No change.

~~70.10(5) 70.10(7)~~ Public notification.

a. and b. No change.

These rules are intended to implement Iowa Code section 135.105A.

ARC 3130B**RACING AND GAMING
COMMISSION[491]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 99D.7 and 99F.4, the Racing and Gaming Commission hereby gives Notice of Intended Action to amend Chapter 3, “Fair Information Practices,” Chapter 4, “Contested Cases and Other Proceedings,” Chapter 5, “Track and Excursion Boat Licenses’ Responsibilities,” Chapter 6, “Occupational and Vendor Licensing,” Chapter 8, “Wagering and Simulcasting,” and Chapter 12, “Accounting and Cash Control,” Iowa Administrative Code.

Item 1 allows for security plans, surveillance plans and internal controls of the licensees to remain confidential.

Item 2 allows for the appointment by the administrator of an employee to assist and advise the board of stewards.

Item 3 allows the Commission access to licensed employees’ drug testing results.

Item 4 removes the rule that would not allow a farrier to be licensed in more than one capacity.

Item 5 requires a hearing to be held on any individual whose license would still be effective after a 365-day suspension.

Item 6 clarifies when a kennel/stable name license is required.

Item 7 reflects current practice regarding close of wagering.

Items 8 and 9 establish rules for credit and ticket payouts.

Any person may make written suggestions or comments on the proposed amendments on or before February 24, 2004. Written material should be directed to the Racing and Gaming Commission, 717 E. Court Avenue, Suite B, Des Moines, Iowa 50309. Persons who wish to convey their views orally should contact the Commission office at (515)281-7352.

Also, there will be a public hearing on February 24, 2004, at 9 a.m. in the office of the Racing and Gaming Commission, 717 E. Court Avenue, Suite B, Des Moines, Iowa. Persons may present their views at the public hearing either orally or in writing.

These amendments are intended to implement Iowa Code chapters 99D and 99F.

The following amendments are proposed.

ITEM 1. Amend subrule **3.13(2)** by adding a **new** paragraph “j” as follows:

RACING AND GAMING COMMISSION[491](cont'd)

j. Security plans, surveillance system plans, and internal controls of the licensees that are made available to the commission that would enable law violators to avoid detection and give a clearly improper advantage to persons who are in an adverse position to the agency. (See Iowa Code sections 17A.2, 17A.3 and 22.7(18).)

ITEM 2. Amend subrule **4.6(5)**, paragraph “**c**,” as follows:

c. The board has complete and total authority to decide the process of the hearing. *The administrator may designate an employee to assist and advise the board of stewards through all aspects of the hearing process.* The board shall recognize witnesses and either question the witnesses or allow them to give a narrative account of the facts relevant to the case. The board may request additional documents or witnesses before making a decision. The licensee has no right to present testimony, cross-examine witnesses, make objections, or present argument, unless specifically authorized by the board.

ITEM 3. Amend subrule **5.4(14)**, paragraph “**b**,” as follows:

b. For the purpose of this subrule, “books, records, and documents” shall be defined as any book, record, or document pertaining to or prepared or generated by the licensee including, but not limited to, all forms, reports, accounting records, ledgers, subsidiary records, computer-generated data, internal audit records, correspondence, contracts, and personnel records, *including information concerning test results conducted pursuant to Iowa Code section 730.5.*

ITEM 4. Amend subrule **6.2(3)**, paragraph “**b**,” subparagraph (1), as follows:

(1) A person licensed as a jockey, *or veterinarian, or farrier* may not be licensed in another capacity.

ITEM 5. Amend subrule 6.6(2) as follows:

6.6(2) Any person whose license was suspended for 365 days may file a new application for a license upon the expiration of the period of suspension but must satisfy all of the conditions set out forth in 6.6(1) “a,” “b,” and “c” above. *If a person’s license has not expired after the 365-day suspension, the person must have a hearing before a board to determine if the person has satisfied all of the conditions set forth in 6.6(1) “a,” “b,” and “c” above prior to that individual’s participating in racing or gaming.*

ITEM 6. Amend subrule 6.17(2) as follows:

6.17(2) A kennel/stable name license is only necessary if the kennel/stable name is a name other than the licensed owner’s legal name (~~full first and last name or last name only~~), the owner’s full name followed by the word “kennel” or “stable,” or a licensed partnership or corporation.

ITEM 7. Amend subrule **8.2(15)**, paragraph “**a**,” as follows:

a. A commission representative shall close wagering for each contest after which time no pari-mutuel tickets shall be sold for that contest. All wagering shall stop and all pari-mutuel machines shall be locked at post time or at the actual start of the races, ~~whichever first occurs~~. Machines shall be automatically locked by the stewards, unless unusual circumstances dictate the stewards to act differently.

ITEM 8. Amend the catchwords to rule 491—12.14(99F) as follows:

491—12.14(99F) Jackpot, credit, and ticket payouts.

ITEM 9. Amend rule 491—12.14(99F) by adding the following **new** subrules:

12.14(6) Under this rule, unless otherwise subject to Iowa Code chapter 556, jackpots and accumulated credits paid by a slip that are unpaid or unclaimed at the close of a facility’s fiscal year shall be disallowed as a deduction from gross receipts for the calculation of adjusted gross revenue for the wagering tax. A facility shall make this adjustment to revenue within 90 days of the close of the facility’s fiscal year.

12.14(7) Payouts dispensed by a ticket issued directly from a slot machine must have a minimum redemption period of 90 days from the date of issue.

a. Notwithstanding 491—subrule 5.4(14), an issued ticket redeemed for cash or deposited in a slot machine for machine credits shall be retained for a minimum of 90 days from the redemption date. The ticket may be subsequently destroyed, if record of the transaction is retrievable by other means.

b. At the close of a facility’s fiscal year, tickets that remain outstanding and unredeemed after the redemption period has expired are subject to the requirements of 12.14(6) above.

ARC 3122B**TRANSPORTATION
DEPARTMENT[761]****Notice of Intended Action**

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

Pursuant to the authority of Iowa Code sections 307.10, 307.12, 321.449 and 321.450, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 520, “Regulations Applicable to Carriers,” Iowa Administrative Code.

Iowa Code section 321.449 as amended by 2003 Iowa Acts, chapter 8, section 17, requires the Department to adopt rules consistent with the Federal Motor Carrier Safety Regulations promulgated under United States Code, Title 49, and found in 49 Code of Federal Regulations (CFR), Parts 385 and 390 to 399. Iowa Code section 321.450 requires the Department to adopt rules consistent with the Federal Hazardous Materials Regulations promulgated under United States Code, Title 49, and found in 49 CFR Parts 107, 171 to 173, 177, 178 and 180. To ensure the consistency required by statute, the Department annually adopts the specified parts of 49 CFR as adopted by the United States Department of Transportation.

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

Proposed federal regulations are published in the Federal Register to allow a period for public comment, and, after adoption, the final regulations are again published in the Fed-

TRANSPORTATION DEPARTMENT[761](cont'd)

eral Register. Each year a revised edition of 49 CFR is published, incorporating all of the final regulations adopted during the year. Although revised editions of 49 CFR are usually dated October or November, the publication is not actually available in Iowa for several months after that date.

The amendments to the Federal Motor Carrier Safety Regulations and Federal Hazardous Materials Regulations that have become final and effective since the 2002 edition of the CFR are listed in the information below. The parts affected are followed by Federal Register (FR) citations.

Amendments to the Federal Motor Carrier Safety Regulations and Federal Hazardous Materials Regulations

Parts 390, 391 and 393 (FR Vol. 67, No. 191, Page 61818, 10-02-02)

This final rule makes technical corrections throughout 49 CFR to various rules containing outdated references, grammatical corrections for clarity and correction of an error in the final rule on brake performance requirements for commercial motor vehicles published on August 9, 2002, in the Federal Register.

Part 397 (FR Vol. 67, No. 193, Page 62191, 10-04-02)

This final rule eliminates an outdated requirement for certain motor vehicle operators to stop periodically to check their tires. Eliminating this requirement enhances the security of hazardous materials shipments.

Part 390 (FR Vol. 67, No. 196, Page 63019, 10-09-02)

This rule makes a technical correction to the regulations.

Part 393 (FR Vol. 67, No. 200, Page 63966, 10-16-02)

This final rule makes a technical correction to the standards for protection against shifting and falling cargo.

Parts 172, 174, 175, 176 and 177 (FR Vol. 67, No. 212, Page 66571, 11-01-02)

This final rule makes changes to the hazardous materials regulations to require shippers and carriers to retain a copy of each hazardous material shipping paper, or an electronic image thereof, for a period of 375 days after the date of the hazardous material being accepted by a carrier.

Part 171 (FR Vol. 68, No. 5, Page 1013, 01-08-03)

This final rule amends the hazardous materials regulations by updating incorporation by reference materials to include the most recent amendments to the International Maritime Dangerous Goods Code, the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air and the United Nations Recommendations on the Transport of Dangerous Goods.

Part 107 (FR Vol. 68, No. 6, Page 1342, 01-09-03)

This final rule reduces the registration fees paid by persons who transport or offer for transportation in commerce certain categories and quantities of hazardous materials, in order to eliminate the unexpended balance in the Hazardous Materials Emergency Preparedness Grants Fund. The Research and Special Programs Administration (RSPA) is also revising its regulations to provide that a not-for-profit organization will pay the same registration fee as a small business.

Part 107 (FR Vol. 68, No. 48, Page 11748, 03-12-03)

This final rule adds the definition of "administrator" in several sections of the Code of Federal Regulations for clarification purposes.

Part 172 (FR Vol. 68, No. 57, Page 14510, 03-25-03)

This final rule establishes new requirements to enhance the security of hazardous materials transported in commerce. Shippers and carriers of certain highly hazardous materials must develop and implement security plans. In addition, all

shippers and carriers of hazardous materials must ensure that their employee training includes a security component.

Parts 107, 171, 172, 173, 177, 178 and 180 (FR Vol. 68, No. 75, Page 19258, 04-18-03)

This final rule adopts a number of revisions to the hazardous materials regulations to update and clarify the regulations on the construction and maintenance of cargo tank motor vehicles. The rule also addresses three National Transportation Safety Board recommendations and several petitions for rule making to increase the safety of cargo tanks transporting hazardous materials. These changes will provide greater flexibility in design and construction of cargo tanks, and reduce operating burdens for owners, operators and manufacturers of cargo tank motor vehicles.

Parts 107, 171, 176 and 177 (FR Vol. 68, No. 86, Page 23832, 05-05-03)

This interim final rule incorporates into the hazardous materials regulations a requirement that shippers and transporters of certain hazardous materials comply with federal security regulations that apply to motor carrier and vessel transportation. In addition, this interim final rule revises the procedures for applying for an exemption from the hazardous materials regulations to require applicants to certify compliance with applicable federal transportation security laws and regulations. This interim final rule will ensure that shippers and transporters are aware of and comply with their security obligations.

Parts 107, 171, 173, 177 and 180 (FR Vol. 68, No. 89, Page 24653, 05-08-03)

This final rule amends certain requirements, extends certain compliance dates and makes minor editorial corrections to the hazardous materials regulations applicable to the maintenance, requalification, repair and use of U.S. Department of Transportation specification cylinders.

Part 171 (FR Vol. 68, No. 102, Page 31627, 05-28-03)

This final rule announces the Office of Management and Budget's (OMB) approval of information collection request "Hazardous Materials Security Plans." The OMB approved this information collection until April 30, 2006. This final rule also makes appropriate revisions to regulations concerning the Paperwork Reduction Act to incorporate this new information collection approval.

Parts 171, 173, 177 and 178 (FR Vol. 68, No. 104, Page 32409, 05-30-03)

This final rule amends the hazardous materials regulations to permit, for an interim period and subject to certain unloading conditions, the unloading of intermodal and United Nations portable tanks transporting certain liquid hazardous materials when those tanks are not equipped with a thermal means of remote activation of the internal self-closing stop valves fitted on the bottom discharge outlets. Permitting such unloading for an interim period affords operators time to bring the portable tanks into conformance with the regulations.

Parts 107, 171, 173, 177 and 180 (FR Vol. 68, No. 105, Page 32679, 06-02-03)

This correction to a final rule makes changes to several compliance dates in a final rule published May 8, 2003. That rule made revisions to certain cylinder requirements. The compliance date for the final rule is corrected to permit immediate voluntary compliance. The delayed compliance dates for two other requirements in the final rule are also corrected.

Parts 171, 172, 173, 178 and 180 (FR Vol. 68, No. 147, Page 44992, 07-31-03)

This rule amends the hazardous materials regulations to maintain alignment with international standards by incorpo-

TRANSPORTATION DEPARTMENT[761](cont'd)

rating various amendments, including changes to proper shipping names, hazard classes, packaging groups, special provisions, packaging authorizations, air transport quantity limitations and vessel stowage requirements. These revisions are necessary to facilitate the transport of hazardous materials in international commerce.

Parts 390 and 398 (FR Vol. 68, No. 155, Page 47860, 08-12-03)

This final rule requires motor carriers operating commercial motor vehicles (CMVs), designed or used to transport between 9 and 15 passengers (including the driver) in interstate commerce, to comply with the applicable safety regulations when they are directly compensated for such services and the vehicle is operated beyond a 75-air-mile radius from the driver's normal work-reporting location. The Federal Motor Carrier Safety Administration has revised its proposed distance threshold to focus on the distance that the driver operates the vehicle, as opposed to the distance that the passengers are transported. Through this rule, these motor carriers, drivers, and vehicles are now subject to the same safety requirements as motor coach operators, except for the commercial driver's license, and controlled substances and alcohol testing regulations.

Parts 171, 172, 173, 177, 178, 179 and 180 (FR Vol. 68, No. 157, Page 48562, 08-14-03)

This final rule amends the hazardous materials regulations by incorporating miscellaneous changes based on petitions for rule making and Research and Special Programs Administration's initiatives. The intended effect of these regulatory changes is to update, clarify or provide relief from certain regulatory requirements.

Parts 172, 178 and 180 (FR Vol. 68, No. 170, Page 52363, 09-03-03)

In response to appeals submitted by persons affected by a final rule published on April 18, 2003, to update and clarify requirements in the hazardous materials regulations applicable to construction and maintenance of cargo tank motor vehicles, this final rule amends certain requirements and makes minor editorial corrections.

Parts 107 and 171 (FR Vol. 68, No. 173, Page 52844, 09-08-03)

This final rule increases Research and Special Programs Administration's (RSPA) maximum and minimum civil penalties for a known violation of federal hazardous materials transportation law or a regulation issued under that law. In addition, RSPA is updating the address to which civil penalty payments must be sent as well as making editorial changes to the procedural regulations for issuing an administrative determination of preemption.

Parts 107 and 180 (FR Vol. 68, No. 187, Page 55542, 09-26-03)

This final rule extends the compliance date of the regulations contained in 49 CFR 107.805(f) and 180.209(g) of the hazardous materials regulations that require persons who perform visual requalification of U.S. Department of Transportation specification cylinders to obtain approval from the RSPA and to mark the requalifier identification number assigned by RSPA on cylinders successfully requalified after September 30, 2003. This September 30, 2003, date is extended to May 31, 2004.

Parts 391, 393, and 396 (FR Vol. 68, No. 189, Page 56196, 09-30-03)

This rule makes technical amendments to the Federal Motor Carrier Safety Regulations (FMCSRs). These technical amendments were needed to correct inadvertent errors and omissions, update mailing addresses, remove obsolete references, and make minor editorial changes to improve clarity

and consistency. No substantive changes have been made to the FMCSRs.

Part 395 (FR Vol. 68, No. 189, Page 56208, 09-30-03)

This rule makes technical amendments to the hours of service regulations. These technical amendments are needed to correct inadvertent errors and omissions, and make minor editorial changes to improve clarity and consistency. The amendments do not make substantive changes.

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

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

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

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

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

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

5. Be received by the Director's Staff Division no later than February 24, 2004.

A meeting to hear requested oral presentations is scheduled for Thursday, February 26, 2004, at 10 a.m. in the DOT conference room at Park Fair Mall, 100 Euclid Avenue, Des Moines, Iowa.

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

The proposed amendments may have an impact on small business. A request for a regulatory analysis pursuant to Iowa Code section 17A.4A must be received by the Director's Staff Division at the address listed in this Notice no later than March 8, 2004.

These amendments are intended to implement Iowa Code chapter 321.

Proposed rule-making actions:

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

- a. Motor carrier safety regulations. The Iowa department of transportation adopts the Federal Motor Carrier Safety Regulations, 49 CFR Parts 385 and 390-399 (October 1, 2002 2003). ~~The department also adopts “Hours of Service of Drivers; Driver Rest and Sleep for Safe Operations; Final Rule” as published in the Federal Register on April 28, 2003 (68 FR 22455).~~

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

- a. 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, 2002 2003).

ARC 3123B**TRANSPORTATION
DEPARTMENT[761]****Notice of Intended Action**

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

Pursuant to the authority of Iowa Code sections 307.10, 307.12 and 321.178, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 600, "General Information," adopt new Chapter 634, "Driver Education," amend Chapter 635, "Motorcycle Rider Education (MRE)," and adopt new Chapter 636, "Motorized Bicycle Rider Education," Iowa Administrative Code.

2002 Iowa Acts, chapter 1140, sections 32 and 33, (Iowa Code section 321.178) transferred the responsibilities for administering the driver education program from the Department of Education to the Department of Transportation and required the Department of Transportation to adopt rules. The Department of Transportation is adopting two new chapters: Chapter 634, "Driver Education," and Chapter 636, "Motorized Bicycle Rider Education." These amendments also make the following changes to Chapters 600 and 635:

- Rescind three rules in Chapter 600. The information in these three rules is included as appropriate in Chapter 634, 635 or 636.

- Add a contact office for Chapter 635.

These rules do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

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

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Director's Staff Division, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address tracy.george@dot.state.ia.us.
5. Be received by the Director's Staff Division no later than February 24, 2004.

A meeting to hear requested oral presentations is scheduled for Thursday, February 26, 2004, at 1 p.m. in the DOT conference room at Park Fair Mall, 100 Euclid Avenue, Des Moines, Iowa.

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

The proposed rules may have an impact on small business. A request for a regulatory analysis pursuant to Iowa Code section 17A.4A must be submitted to the Director's Staff Division at the address listed in this Notice no later than March 8, 2004.

These rules are intended to implement Iowa Code chapter 321.

Proposed rule-making actions:

ITEM 1. Rescind and reserve rules **761—600.12(321)**, **761—600.13(321)** and **761—600.14(321)**.

ITEM 2. Adopt **new** 761—Chapter 634 as follows:

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.

TRANSPORTATION DEPARTMENT[761](cont'd)

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.

TRANSPORTATION DEPARTMENT[761](cont'd)

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.

ITEM 3. Amend subrule 635.2(2) as follows:

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 ~~under rule 761—600.12(321)~~ *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.*

ITEM 4. Adopt the following **new** rules:

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.

ITEM 5. Adopt **new** 761—Chapter 636 as follows:

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.

TRANSPORTATION DEPARTMENT[761](cont'd)

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.

NOTICE—USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph "a," the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

February 1, 2003 — February 28, 2003	6.00%
March 1, 2003 — March 31, 2003	6.00%
April 1, 2003 — April 30, 2003	6.00%
May 1, 2003 — May 31, 2003	5.75%
June 1, 2003 — June 30, 2003	6.00%
July 1, 2003 — July 31, 2003	5.50%
August 1, 2003 — August 31, 2003	5.25%
September 1, 2003 — September 30, 2003	6.00%
October 1, 2003 — October 31, 2003	6.50%
November 1, 2003 — November 30, 2003	6.25%
December 1, 2003 — December 31, 2003	6.25%
January 1, 2004 — January 31, 2004	6.25%
February 1, 2004 — February 29, 2004	6.25%

ARC 3135B**UTILITIES DIVISION[199]****Notice of Intended Action**

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

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

Pursuant to Iowa Code sections 17A.4, 476.1, and 476.6(11), the Utilities Board (Board) gives notice that on January 16, 2004, the Board issued an order in Docket No. RMU-03-17, In re: Electric Energy Adjustment Clause, “Order Granting Petition and Commencing Rule Making.” The Board is publishing proposed amendments to 199 IAC 20.9(476), the energy adjustment clause (EAC) rule, in response to a petition for rule making filed with the Board by the Consumer Advocate Division of the Department of Justice (Consumer Advocate).

Currently, only identified energy costs are permitted to be recovered through the EAC. Consumer Advocate proposes that the rules be revised to require that all demand charges explicitly identified in current and future purchase power contracts, less the demand charges included in base rates, be recovered through the EAC. Any demand charges would then be removed from base rates in an electric utility's next rate case proceeding. Consumer Advocate states this approach would allow a utility with an EAC the opportunity to fully recover all of its reasonably incurred purchased power costs

UTILITIES DIVISION[199](cont'd)

while at the same time prevent the overrecovery of such costs.

Interstate Power and Light Company (IPL) filed a response to the petition for rule making on January 2, 2004. IPL did not take a position on Consumer Advocate's proposed rule changes at this time, but disagreed with Consumer Advocate's arguments in support of the changes. IPL also pointed out that it intends to file a petition for additional changes to the EAC rules when firm information about the Midwest Independent System Operator's (MISO's) "Day 2" market is available. IPL expects to file a rule-making petition in April and suggested that the Board may want to consider addressing Consumer Advocate's proposed changes at the same time.

The Large Energy Group (LEG) filed a response on January 9, 2004. The LEG noted that there have been ongoing concerns with the EAC and that an inquiry should be opened to examine whether the EAC should be eliminated entirely or restructured to exclude any demand components.

While it is possible that it would be more efficient to consider IPL's and Consumer Advocate's changes to the EAC rule at the same time, the Board does not want to delay initial consideration of Consumer Advocate's proposed changes until April (or later, if MISO's actions are delayed). Consumer Advocate's proposed changes should be addressed now, not on a time schedule that is dependent on MISO and its "Day 2" market rules and procedures. The concerns raised by the LEG can be addressed in the rule-making comments. If necessary, the Board can subsequently terminate this rule making and open an inquiry, or adopt something similar to Consumer Advocate's proposal as a stopgap measure while wholesale changes to the EAC are examined.

Pursuant to Iowa Code sections 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed amendments. The statement may be filed on or before February 24, 2004, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author's name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

A public hearing to receive comments on the proposed amendments will be held at 10 a.m. on March 3, 2004, in the Board's hearing room at the address listed above.

The Board does not find it necessary to propose a separate waiver provision in this rule making. The Board's general waiver provision in 199 IAC 1.3(17A,474,476,78GA, HF2206) would be applicable to this rule.

These amendments are intended to implement Iowa Code section 476.6(11).

The following amendments are proposed.

ITEM 1. Amend rule 199—20.9(476), introductory paragraph, as follows:

199—20.9(476) Electric energy sliding scale or automatic adjustment. A rate-regulated utility's sliding scale or automatic adjustment of the unit charge for electric energy shall be an energy clause. *For purposes of this rule:*

Capacity revenues recorded in Uniform System of Accounts for Electric Utilities account 447 are treated the same as energy revenues recorded in account 447; and

Capacity expenses recorded in account 555 are treated the same as energy expenses recorded in account 555.

ITEM 2. Amend paragraph **20.9(2)"a,"** fourth and fifth unnumbered paragraphs, as follows:

EQ₀ is the estimated electric energy to be consumed or delivered and entered in accounts 440, 442, 444-7 6, ~~excluding energy from distinct interchange deliveries entered into account 447~~ and including intrautility energy service as included in accounts 448 and 929 of the Uniform System of Accounts during the month in which E₀ will be used.

EQ₁ is the estimated electric energy to be consumed or delivered and entered in accounts 440, 442, 444-7 6, ~~excluding energy from distinct interchange deliveries entered in account 447~~ and including intrautility energy service as included in accounts 448 and 929 of the Uniform System of Accounts during the month prior to EQ₀.

ITEM 3. Amend subparagraph **20.9(2)"b"(5)** as follows:

(5) The energy costs paid for energy *and capacity* purchased ~~under arrangements or contracts for firm power, operational control energy, outage energy, participation power, peaking power, and economy energy,~~ as entered into account 555 of the Uniform System of Accounts, less the energy *and capacity* revenues ~~to be recovered from corresponding sales,~~ as entered in account 447 of the Uniform System of Accounts.

ARC 3152B**AGRICULTURE AND LAND
STEWARDSHIP DEPARTMENT[21]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 99D.22 and 159.5(11), the Department of Agriculture and Land Stewardship hereby amends Chapter 62, "Registration of Iowa-Foaled Horses and Iowa-Whelped Dogs," Iowa Administrative Code.

The purpose of these new rules and amendments is to reorganize the Department's disciplinary and premises access rules for participants in the Iowa-whelped dog program. These rules are also expanded to apply to participants in the Iowa-foaled horse program. Finally, they impose new disciplinary rules for persons who are disqualified from licensure by the Iowa Racing and Gaming Commission.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 15, 2003, as **ARC 2873B**. The Department received public comments from a representative of the standardbred and quarter horse breeding industries. These comments sought clarification of the amendments. As a result of the comments, the following changes were made to rule 21—62.4(99D):

1. The words "deny, temporarily suspend, or permanently suspend" were substituted for the words "deny, suspend, or revoke."

2. The phrase "animal welfare laws and regulations" was removed, and in lieu thereof reference was made to specific chapters of the Iowa Code relating to animal welfare laws.

3. New subrule 62.4(4) was added to clarify the circumstances under which disciplinary action does not apply.

These amendments will become effective on March 10, 2004.

These amendments are intended to implement Iowa Code section 99D.22.

The following amendments are adopted.

ITEM 1. Rescind rule 21—62.4(99D) and adopt the following **new** rule in lieu thereof:

21—62.4(99D) Disciplinary actions.

62.4(1) A person shall not knowingly provide false information to the department. If the department finds that a person knowingly furnished false information to the department relating to the registration of a horse or dog under these rules, then the department may deny, temporarily suspend, or permanently suspend all registrations and eligibility certificates by or on behalf of the person. The department may withhold payment of breeder's awards to a breeder if the breeder is not in compliance with Iowa Code chapter 162, 717, or 717B or rules adopted pursuant to those chapters. If a breeder does not come into compliance, the department may deny the registration of a breeder's litters, dogs or foals. In addition, the department may temporarily or permanently suspend previously approved registrations.

62.4(2) Upon receipt of information from the Iowa racing and gaming commission that a person has been disqualified from licensure (suspended for 365 days or denied), the department shall deny, temporarily suspend, or permanently suspend all registrations and eligibility certificates by or on behalf of the person. The department may determine horses certified as Iowa-foaled horses or dogs certified as Iowa-whelped dogs prior to commission action are eligible to race as Iowa-foaled or Iowa-whelped; however, the disqualified

person is denied receipt of moneys from the Iowa horse and dog breeders' fund. If the Iowa racing and gaming commission subsequently grants licensing privileges to a previously disqualified person, the department shall make an independent determination as to the person's eligibility to have registrations and eligibility certificates by or on behalf of the person reinstated or granted.

62.4(3) Whenever action is taken under this rule, the department shall remit the withheld breakage to the breakage pool at the track where the money was generated. In such cases, the money shall instead be retained by the racetrack and distributed in the manner as provided in Iowa Code section 99D.12.

62.4(4) The registration of an Iowa-foaled horse or an Iowa-whelped dog shall not be denied or suspended under this rule if either of the following applies:

a. The horse or dog had previously been owned by the person subject to discipline, but the horse or dog had been, in good faith, transferred to another person prior to the imposition of discipline by the department. The department, however, may still impose the discipline if the department determines that the purpose of the transfer was to circumvent the discipline.

b. The horse or dog is in the possession of or under the control of a person subject to discipline but the person has never had an ownership interest in the horse or dog.

ITEM 2. Adopt the following **new** rule:

21—62.5(99D) Access to premises and records. The department inspectors shall have access to records and to the premises on which qualified Iowa-whelped dogs and Iowa foaled horses are kept.

ITEM 3. Rescind rules **21—62.43(99D)** and **21—62.44(99D)**.

[Filed 1/16/04, effective 3/10/04]

[Published 2/4/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/4/04.

ARC 3129B**ATTORNEY GENERAL[61]****Adopted and Filed**

Pursuant to the authority of Iowa Code Supplement section 453D.5(5), the Attorney General hereby adopts new Chapter 5, "Quarterly Escrow Installments from Particular Nonparticipating Manufacturers," Iowa Administrative Code.

The purpose of this chapter is to help ensure that nonparticipating tobacco product manufacturers whose products are sold in Iowa comply with Iowa Code section 453C.2, which requires such manufacturers to establish and fund escrow accounts based on the sale of their cigarettes and roll-your-own tobacco products in the state.

The Notice of Intended Action was published in the Iowa Administrative Bulletin on December 10, 2003, as **ARC 2993B**. No comments regarding these proposed rules have been received from the public.

The only change in these rules presented in the Notice of Intended Action is found in rule 61—5.5(453D). Numbered paragraph "2," which formerly read "The attorney general is

ATTORNEY GENERAL[61](cont'd)

not timely notified that quarterly escrow payments have not been made in full” has been changed to read as follows: “The attorney general is not timely notified that quarterly payments have been made in full.” This change more accurately reflects the requirement that a nonparticipating manufacturer must notify the Attorney General that it has made a timely, full payment of its escrow obligation.

These rules are intended to implement Iowa Code Supplement chapter 453D.

These rules will become effective on March 10, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 5] is being omitted. With the exception of the change noted above, these rules are identical to those published under Notice as **ARC 2993B**, IAB 12/10/03.

[Filed 1/15/04, effective 3/10/04]
[Published 2/4/04]

[For replacement pages for IAC, see IAC Supplement 2/4/04.]

ARC 3139B

DENTAL EXAMINERS BOARD[650]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby amends Chapter 11, “Licensure to Practice Dentistry or Dental Hygiene,” Iowa Administrative Code.

These amendments allow a dentist who is a graduate of a foreign dental school to apply for licensure in Iowa provided certain requirements are met. Currently, all applicants for dental licensure in Iowa must graduate from an accredited dental school approved by the Board. Only schools in the United States and Canada are currently accredited.

A graduate of a foreign dental school may be eligible for licensure if the graduate completes a full-time, supplemental dental education program of at least two academic years at an accredited dental college. The supplemental dental education program must provide didactic and clinical education to the level of a DDS or DMD graduate of the dental college. A graduate of a foreign dental school must also provide a transcript from the foreign dental school, verification of licensure from the country where the applicant graduated from dental school, and proof of English proficiency. An applicant who is a graduate of a foreign dental school must also meet all other requirements for licensure by examination or licensure by credentials.

These amendments are subject to waiver at the sole discretion of the Board in accordance with 650—Chapter 7.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 12, 2003, as **ARC 2919B**. A public hearing on the amendments was held on December 9, 2003. Written comments on the proposed amendments were received. The Iowa Dental Association expressed support for the amendments.

Minor changes from the Notice have been made in subrule 11.4(1) and in subrule 11.4(3), paragraph “a,” by adding the word “undergraduate” to clarify that the Board is referring to undergraduate education and not postgraduate specialty training. In addition, clarification was made to paragraph “e” in subrule 11.4(3) to state that verification of the foreign den-

tal license should also include a statement that no adverse action was taken against the license.

These amendments were approved at the January 15, 2004, regular meeting of the Board of Dental Examiners.

These amendments are intended to implement Iowa Code chapter 153.

These amendments will become effective on March 10, 2004.

The following amendments are adopted.

ITEM 1. Amend subrule **11.2(2)**, paragraphs “a” and “e,” as follows:

a. Satisfactory evidence of graduation with a DDS or DMD from an accredited dental college approved by the board *or satisfactory evidence of meeting the requirements specified in rule 11.4(153)*.

e. Evidence of successful completion of the examination *taken in the last five years*, with resulting scores, administered by the Central Regional Dental Testing Service, Inc., or the Western Regional Examining Board, Inc., ~~taken after January 1, 2001 (WREB)~~. *The WREB examination must also be taken after January 1, 2001.*

ITEM 2. Amend subrule **11.3(2)**, paragraph “a,” as follows:

a. Satisfactory evidence of graduation with a DDS or DMD from an accredited dental college approved by the board *or satisfactory evidence of meeting the requirements specified in rule 11.4(153)*.

ITEM 3. Adopt the following **new** rule:

650—11.4(153) Graduates of foreign dental schools. In addition to meeting the other requirements for licensure specified in rule 11.2(147,153) or 11.3(153), an applicant for dental licensure who did not graduate with a DDS or DMD from an accredited dental college approved by the board must provide satisfactory evidence of meeting the following requirements.

11.4(1) The applicant must complete a full-time, undergraduate supplemental dental education program of at least two academic years at an accredited dental college. The undergraduate supplemental dental education program must provide didactic and clinical education to the level of a DDS or DMD graduate of the dental college.

11.4(2) The applicant must receive a dental diploma, degree or certificate from the accredited dental college upon successful completion of the program.

11.4(3) The applicant must present to the board the following documents:

a. An official transcript issued by the accredited dental college that verifies completion of all coursework requirements of the undergraduate supplemental dental education program;

b. A dental diploma, degree or certificate issued by the accredited dental college or a certified copy thereof;

c. A letter addressed to the board from the dean of the accredited dental college verifying that the applicant has successfully completed the requirements set forth in 11.4(1);

d. A final, official transcript verifying graduation from the foreign dental school at which the applicant originally obtained a dental degree. If the transcript is written in a language other than English, an original, official translation shall also be submitted; and

e. Verification from the appropriate governmental authority that the applicant was licensed or otherwise authorized by law to practice dentistry in the country in which the

DENTAL EXAMINERS BOARD[650](cont'd)

applicant received foreign dental school training and that no adverse action was taken against the license.

11.4(4) The applicant must demonstrate to the satisfaction of the board an ability to read, write, speak, understand, and be understood in the English language. The applicant may demonstrate English proficiency by submitting to the board proof of a passing score on one of the following examinations:

a. Test of English as a Foreign Language (TOEFL) administered by the Educational Testing Service. A passing score on TOEFL is a minimum overall score of 550 on the paper-based TOEFL or a minimum overall score of 213 on the computer-administered TOEFL.

b. Test of Spoken English (TSE) administered by the Educational Testing Service. A passing score on TSE is a minimum of 50.

This rule is intended to implement Iowa Code chapter 153.

[Filed 1/16/04, effective 3/10/04]

[Published 2/4/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/4/04.

ARC 3140B**DENTAL EXAMINERS BOARD[650]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby amends Chapter 29, "Deep Sedation/General Anesthesia, Conscious Sedation and Nitrous Oxide Inhalation Analgesia," Iowa Administrative Code.

Item 1 of the amendments adds a new definition of "monitoring nitrous oxide inhalation analgesia." Item 2 of the amendments establishes minimum training standards for a dental hygienist or dental assistant who monitors a patient under nitrous oxide inhalation analgesia. A dentist must delegate the task, provide direct supervision, and dismiss the patient following completion of the procedure. The hygienist or assistant must also immediately report any adverse reactions to the supervising dentist.

These amendments are not subject to waiver or variance as the rules establish minimum training standards and supervision requirements that must be followed in order to protect public health, safety, and welfare.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 17, 2003, as **ARC 2785B**. A public hearing on the amendments was held on October 7, 2003. Three written comments on the proposed amendments were received. These comments expressed support for the Board's definition of monitoring. The Iowa Dental Association expressed support overall for the amendments, but suggested that the Board allow dentists to provide the training to their own staff. A comment from the Iowa Dental Hygienists' Association and another written comment objected to having a different training standard for dental hygienists who only monitor, but do not administer, nitrous oxide inhalation analgesia.

Minor changes have been made to the amendments published under Notice. In subrule 29.6(5), the amendments now refer to both dental hygienists and registered dental assistants. In October 2003, the Board approved expanded functions for registered dental assistants, including the moni-

toring of nitrous oxide inhalation analgesia. References to dental assistants have been added to these amendments for clarification and consistency with the expanded function provisions. In addition, subrule 29.6(6) has been changed to eliminate an incorrect cross reference to direct supervision.

These amendments were approved at the January 15, 2004, regular meeting of the Board of Dental Examiners.

These amendments are intended to implement Iowa Code chapters 147 and 153.

These amendments will become effective on March 10, 2004.

The following amendments are adopted.

ITEM 1. Amend rule **650—29.1(153)** by adopting the following **new** definition:

"Monitoring nitrous oxide inhalation analgesia" means continually observing the patient receiving nitrous oxide and recognizing and notifying the dentist of any adverse reactions or complications.

ITEM 2. Adopt **new** subrule 29.6(5) and amend existing subrules 29.6(5) and 29.6(6) as follows:

29.6(5) *A dental hygienist or registered dental assistant may monitor a patient under nitrous oxide inhalation analgesia provided all of the following requirements are met:*

a. *The hygienist or registered dental assistant has completed a board-approved course of training or has received equivalent training while a student in an accredited school of dental hygiene or dental assisting;*

b. *The task has been delegated by a dentist and is performed under the direct supervision of a dentist;*

c. *Any adverse reactions are reported to the supervising dentist immediately; and*

d. *The dentist dismisses the patient following completion of the procedure.*

29.6(5 6) A dentist who delegates the administration of nitrous oxide inhalation analgesia in accordance with 29.6(4) shall provide direct supervision pursuant to ~~650—10.3(153)~~ and establish a written office protocol for taking vital signs, adjusting anesthetic concentrations, and addressing emergency situations that may arise.

29.6(6 7) If the dentist intends to achieve a state of conscious sedation from the administration of nitrous oxide inhalation analgesia, the rules for conscious sedation apply.

[Filed 1/16/04, effective 3/10/04]

[Published 2/4/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/4/04.

ARC 3138B**DENTAL EXAMINERS BOARD[650]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby amends Chapter 35, "Impaired Practitioner Review Committee," Iowa Administrative Code.

This amendment changes the name of the Impaired Practitioner Review Committee to the Iowa Practitioner Review Committee (IPRC). The amendment also clarifies criteria for eligibility in the program. The amendment gives the Committee additional discretion in allowing practitioners into the program if there is an unrelated complaint pending

DENTAL EXAMINERS BOARD[650](cont'd)

before the Board. The amendment clarifies that information reported on a license or registration application or renewal form may be considered a self-report at the request of the practitioner.

This amendment also clarifies that the term "impairment" does not include various sexual problems. The purpose of the Committee is also revised to reflect that the Committee serves practitioners impaired by chronic health conditions, in addition to substance abuse, and that maintenance may be a more realistic goal than recovery or rehabilitation. The amendment also makes it clear that the Committee advocates both for the health of the practitioner and for the public health and safety.

In addition, the amendment clarifies Committee membership, IPRC policies, terms and length of participation, confidentiality provisions, and when information related to participation in the program may be shared. A new subrule related to monitoring costs has also been added. This subrule clarifies that participants may be responsible for paying the cost of monitoring compliance with contract terms. This provision was previously spelled out in individual recovery contracts.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 12, 2003, as **ARC 2918B**. A public hearing on the amendment was held on December 9, 2003. Written comments in support of the amendment were received from the Iowa Dental Association. The amendment is identical to that published under Notice.

This amendment was approved at the January 15, 2004, regular meeting of the Board of Dental Examiners.

This amendment is intended to implement Iowa Code chapters 147 and 153.

This amendment will become effective on March 10, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this amendment [Ch 35 title, 35.1] is being omitted. This amendment is identical to that published under Notice as **ARC 2918B**, IAB 11/12/03.

[Filed 1/16/04, effective 3/10/04]
[Published 2/4/04]

[For replacement pages for IAC, see IAC Supplement 2/4/04.]

ARC 3137B**EDUCATION DEPARTMENT[281]****Adopted and Filed**

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

The amendment aligns Chapter 83 with teacher quality program expectations for school district professional development, including professional development standards, district career development plan expectations and professional development provider requirements.

A public hearing was held on January 7, 2004. Three written comments were received that were supportive and no changes were made. This amendment is identical to the one published on December 10, 2003, in the Iowa Administrative Bulletin as **ARC 2999B**.

This amendment is intended to implement Iowa Code section 284.6.

This amendment will become effective on March 10, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this amendment [83.6(2) to 83.6(4)] is being omitted. This amendment is identical to that published under Notice as **ARC 2999B**, IAB 12/10/03.

[Filed 1/16/04, effective 3/10/04]
[Published 2/4/04]

[For replacement pages for IAC, see IAC Supplement 2/4/04.]

ARC 3143B**ELDER AFFAIRS
DEPARTMENT[321]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 231.23, the Elder Affairs Department hereby amends Chapter 8, "Long-Term Care Resident's Advocate/Ombudsman," Iowa Administrative Code.

The purpose of this rule making is to establish a Volunteer Long-Term Care Ombudsman program within the Office of the Long-Term Care Ombudsman.

Notice of Intended Action was published in the October 29, 2003, Iowa Administrative Bulletin as **ARC 2904B**.

A public hearing was held on November 19, 2003, from 9 to 11 a.m. in the Director's Conference Room at the Department of Elder Affairs, Clemens Building, 200 Tenth Street, Des Moines, Iowa 50309. The Iowa Health Care Association presented oral and written comments. The Iowa Association of Homes and Services for the Aging supplied written comment.

Changes were made as requested when possible. Public comments generally reflected confusion between the duties of the resident's advocate/ombudsman (state long-term care ombudsman), the resident advocate committees and the volunteer long-term care ombudsman. One letter from an association was received stating "... (the association) does not support the implementation of the Volunteer Long-Term Care Ombudsman until further research is established." Following both an in-depth reply to the concerns by Department staff and a meeting held January 12, 2004, where issues of contention were discussed in detail, this association is now in support of this program as is the other association.

These amendments were adopted by the Commission for the Department of Elder Affairs on January 14, 2004.

These amendments will become effective March 10, 2004.

These amendments are intended to implement Iowa Code chapter 231.

The following amendments are adopted.

Amend 321—Chapter 8 as follows:

321—8.1(231) Definitions.

"Designee" means an employee who is designated as a regional long-term care ombudsman.

ELDER AFFAIRS DEPARTMENT[321](cont'd)

“Resident advocate committee member” means a volunteer appointed by the director or the director’s designee pursuant to Iowa Code section 135C.25.

“Resident’s advocate/ombudsman” means the state long-term care ombudsman.

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

321—8.1(249D) 321—8.2(231) Purpose.

8.1(1) 8.2(1) General rule. The department shall operate a statewide long-term care resident’s advocate/ombudsman program in cooperation with appropriate state and local agencies such as the office of the citizen’s aide/ombudsman, the Iowa department of public health, the department of inspections and appeals, the Iowa department of human services, and the AAAs.

8.1(2) 8.2(2) Care review Resident advocate committee and volunteer long-term care ombudsman program administration. The program shall include the administration of the care review resident advocate committee program identified in Iowa Code section 249D.4 231.4 and the volunteer long-term care ombudsman program identified in Section 712(5) of the Older Americans Act.

321—8.2(249D) 321—8.3(231) Long-term care resident’s advocate/ombudsman duties.

8.2(1) 8.3(1) Program administration. The department shall employ an individual (hereinafter called the resident’s advocate/ombudsman) to administer the long-term care resident’s advocate/ombudsman program in accordance with the requirements of the Act and Iowa Code chapter 249D 231.

8.2(2) 8.3(2) Duties of the resident’s advocate/ombudsman (also known as the state long-term care ombudsman). ~~The~~ In accordance with the Older Americans Act, the resident’s advocate/ombudsman shall perform the following duties:

a. Investigate Identify, investigate and resolve complaints and grievances that are made by or on behalf of residents that may adversely affect the health, safety, welfare or rights of residents;

b. Administer the care review resident advocate committee system pursuant to these rules and assist the committees in the performance of their duties through training and technical assistance;

c. Monitor the development and implementation of federal, state and local laws, rules, regulations and policies that relate to long-term care facilities;

d. Provide information to the public and to state and local agencies about problems of persons in long-term care facilities;

e. Train long-term care facility staff in conjunction with training provided to care review resident advocate committee members;

f. Administer the volunteer long-term care ombudsman program;

g. Assist in the development of organizations to participate in the long-term care resident’s advocate/ombudsman program; and

h. Comment and make recommendations on administrative actions under consideration by an agency or authority which may affect residents in long-term care facilities. ;

i. Designate regional long-term care ombudsmen (hereinafter called designees) to perform any of the above duties; and

j. Approve certification for volunteer long-term care ombudsmen.

321—8.3(249D) 321—8.4(231) Access requirements. The resident’s advocate/ombudsman or designee shall have access to long-term care facilities, private access to residents, access to residents’ personal and medical records of residents and access to other records maintained by the facilities or governmental agencies or their agents, pertaining only to the complaint(s) person on whose behalf a complaint is being investigated.

8.3(1) 8.4(1) Visits to facilities. The resident’s advocate/ombudsman or designee may enter any long-term care facility without prior notice. After notifying the person in charge of the facility of the resident’s advocate/ombudsman’s or designee’s presence, the resident’s advocate/ombudsman or designee may communicate privately and without restriction with any resident who consents to the communication.

8.3(2) 8.4(2) Visits to resident’s living area. The resident’s advocate/ombudsman or designee shall not observe the private living area of any resident who objects to the observation.

8.3(3) 8.4(3) Restrictions on visits. The facility staff member in charge may refuse or terminate a resident’s advocate/ombudsman’s or designee’s visit with a resident only when written documentation is provided to the resident’s advocate/ombudsman or designee that the visit is a threat to the health and safety of the resident. The restriction shall be ordered by the resident’s physician, and the order shall be documented in the resident’s medical record.

8.3(4) 8.4(4) Request agency assistance.

a. The resident’s advocate/ombudsman or designee may request cooperation, assistance and data that will enable the resident’s advocate/ombudsman or designee to execute any of the resident’s advocate/ombudsman’s or designee’s duties and powers under the Older Americans Act from any governmental agency or its agent or AAA.

b. Only the state long-term care ombudsman shall have access to adult abuse case information.

8.3(5) Copies of medical and personal records. All medical and personal records maintained by a facility shall be confidential and shall not be available for copying by the resident’s advocate/ombudsman except under the following circumstances:

a. The information is requested by the resident’s advocate/ombudsman who provides the facility with a written waiver signed by the person about whom the information is sought, the person’s guardian, conservator, legal representative or responsible party, as defined under rule 470—58.1(135C), Iowa Administrative Code. Each signed consent shall designate specifically the person or agency to whom the information is to be provided, and the information shall be provided only to that person or agency; or

b. The information is sought by a court order.

8.4(5) Facility records. Copies of a resident’s medical or personal records maintained by the facility, or other records of a long-term care facility, may be made with the permission of the resident, the resident’s responsible party, or the legal representative of the resident.

a. The office of the long-term care ombudsman will pay for copies as requested.

b. All medical and personal records shall be made available to a volunteer long-term care ombudsman for review if:

(1) The volunteer long-term care ombudsman has the permission of the resident, the legal representative of the resident or the responsible party; or

ELDER AFFAIRS DEPARTMENT[321](cont'd)

(2) Access to the records is necessary to investigate a complaint; and

(3) The volunteer long-term care ombudsman obtains approval of the resident's advocate/ombudsman or designee; or

(4) The information is sought by court order.

c. The resident's advocate/ombudsman program shall keep all records and information confidential according to the Older Americans Act.

~~8.3(6) Records needed to resolve complaints. Except as limited by subrule 8.3(5), the resident's advocate/ombudsman may review and copy any files or other records of a long-term care facility, or of any government agency pertaining to the care of residents that may be considered necessary to the resident's advocate/ombudsman for the resolution of a complaint.~~

~~321—8.4(249D)~~ **321—8.5(231) Authority and responsibilities of the department.**

~~8.4(1)~~ **8.5(1)** Confidentiality and disclosure. The complaint files maintained by the resident's advocate/ombudsman program shall be maintained as confidential information and may not be disclosed unless the resident's advocate/ombudsman authorizes disclosure.

a. ~~The resident's advocate/ombudsman~~ No member of the resident's advocate/ombudsman program shall not disclose the identity of any complainant or resident, or any identifying information obtained from a resident's personal or medical records unless the complainant or resident, or the legal representative of either, consents in writing to the disclosure and specifies to whom the information may be disclosed.

b. The resident's advocate/ombudsman may use materials in the files for the preparation and disclosure of statistical, case study and other pertinent reports provided that the means of discovering the identity of particular persons is not disclosed.

~~8.4(2)~~ **8.5(2)** Referral of complaints or grievances.

a. When the resident's advocate/ombudsman or designee encounters facts which may indicate the failure to comply with state or federal laws, rules or regulations, the resident's advocate/ombudsman or designee shall refer the case to the appropriate agency.

b. When the resident's advocate/ombudsman or designee encounters facts that may warrant the institution of civil proceedings, the resident's advocate/ombudsman or designee shall refer the case appropriately for administrative and legal assistance.

c. When the resident's advocate/ombudsman or designee encounters facts which may indicate the misconduct or breach of duty of any officer or employee of a long-term care facility or government agency, the resident's advocate/ombudsman shall refer the case to the appropriate authorities.

d. The resident's advocate/ombudsman or designee shall initiate follow-up activities on all referred complaints and grievances.

~~8.4(3)~~ **8.5(3)** Reporting. The resident's advocate/ombudsman program shall maintain a statewide, uniform reporting system to collect and analyze information on complaints and grievances in regarding long-term care facilities in accordance with requirements of the Act and Iowa Code section ~~249D.4~~ 231.42.

a. Information provided by the department of inspections and appeals, individuals and agencies to whom cases were referred, and care review resident advocate committees and the volunteer long-term care ombudsman program shall be used in the reporting system.

b. No information from this reporting system that threatens the confidentiality of residents or complainants shall be made public without the written permission of the affected residents or complainants.

c. Any information from this reporting system which identifies a specific facility shall state that problems identified in that facility have been corrected, if problems identified have been corrected to the satisfaction of the resident's advocate/ombudsman and the department of inspections and appeals, resident or complainant or pursuant to 321—9.13(231).

d. No change.

e. The resident's advocate/ombudsman program shall prepare an annual report analyzing the complaint and statistics collected and provide this report, by January 15 of each year, to the following agencies and others as deemed appropriate, including but not limited to: AOA, the office of the governor, the general assembly of Iowa, the Iowa department of inspections and appeals, the Iowa department of human services, and AAAs.

321—8.6(231) Volunteer long-term care ombudsman program.

8.6(1) Application. Any individual may apply to the resident's advocate/ombudsman program to become a volunteer long-term care ombudsman. A resident advocate committee member shall be given priority in the selection process and may become a certified volunteer long-term care ombudsman pending successful completion of the required training and background checks.

a. Application forms. Application forms may be obtained from the resident's advocate/ombudsman program at the department of elder affairs address listed in rule 321—2.1(231) or from other organizations designated by the department.

b. Submission of forms. Each applicant shall complete an application and submit it to the department address listed in rule 321—2.1(231).

8.6(2) Conflict of interest.

a. Prior to certification, applicants for the volunteer long-term care ombudsman program must not have a conflict of interest or have had a conflict of interest within the past two years in accordance with the Older Americans Act. A conflict of interest shall be defined as:

(1) Employment of the applicant or a member of the applicant's immediate family within the previous year by a long-term care facility or by the owner or operator of any long-term care facility;

(2) Current participation in the management of a long-term care facility by the applicant or a member of the applicant's immediate family;

(3) Current ownership or investment interest (represented by equity, debt, or other financial relationship) in an existing or proposed long-term care facility or long-term care service by the applicant or a member of the applicant's immediate family;

(4) Current involvement in the licensing or certification of a long-term care facility or provision of a long-term care service by the applicant or a member of the applicant's immediate family;

(5) Receipt of remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility by the applicant or a member of the applicant's immediate family;

(6) Acceptance of any gifts or gratuities from a long-term care facility or a resident or a resident's representative;

ELDER AFFAIRS DEPARTMENT[321](cont'd)

(7) Acceptance of money or any other consideration from anyone other than the office of the state long-term care resident's advocate/ombudsman for the performance of an act in the regular course of long-term care;

(8) Provision of services while employed in a position with duties that conflict with the duties of a volunteer long-term care ombudsman;

(9) Provision of services to residents of a facility in which a member of the applicant's immediate family resides; or

(10) Participation in activities which negatively affect the applicant's ability to serve residents or which are likely to create a perception that the applicant's primary interest is other than as an advocate for the residents.

b. Immediate family shall be defined as father, mother, son, daughter, brother, sister, aunt, uncle, first cousin, nephew, niece, wife, husband, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, step-parent, stepbrother, stepchild, stepsister, half sister, half brother, grandparent or grandchild.

8.6(3) Applicants shall not be accepted into the program if:

a. It is determined that the applicant has a conflict of interest as listed in subrule 8.6(2); or

b. The applicant has unfavorable references, which shall include a DCI criminal background check and abuse check; or

c. The applicant lives in any part of a continuing care retirement community, or any housing owned by the long-term care facility in which the volunteer would function.

8.6(4) Training. Prior to certification, applicants must successfully complete the required training as approved by the resident's advocate/ombudsman. Successful completion shall be defined as completion of all assignments and tasks during training, demonstration of proper techniques and skills, and an understanding of the role of the volunteer long-term care ombudsman in the long-term care setting. The applicant shall complete a minimum of 24 hours of approved training, which shall include, but not be limited to:

a. History and overview of resident's advocate/ombudsman program;

b. Terminology;

c. Resident rights;

d. State and federal law, rules and regulations regarding long-term care facilities;

e. Regulatory process in long-term care facilities;

f. Aging process, common medical conditions and terminology;

g. Life in a long-term care facility and culture change;

h. Communication skills;

i. Confidentiality;

j. Problem solving and documentation, and follow-up of complaints;

k. Dynamics of abuse and neglect;

l. Ethics; and

m. Resources for volunteer long-term care ombudsmen.

8.6(5) Approval for certification. Final approval for certification as a volunteer long-term care ombudsman shall be made by the resident's advocate/ombudsman and shall be subject to the applicant's successful completion of the required training and to a favorable report from the instructor. The resident's advocate/ombudsman has the right to require that the applicant receive additional personal training prior to certification and has the right to deny certification to applicants not meeting the above training criteria.

8.6(6) Certification.

a. Notification. A volunteer long-term care ombudsman shall be notified in writing within 14 days following the conclusion of the training program if certification has been continued or revoked.

b. Certification shall initially be for one year, with recertification available following the volunteer's completion of a minimum of ten hours of approved continuing education in the first year and completion of a progress review by the residents of the facility, the facility administrator and staff, and the resident's advocate/ombudsman or a representative from the office of the state long-term care resident's advocate/ombudsman program.

c. After the volunteer's successful completion of one year as a volunteer long-term care ombudsman, the resident's advocate/ombudsman may recertify the volunteer for a two-year period.

8.6(7) Continuing education.

a. All certified volunteer long-term care ombudsmen shall complete a minimum of ten hours of continuing education the first year and a minimum of six hours of continuing education each year thereafter. Continuing education may include, but is not limited to:

(1) Scheduled telephone conference calls with representatives from the office of the state long-term care resident's advocate/ombudsman program;

(2) Governor's conference on aging;

(3) Area Alzheimer's disease conferences;

(4) Elder abuse conferences;

(5) Courses related to aging conducted by a local community college or university or via the Internet;

(6) Other events as approved in advance by the resident's advocate/ombudsman.

b. Volunteer long-term care ombudsmen are responsible for reporting continuing education hours to the resident's advocate/ombudsman or designee within 30 days following the completion of the continuing education event.

8.6(8) Contesting an appointment. A provider who wishes to contest the appointment of a volunteer shall do so in writing to the resident's advocate/ombudsman. The final determination shall be made by the resident's advocate/ombudsman within 30 days after receipt of notification from the provider.

8.6(9) Certification revocation.

a. Reasons for revocation. A volunteer long-term care ombudsman's certification may be revoked by the resident's advocate/ombudsman for any of the following reasons: falsification of information on the application, breach of confidentiality, acting as a volunteer long-term care ombudsman without proper certification, attending less than the required continuing education training, voluntary termination, unprofessional conduct, failure to carry out the duties as assigned, or actions which are found by the resident's advocate/ombudsman to violate the rules or intent of the program.

b. Notice of revocation. The resident's advocate/ombudsman shall notify the volunteer and the facility in writing of a revocation of certification.

c. Request for reconsideration. A request for reconsideration or reinstatement of certification may be made in writing to the resident's advocate/ombudsman. The request must be filed within 14 days after receipt of the notice of revocation.

d. Response time. The resident's advocate/ombudsman shall investigate and consider the request and notify the requesting party and the facility of the decision within 30 days of receipt of the written request.

8.6(10) Access.

ELDER AFFAIRS DEPARTMENT[321](cont'd)

a. *Visits to facilities.* A volunteer long-term care ombudsman may enter any long-term care facility without prior notice. After notifying the person in charge of the facility of the volunteer long-term care ombudsman's presence, the volunteer long-term care ombudsman may communicate privately and without restriction with any resident who consents to the communication.

b. *Visits to resident's living area.* The volunteer long-term care ombudsman shall not observe the private living area of any resident who objects to the observation.

c. *Restrictions on visits.* The facility staff member in charge may refuse or terminate a volunteer long-term care ombudsman visit with a resident only when written documentation is provided to the volunteer long-term care ombudsman that the visits are a threat to the health and safety of the resident. The restriction shall be ordered by the resident's physician, and the order shall be documented in the resident's medical record.

8.6(11) Duties. The volunteer long-term care ombudsman shall assist the resident's advocate/ombudsman or designee in carrying out the duties described in the Older Americans Act. Primary responsibilities of a volunteer long-term care ombudsman shall include:

a. *Conducting initial inquiries regarding complaints registered with the long-term care resident's advocate/ombudsman;*

b. *At the request of the resident's advocate/ombudsman or designee, providing follow-up visits on cases investigated by the resident's advocate/ombudsman or designee;*

c. *Attending, assisting with, or providing technical assistance to resident and family council meetings as needed;*

d. *At the request of the resident's advocate/ombudsman or designee, making follow-up visits to a facility after a department of inspections and appeals survey or complaint investigation to monitor the progress and changes listed in the plan of correction or to monitor the correction of deficiencies;*

e. *Tracking, monitoring and following up on publicly available information regarding facility performance;*

f. *Identifying concerns in a facility. Concerns identified should be discussed with the chair of the resident advocate committee to determine an appropriate course of action to reach resolution;*

g. *Completing all reports and submitting them to the resident's advocate/ombudsman in a timely manner; and*

h. *Completing exit interviews when the volunteer ombudsman resigns.*

These rules are intended to implement Iowa Code chapter 231.

[Filed 1/16/04, effective 3/10/04]

[Published 2/4/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/4/04.

ARC 3144B

ELDER AFFAIRS DEPARTMENT[321]

Adopted and Filed

Pursuant to the authority of Iowa Code section 231.23, the Elder Affairs Department hereby amends Chapter 9, "Resident Advocate Committees," Iowa Administrative Code.

The purpose of this rule making is to clarify the definition of what constitutes a Resident Advocate Committee by establishing minimum standards.

Notice of Intended Action was published in the October 29, 2003, Iowa Administrative Bulletin as **ARC 2905B**.

A public hearing was held on November 19, 2003, from 9 to 11 a.m. in the Director's Conference Room at the Department of Elder Affairs, Clemens Building, 200 Tenth Street, Des Moines, Iowa 50309. The Iowa Health Care Association presented oral and written comments in support of the amendments.

The Iowa Association of Homes and Services for the Aging supplied written comments stating their concern with removing the ratio of residents per advocate. After the Department provided a written response to the association's concern and shared information about the events leading to the proposed amendment, the concern was addressed and the IAHSAs supports the rules as modified. The modification to subrule 9.1(2) will reinstate the original rule language that a committee "shall consist of two members or a number sufficient to meet the needs of the residents." A clause has been added to clarify that in facilities licensed to serve fewer than 15 residents, one volunteer is sufficient to comprise a Resident Advocate Committee for purposes of facility compliance with Iowa Code section 135C.25.

These amendments were adopted by the Commission for the Department of Elder Affairs on January 14, 2004.

These amendments are intended to implement Iowa Code chapters 17A, 22 and 231.

These amendments will become effective March 10, 2004. The following amendments are adopted.

ITEM 1. Amend subrule 9.1(2) as follows:

9.1(2) Committee membership. The committee shall consist of at least two members or a number sufficient to meet the needs of the residents, *except in facilities licensed to serve fewer than 15 residents. In such facilities, the minimum number of members shall be one.*

ITEM 2. Amend subrule 9.2(4) as follows:

9.2(4) Waiver of membership restriction. The waiver of membership restriction for relatives in subrule 9.2(3) may be reviewed and approved by the executive director and granted, if it can be documented to the department that efforts have been made individually or jointly by the resident advocate committee, ~~AAA~~, or the department to contact and recruit alternative applicants.

ITEM 3. Amend subrule 9.3(1) as follows:

9.3(1) Notification. Members of the resident advocate committee shall be appointed from individuals whose applications for membership have been accepted according to this rule. Appointments shall be made by letter within 45 days of receipt of applications by the executive director or designee. Appropriate ~~AAAs~~ and facilities shall be notified of the appointments.

ITEM 4. Amend subrule 9.4(3) as follows:

9.4(3) Notification of cancellation. The executive director shall notify, in writing, the remaining committee members, ~~the appropriate AAA~~, and the facility of the cancellation of resident advocate committee members' appointments.

ITEM 5. Amend subrule **9.6(2)**, paragraph "c," as follows:

c. The secretary shall complete a report on the committee meeting on the report form designated by the department. Copies of the report shall be submitted to the administrator

ELDER AFFAIRS DEPARTMENT[321](cont'd)

and to the resident advocate coordinator if the facility is a nursing facility or residential care facility. Copies of each report shall be sent by the coordinator to the office of long-term care resident advocate/ombudsman.

ITEM 6. Amend subrule 9.8(2) as follows:

9.8(2) Assistance to the committee. The committee may request information, advice and counsel from the facility administrator, medical or health professionals or specialists, AAAs, the department or from other state and local agencies.

a. The physician's certification of care shall be made available to the committee by the administrator of the facility.

b. Physicians who have patients residing in the facility shall have the responsibility of assisting the committee upon request.

c. Upon contacting anyone on behalf of residents in the performance of duties, the resident advocate committee member shall clearly be identified as a resident advocate committee member who is a volunteer advocate and shall clearly state the purpose and justification for this contact.

ITEM 7. Amend subrule 9.10(1) as follows:

9.10(1) Resident reviews. To evaluate the degree of satisfaction that residents have with the quality of life experienced in the facility in which they reside, the following procedures shall be used:

a. Resident *resident* reviews shall be recorded, including responses to questions asked of residents or their representatives.

b. The committee shall establish a schedule for at least one private interview annually with each resident in the facility.

ITEM 8. Rescind and reserve subrule **9.11(2)**, paragraph "b."

ITEM 9. Rescind rules 321—9.13(231) and 9.14(231) as follows:

~~**321—9.13(231) Role of the AAAs.** AAAs shall carry out the following activities in support of the ombudsman program in nursing facilities and residential care facilities:~~

~~1. Advise the ombudsman program on the training needs of resident advocate committees in the planning and service area of the area agency;~~

~~2. Assist the ombudsman program in training and coordinating the training of resident advocate committee members;~~

~~3. Distribute department provided forms if requested by resident advocate committees;~~

~~4. Assist resident advocate committees to obtain legal and other technical assistance;~~

~~5. Recruit applicants for membership on resident advocate committees; and~~

~~6. Assist in the resolution of complaints or grievances being investigated by resident advocate committees or the ombudsman program as requested.~~

~~**321—9.14(231) Approval of training for committees in nursing facilities and residential care facilities.**~~

~~**9.14(1)** Potential provider requirements. The provider of proposed training shall submit the training agenda, facility, and objectives to the ombudsman program for approval 30 days prior to the date of the proposed training.~~

~~**9.14(2)** Time for approval or disapproval. The ombudsman program shall approve or disapprove the proposal and notify the provider of the proposed training within ten working days of receipt of the proposal.~~

~~**9.14(3)** Provider reports. Upon completion of the resident advocate committee training, the provider of the training shall submit a list of the name and address of each resident advocate committee member trained and the name and address of the long-term care facility at which each trained member serves, to the resident advocate coordinator within ten days following completion of the training course. The ombudsman shall audit records at least once per year or as needed.~~

[Filed 1/16/04, effective 3/10/04]

[Published 2/4/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/4/04.

ARC 3120B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Adopted and Filed

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

These amendments clarify the definitions of "committee," "candidate," and "ballot issue" as those terms are used in the campaign laws of Iowa.

These amendments were published under Notice of Intended Action in the Iowa Administrative Bulletin on November 26, 2003, as **ARC 2971B**. No oral or written comments on the amendments were received. The amendments are identical to those published under Notice.

The Board adopted these amendments on January 13, 2004.

These amendments are intended to implement Iowa Code Supplement section 68A.102.

These amendments will become effective on March 10, 2004.

The following amendments are adopted.

ITEM 1. Rescind subrule **4.1(1)**, paragraph "a," and adopt the following **new** paragraph in lieu thereof:

a. Committee defined. "Committee" includes the following:

(1) A "candidate's committee" that is the committee, even if the committee consists only of the candidate, designated by a candidate for a state or local office to receive contributions, make expenditures, or incur debts in excess of \$750.

(2) A "political committee" (PAC) that is a committee exceeding the \$750 organizational threshold to expressly advocate the nomination, election, or defeat of candidates or to expressly advocate the passage or defeat of a ballot issue.

(3) A "state statutory political committee" (state party), "county statutory political party" (county central committee), or "city statutory political committee" (city central committee).

ITEM 2. Adopt **new** subrules 4.1(4) and 4.1(5) as follows:

4.1(4) Candidate defined. For purposes of Iowa Code Supplement chapter 68A and Iowa Code chapter 68B, and the rules of the board, "candidate" means an individual who takes affirmative action to seek nomination or election to a state or local public office. "Takes affirmative action" in-

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

cludes making a public announcement of intention to seek nomination or election, making any expenditure or accepting any contribution for nomination or election, distributing petitions for signatures for nomination, filing nomination papers or an affidavit of candidacy, or being nominated by any convention process set out by law.

4.1(5) Ballot issue defined. "Ballot issue" means a question that has been approved by a political subdivision or the general assembly to be placed before the voters or is otherwise required by law to be placed before the voters. "Ballot issue" does not include the nomination, election, or defeat of a candidate.

[Filed 1/14/04, effective 3/10/04]
[Published 2/4/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/4/04.

ARC 3119B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Adopted and Filed

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

The amendments consolidate current rules involving the requirement to place a "paid for by" attribution statement on political materials and political advertisements. The amendments reflect federal court decisions, state law, and Board advisory opinions. The most significant change from the current rules would exempt a yard sign of 32 square feet or less (the current rule exempts yard signs of 16 square feet or less) from the requirement to place a "paid for by" attribution statement on the sign. This change is to reflect the fact that many people use hand-painted 4-foot by 8-foot plywood boards as yard signs.

The amendments were published under Notice of Intended Action in the Iowa Administrative Bulletin on November 26, 2003, as **ARC 2970B**. No oral or written comments on the amendments were received. The amendments are identical to those published under Notice.

The Board adopted these amendments on January 14, 2004.

These amendments are intended to implement Iowa Code Supplement section 68A.405 and Iowa Code section 68B.32A(8).

These amendments will become effective on March 10, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [4.38(2), 4.39, 4.41 to 4.43] is being

omitted. These amendments are identical to those published under Notice as **ARC 2970B**, IAB 11/26/03.

[Filed 1/14/04, effective 3/10/04]
[Published 2/4/04]

[For replacement pages for IAC, see IAC Supplement 2/4/04.]

ARC 3154B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4 and Iowa Code Supplement section 249A.20A, the Department of Human Services amends Chapter 78, "Amount, Duration, and Scope of Medical and Remedial Services," Iowa Administrative Code.

These amendments change Medicaid coverage limitations for drugs by expanding prior authorization requirements and implementing a preferred drug list. The preferred drug list will be developed and recommended to the Department by the Governor-appointed Pharmaceutical and Therapeutics Committee. The Department will publish the approved list to all Medicaid providers.

The preferred drug list will be a comprehensive list of all Iowa Medicaid-payable drugs, considering clinical efficacy, safety, and cost-effectiveness. Within therapeutic categories of medications where there is little therapeutic variation within the class, the list will designate the most cost-effective drug as the "preferred" drug for Iowa Medicaid. Non-preferred drugs will require prior authorization for Medicaid payment. The list will specify the conditions for prior authorization of all nonpreferred drugs and any conditions for coverage of preferred drugs. Existing criteria for drug prior authorization will remain in effect until that category of drugs is phased into the preferred drug list.

Pursuant to Iowa Code Supplement section 249A.20A(4), the following drug categories are exempt from prior authorization:

- Drugs prescribed for treatment of human immunodeficiency virus or acquired immune deficiency syndrome, transplantation, or cancer; and
- Drugs prescribed for mental illness, with the exception of drugs and drug compounds that do not have a significant variation in therapeutic profile or side effect profile within a therapeutic class.

Further exceptions may be pursued under the Department's general rule on exceptions at 441—1.8(17A,217).

The Department may negotiate supplemental rebates from drug manufacturers and labelers for the Medicaid program over and above those required under federal regulations, which would affect the determination of cost-effectiveness. Coverage of nonprescription drugs may also be expanded if nonprescription drugs are found to be preferred.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on September 17, 2003, as **ARC 2789B**. In addition, an Amended Notice of Intended Action was published in the October 29, 2003, Iowa Administrative Bulletin as **ARC 2906B** to allow for a public hearing, which was held on November 24, 2003.

Six people participated in the hearing. Comments related to the time allowed for implementation, the burden of mak-

HUMAN SERVICES DEPARTMENT[441](cont'd)

ing prior authorization the responsibility of the prescriber, whether the Department should have quoted the legislation in the rules, whether patient rights have been adequately protected, and whether the process for developing the preferred drug list is open to the public.

These amendments were also Adopted and Filed Emergency and were published in the Iowa Administrative Bulletin on December 10, 2003, as **ARC 3020B**. However, the Department has postponed the date for implementation of the preferred drug list (previously expected to be January 5, 2004). The postponement is necessary in order for the Department to select a new contractor to assist in development and implementation of this important program.

These amendments are identical to the Notice of Intended Action and the Adopted and Filed Emergency amendments except for replacing references to "House File 619" with references to the Iowa Code Supplement.

The Council on Human Services adopted these amendments on January 14, 2004.

These amendments are intended to implement Iowa Code Supplement section 249A.20A.

These amendments shall become effective on March 10, 2004, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend subrule **78.1(2)** as follows:

Amend paragraph "**a**," subparagraph (3), introductory paragraph, as follows:

(3) *Prior authorization is required as specified in the preferred drug list published by the department pursuant to Iowa Code Supplement section 249A.20A. Until the implementation date designated in the preferred drug list, Payment payment will be made for certain the drugs listed below only when prior approval is obtained from the fiscal agent and when prescribed for treatment of specified conditions as follows. Prior authorization will be granted for 12-month periods per recipient as needed unless otherwise specified.*

Amend paragraph "**f**" as follows:

f. *Nonprescription drugs.*

(1) *The following nonprescription drugs are payable, and may be subject to the prior authorization requirements stated below and as specified in the preferred drug list published by the department pursuant to Iowa Code Supplement section 249A.20A:*

Acetaminophen tablets 325 mg, 500 mg
 Acetaminophen elixir 120 mg/5 ml
 Acetaminophen elixir 160 mg/5 ml
 Acetaminophen solution 100 mg/ml
 Acetaminophen suppositories 120 mg
 Aspirin tablets 325 mg, 650 mg, 81 mg (chewable)
 Aspirin tablets, enteric coated 325 mg, 650 mg, 81 mg
 Aspirin tablets, buffered 325 mg
 Bacitracin ointment 500 units/gm
 Benzoyl peroxide 5%, cleanser, lotion, cream, gel
 Benzoyl peroxide 10%, cleanser, lotion, cream, gel
 Chlorpheniramine maleate tablets 4 mg
 Diphenhydramine hydrochloride capsules 25 mg
 Diphenhydramine hydrochloride liquid 6.25 mg/5 ml,
 12.5 mg/5 ml
 Ferrous sulfate tablets 300 mg, 325 mg
 Ferrous sulfate elixir 220 mg/5 ml
 Ferrous sulfate drops 75 mg/0.6 ml
 Ferrous gluconate tablets 300 mg, 325 mg
 Ferrous gluconate elixir 300 mg/5 ml
 Ferrous fumarate tablets 300 mg, 325 mg

Guaifenesin 100 mg/5 ml with dextromethorphan 10 mg/5 ml liquid

Insulin

Meclizine hydrochloride tablets 12.5 mg, 25 mg

Miconazole nitrate cream 2% topical and vaginal

Miconazole nitrate vaginal suppositories, 100 mg

Multiple vitamin and mineral products specifically formulated and recommended for use as a dietary supplement during pregnancy and lactation

Multiple vitamin and mineral products with prior authorization under the conditions specified in subparagraph 78.1(2)"a"(3)

Niacin (nicotinic acid) tablets 25 mg, 50 mg, 100 mg, 250 mg, 500 mg

Pediatric oral electrolyte solutions

Permethrin liquid 1%

Pseudoephedrine hydrochloride tablets 30 mg, 60 mg

Pseudoephedrine hydrochloride liquid 30 mg/5 ml

Salicylic acid liquid 17%

Senokot granules, 326 mg/tsp for children aged 20 and under

Senokot tablets, 187 mg for children aged 20 and under

Sodium chloride solution 0.9% for inhalation with metered dispensing valve 90 ml, 240 ml

Tolnaftate 1% cream, solution, powder

~~Nonprescription multiple vitamin and mineral products specifically formulated and recommended for use as a dietary supplement during pregnancy and lactation.~~

~~With prior authorization, nonprescription multiple vitamins and minerals under the conditions specified in subparagraph 78.1(2)"a"(3).~~

~~Insulin.~~

~~Other nonprescription drugs listed as preferred in the preferred drug list published by the department pursuant to Iowa Code Supplement section 249A.20A.~~

(2) Oral solid forms of the above-covered items shall be prescribed and dispensed in a minimum quantity of 100 units per prescription or the currently available consumer package size except when dispensed via a unit dose system. When used for maintenance therapy, all of the above-listed covered items may be prescribed and dispensed in 90-day quantities.

ITEM 2. Amend subrule 78.28(1), introductory paragraph, as follows:

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:*

[Filed 1/16/04, effective 3/10/04]

[Published 2/4/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/4/04.

ARC 3153B

**HUMAN SERVICES
 DEPARTMENT[441]**

Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 153, "So-

HUMAN SERVICES DEPARTMENT[441](cont'd)

cial Services Block Grant and Funding for Local Services," Iowa Administrative Code.

These amendments change service management provisions under the State Payment Program by:

- Removing State Payment Program members who receive only non-managed services of protective payee, transportation, or rent subsidy from the Iowa Plan, for a projected four-month savings of \$27,585 in administrative fees. There is no value added to the consumer or the Department by having these services included in the Iowa Plan.
- Requiring waiting lists for services in counties that have waiting lists for services to county residents.
- Removing references to counties without approved county management plans, since all counties now have approved plans.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on November 26, 2003, as **ARC 2977B**. The Department received one comment on the Notice of Intended Action, suggesting that all services offered in the State Payment Program be removed from the Iowa Plan and be managed by the counties. That is not a fiscally or politically feasible alternative at this time.

The Department is deferring action on the portions of proposed Item 5 in the Notice of Intended Action that would reduce the payment to providers by an across-the-board percentage, for action at a later date. Specifically, the Department is not adopting the changes proposed for subrule 153.57(3), paragraph "b," introductory paragraph and subparagraphs (1) and (2), at this time.

These amendments do not provide for waivers in specified situations because necessary savings would not be achieved if waivers were granted. Individuals may request a waiver under the Department's general rule on exceptions, 441—1.8(17A,217).

The Council on Human Services adopted these amendments on January 14, 2004.

These amendments are intended to implement Iowa Code section 234.6(6).

These amendments shall become effective on March 10, 2004.

The following amendments are adopted.

ITEM 1. Amend subrule 153.52(1) as follows:

153.52(1) Eligibility criteria. ~~When residing in a county without an approved county management plan, meet~~ Meet the eligibility criteria established in the last approved county management plan ~~for the county where the applicant resides. When residing in a county with an approved county management plan, meet the eligibility criteria in the approved plan.~~

ITEM 2. Amend subrule 153.53(2) as follows:

153.53(2) Eligibility for services. An applicant ~~residing in a county with an approved county management plan~~ shall be determined eligible based on the eligibility guidelines contained in the approved county management plan ~~for the county where the applicant resides. An applicant residing in a county without an approved county management plan shall be determined eligible based on the eligibility guidelines of the last approved county management plan.~~ The department's service worker is responsible for the decision made on eligibility based on the approved county management plan.

a. A person eligible for the state payment program as of June 30, 1996, shall remain eligible as long as the eligibility requirements in effect on June 30, 1996, are met.

b. *The department may institute a waiting list for applicants residing in a county that institutes a waiting list for ser-*

vices funded through the county mental health, mental retardation and developmental disabilities services fund.

ITEM 3. Amend rule 441—153.54(234), introductory paragraph, as follows:

441—153.54(234) Eligible services. Services eligible for reimbursement pursuant to this division of the rules are, ~~for applicants residing in a county without an approved county management plan, the services defined in the last approved county management plan where the applicant resides. For applicants residing in a county with an approved county management plan, the applicant is eligible for the services defined in the approved county management plan of the applicant's county of residence.~~

ITEM 4. Amend subrule **153.55(1)** as follows:

Amend paragraph "a," subparagraph (2), as follows:

(2) ~~For a member residing in a county without an approved county management plan, the service is in the county's last approved county management plan and payment for the service for other residents would be made from the county mental health, mental retardation and developmental disabilities services fund. For a member residing in a county with an approved county management plan, the~~ *The* service is provided under the approved *county management plan of the member's county of residence*, and payment for the service for other residents would be made from the county mental health, mental retardation and developmental disabilities services fund.

Amend paragraph "b," subparagraphs (2) and (3), as follows:

(2) ~~For a member residing in a county without an approved county management plan, the~~ *The* Iowa Plan contractor has verified the member's state payment program eligibility with the department and ~~the service is in the county's last approved plan and payment for the service is made for other residents from the county mental health, mental retardation and developmental disabilities services fund.~~

(3) ~~For a member residing in a county with an approved county management plan, the Iowa Plan contractor has verified the person's state payment program eligibility with the department and the~~ *The* service is provided under the approved county management plan *of the member's county of residence*, and payment for the service for other residents is made from the county mental health, mental retardation and developmental disabilities services fund.

Adopt the following **new** paragraph:

c. The department may exclude from the Iowa Plan members who are enrolled in the program for only non-managed services such as protective payee, transportation, and rent subsidy. For these members, payment for services will be made through the department as long as the person is eligible and the following criteria are met:

(1) The department has accepted the provider for a special mental health-mental retardation county contract agreement.

(2) The service is in the approved county management plan of the member's county of residence.

(3) The member's county of residence provides or pays for the service for persons who have legal settlement there.

(4) Payment for the service for other residents would be made from the county mental health, mental retardation and developmental disabilities fund.

(5) Service providers have accessed the other payment systems for which the member is eligible before billing the state payment program.

ITEM 5. Amend rule 441—153.57(234) as follows:

Rescind and reserve subrule **153.57(1)**, paragraph "d."

HUMAN SERVICES DEPARTMENT[441](cont'd)

Amend subrule **153.57(3)** as follows:

Amend paragraph "**b**" by rescinding subparagraph **(3)**.

Amend paragraph "**d**" as follows:

d. ~~Financial participation on the part of the member for services and maintenance for members residing in a county without an approved county management plan shall be governed by the financial participation provisions of the last approved county management plan or under other applicable conditions as stated in the rules which apply to the services requested or received.~~

Financial participation on the part of the member ~~residing in a county with an approved county management plan~~ shall be governed by the financial participation provisions of the approved county management plan *of the member's county of residence*.

ITEM 6. Amend rule 441—153.58(234), introductory paragraph and first unnumbered paragraph, as follows:

441—153.58(234) Reduction, denial or termination of benefits. ~~For members residing in a county without an approved county management plan, the member's state payment program benefits may be denied, terminated or reduced according to the provisions of the last approved county management plan or under other applicable conditions as stated in the rules which apply to the services requested or received.~~

~~For members residing in a county with an approved county management plan, the~~ *The* member's state payment program benefits may be denied, terminated or reduced according to the provisions of the approved county management plan *of the member's county of residence*.

[Filed 1/16/04, effective 3/10/04]

[Published 2/4/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/4/04.

ARC 3125B

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby amends Chapter 57, "Residential Care Facilities," Chapter 58, "Nursing Facilities," Chapter 62, "Residential Care Facilities for Persons with Mental Illness," Chapter 63, "Residential Care Facilities for the Mentally Retarded," Chapter 64, "Intermediate Care Facilities for the Mentally Retarded," and Chapter 65, "Intermediate Care Facilities for Persons with Mental Illness," Iowa Administrative Code.

The amendments clarify the process used to appeal the involuntary discharge or transfer of a resident from a long-term care facility, making it consistent with the Department's administrative rules found at 481—Chapter 10, "Contested Case Hearings," and Iowa Code chapter 17A. Additionally, the amendments stipulate that the administrative law judge will set the date, time, and place for the hearing on an involuntary discharge or transfer, rather than requiring all hearings to be held in the facility. This change is technical in nature and conforms the rules to current practice of the Administrative Hearings Division. Also, the amendments change the number of days in which the Department may respond to a

request for a waiver from 45 days to 120 days, which is consistent with the Department's uniform waiver and variance rules.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 10, 2003, as **ARC 2987B**. No comments were received on the amendments. One technical correction has been made to the last sentence in Items 3, 6, 9, 12, 15 and 18 to clarify an ambiguity in the sentence dealing with the Department's ability to review a proposed decision. The last sentence in each of those items now reads as follows: "Failure to request review will preclude judicial review unless the department reviews a proposed decision upon its own motion within 15 days of the issuance of the decision."

The amendments were presented to the State Board of Health for initial review at the Board's November 12, 2003, meeting. The adopted amendments were presented to and approved by the Board at its January 14, 2004, meeting.

These amendments are intended to implement Iowa Code sections 10A.104(5) and 135C.14.

These amendments will become effective March 10, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [57.2(3), 57.36(1), 58.2(3), 58.40(1), 62.4(3), 62.14(4)"b," 63.2(3), 63.34(1), 64.2(3), 64.36(1), 65.4(3), 65.16(6)] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 2987B**, IAB 12/10/03.

[Filed 1/15/04, effective 3/10/04]

[Published 2/4/04]

[For replacement pages for IAC, see IAC Supplement 2/4/04.]

ARC 3126B

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby amends Chapter 57, "Residential Care Facilities," Chapter 58, "Nursing Facilities," Chapter 62, "Residential Care Facilities for Persons with Mental Illness," and Chapter 63, "Residential Care Facilities for the Mentally Retarded," Iowa Administrative Code.

The adopted amendments eliminate references to the resident's physician's or qualified mental retardation professional's documentation of impairments serving as the basis for altering a resident's rights and responsibilities. The amendments provide that a resident shall only be declared incompetent by a court of law or in accordance with provisions contained in 42 CFR 483.10. The Code of Federal Regulations stipulates that, in the case of a resident who has not been adjudicated incompetent under the laws of the state, any legal-surrogate designated in accordance with state law may exercise the resident's rights to the extent provided by state law.

Notice of Intended Action was published in the October 1, 2003, Iowa Administrative Bulletin as **ARC 2825B**. The Department received one letter in which concerns with the amendments were noted. Technical changes have been made to clarify that the adopted amendments do not limit the au-

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

thority of an individual acting pursuant to Iowa Code chapter 144A, pertaining to life-sustaining procedures.

The amendments were initially reviewed by the State Board of Health at the Board's September 10, 2003, meeting. The Board reviewed and approved the adopted amendments at its January 14, 2004, meeting.

These amendments will become effective March 10, 2004.

These amendments are intended to implement Iowa Code sections 10A.104(5) and 135C.14.

The following amendments are adopted.

ITEM 1. Amend subrule 57.48(1) as follows:

57.48(1) Each facility shall provide that all rights and responsibilities of the resident devolve to the resident's responsible party, when a resident is adjudicated incompetent in accordance with state law, ~~or when the attending physician or qualified mental retardation professional has documented in the resident's record the specific impairment that has rendered the resident incapable of understanding these rights. The resident's specific impairment shall be reevaluated annually by the attending physician or qualified mental retardation professional or, in the case of a resident who has not been adjudicated incompetent under the laws of the state, in accordance with 42 CFR 483.10. This subrule is not intended to limit the authority of any individual acting pursuant to Iowa Code chapter 144A.~~ (II)

ITEM 2. Amend subrule 58.52(1) as follows:

58.52(1) Each facility shall provide that all rights and responsibilities of the resident devolve to the resident's responsible party, when a resident is adjudicated incompetent in accordance with state law, ~~or when the attending physician or qualified mental retardation professional has documented in the resident's record the specific impairment that has rendered the resident incapable of understanding these rights. The resident's specific impairment shall be reevaluated annually by the attending physician or qualified mental retardation professional or, in the case of a resident who has not been adjudicated incompetent under the laws of the state, in accordance with 42 CFR 483.10. This subrule is not intended to limit the authority of any individual acting pursuant to Iowa Code chapter 144A.~~ (II)

ITEM 3. Amend subrule **62.23(22)**, paragraph "a," as follows:

a. Each facility shall provide that all rights and responsibilities of the resident devolve to the resident's legal guardian when a resident is adjudicated incompetent in accordance with state law ~~or, in the case of a resident who has not been adjudicated incompetent under the laws of the state, in accordance with 42 CFR 483.10. This paragraph is not intended to limit the authority of any individual acting pursuant to Iowa Code chapter 144A.~~ (II)

ITEM 4. Amend subrule 63.46(1) as follows:

63.46(1) Each facility shall provide that all rights and responsibilities of the resident devolve to the resident's responsible party, when a resident is adjudicated incompetent in accordance with state law, ~~or when the attending physician or qualified mental retardation professional has documented in the resident's record the specific impairment that has rendered the resident incapable of understanding these rights. The resident's specific impairment shall be reevaluated annually by the attending physician or qualified mental retardation professional or, in the case of a resident who has not been adjudicated incompetent under the laws of the state, in accordance with 42 CFR 483.10. This subrule is not in-~~

tended to limit the authority of any individual acting pursuant to Iowa Code chapter 144A. (II)

[Filed 1/15/04, effective 3/10/04]

[Published 2/4/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/4/04.

ARC 3132B**PROFESSIONAL LICENSURE
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Respiratory Care Examiners hereby amends Chapter 260, "Administrative and Regulatory Authority for the Board of Respiratory Care Examiners," Chapter 261, "Licensure of Respiratory Care Practitioners," and Chapter 262, "Continuing Education for Respiratory Care Practitioners"; rescinds Chapter 263, "Discipline for Respiratory Care Practitioners," and adopts a new Chapter 263 with the same title; and amends Chapter 264, "Fees," Iowa Administrative Code.

These amendments adopt new subrules for the conduct of persons who attend public meetings, adopt criteria for obtaining a duplicate or reissued license, adopt requirements for renewal of a license to practice respiratory care, and amend requirements for notifying the Board of name and address changes. These amendments also adopt a new discipline chapter.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 15, 2003, as **ARC 2860B**. A public hearing was held on November 5, 2003, from 10 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. Several comments were received regarding the need to change the number of continuing education hours for which credit may be given in the area of mandatory reporting since licensees may take two 2-hour courses to fulfill their licensure training requirements. The assistant attorney general's office also noted that, to be consistent with the Iowa Code, subrule 261.8(4), paragraphs "a," "b," and "c," should specify that such activity has to be within the scope of practice and employment responsibilities and that the obligation of being a mandatory reporter applies anytime within these parameters.

The following changes were made to the amendments published under Notice:

In subrule 261.8(4), paragraphs "a," "b," and "c," wording was added to conform to statutory descriptions of when the practitioner is a mandatory reporter, and the word "regularly" was removed to be consistent with the Iowa Code. Paragraphs 261.8(4)"a" to "c" now read as follows:

"a. A licensee who, in the scope of professional practice or in the licensee's employment responsibilities, examines, attends, counsels or treats children in Iowa shall indicate on the renewal application completion of two hours of training in child abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph 'e.'

"b. A licensee who, in the course of employment responsibilities, examines, attends, counsels or treats adults in Iowa shall indicate on the renewal application completion of two hours of training in dependent adult abuse identification and

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph 'e.'

"c. A licensee who, in the scope of professional practice or in the course of employment, examines, attends, counsels or treats both adults and children in Iowa shall indicate on the renewal application completion of training in abuse identification and reporting for dependent adults and children in the previous five years or condition(s) for waiver of this requirement as identified in paragraph 'e.'

"Training may be completed through separate courses as identified in paragraphs "a" and "b" or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse. The course shall be a curriculum approved by the Iowa department of public health abuse education review panel."

An amendment to subparagraph 262.3(2)"f"(2) was added to change the continuing education credit for mandatory reporting from three hours to four hours.

These amendments were adopted by the Iowa Board of Respiratory Care Examiners on January 16, 2004.

These amendments will become effective March 10, 2004.

These amendments are intended to implement Iowa Code chapters 21, 147, 152B and 272C.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [260.4, 260.6, 261.8, 261.11 to 261.13, 262.3(2)"f"(2), Ch 263, 264.1] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 2860B**, IAB 10/15/03.

[Filed 1/14/04, effective 3/10/04]
[Published 2/4/04]

[For replacement pages for IAC, see IAC Supplement 2/4/04.]

ARC 3150B**PUBLIC HEALTH
DEPARTMENT[641]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 139A.4 and 2003 Iowa Acts, chapter 33, the Department of Public Health hereby amends Chapter 1, "Notification and Surveillance of Reportable Communicable and Infectious Diseases, Poisonings and Conditions," Iowa Administrative Code.

The amendments clarify and establish the following:

1. The process for reporting to the Department confirmed or suspected cases of quarantinable diseases, other diseases that carry serious consequences or spread rapidly, common source epidemic or disease outbreaks of unusual numbers or under unusual circumstances, and other reportable diseases.

2. The necessary assistance from health care providers and public, private, or hospital clinical laboratories in gathering information to conduct investigations of reportable diseases.

3. The provision for examination, testing, and treatment of an individual or contact with a suspected or active quarantinable disease.

4. The provisions, conditions and principles for quarantine or isolation of individuals or groups of individuals with suspected or active quarantinable disease.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 10, 2003, as **ARC 2979B**. The Department received comments from the Iowa Health System, Iowa Hospital Association, and University of Iowa Health Care. The following changes from the Notice have been made as a result of comments received.

In rule 1.1(139A), the definition of "survey" was not adopted and a definition of "'suspected' or 'suspected case'" was added.

In rule 1.4(135,139A), all references to survey(s) were omitted; paragraph "b" of subrule 1.4(1) was reworded to clarify reporting of other diseases by telephone; and subrule 1.4(2) was reworded to clarify reporting by mail and the provision for the Department to request reporting by telephone if reporting by mail hinders the application of control measures to protect the public.

In rule 1.9(135,139A), the following changes were made:

In paragraph 1.9(1)"a," the following language was added: "in accordance with guidance from a local health department or the department."

In paragraph 1.9(1)"b," language was added to direct the referring health care provider or facility to notify the receiving health care provider or facility of the suspicious abnormality.

In paragraph 1.9(1)"c," minor changes were made to the paragraph, and the following language was added: "upon order of the department or local board of health."

In subrule 1.9(10), the following sentence was added: "When imposing isolation or quarantine, the department shall coordinate with the local health department as appropriate."

The State Board of Health adopted these amendments on January 14, 2004.

These amendments will become effective on March 10, 2004.

These amendments are intended to implement Iowa Code chapter 139A and section 135.11(4) and 2003 Iowa Acts, chapter 33.

The following amendments are adopted.

ITEM 1. Amend rule **641—1.1(139A)** by adding the following **new** definitions in alphabetical order:

"Investigation" means an inquiry conducted to determine the specific source, mode of transmission, and cause of a disease or suspected disease occurrence and to determine the specific incidence, prevalence, and extent of the disease in the affected population. "Investigation" may also include the application of scientific methods and analysis to institute appropriate control measures.

"Isolation" means the separation of persons or animals presumably or actually infected with a communicable disease, or that are disease carriers, for the usual period of communicability of that disease. Isolation shall be in such places, marked by placards if necessary, and under such conditions to prevent the direct or indirect conveyance of the infectious agent or contagion to susceptible individuals.

"Local board of health" means a county, city, or district board of health.

"Public health disaster" means an incident as defined in Iowa Code Supplement section 135.140.

"Quarantinable disease" means any communicable disease which presents a risk of serious harm to public health and which may require isolation or quarantine to prevent its spread. "Quarantinable disease" includes but is not limited

PUBLIC HEALTH DEPARTMENT[641](cont'd)

to cholera; diphtheria; infectious tuberculosis; plague; smallpox; yellow fever; viral hemorrhagic fevers, including Lassa, Marburg, Ebola, Crimean-Congo, South American, and others not yet isolated or named; and severe acute respiratory syndrome (SARS).

“Quarantine” means the limitation of freedom of movement of persons or animals that have been exposed to a communicable disease, within specified limits marked by placards, for a period of time equal to the longest usual incubation period of the disease. The limitation of movement shall be in such manner as to prevent the spread of a communicable disease.

“Suspected” or “suspected case” means an individual that presents with clinical signs or symptoms indicative of a reportable or quarantinable disease.

ITEM 2. Rescind rule 641—1.4(139A) and adopt the following **new** rule in lieu thereof:

641—1.4(135,139A) Reporting and investigation.

1.4(1) Reporting by telephone.

a. Quarantinable diseases. A health care provider and a public, private, or hospital clinical laboratory shall immediately report any confirmed or suspected case of quarantinable disease by telephone to the department’s disease notification hotline at 1-800-362-2736. The report shall include all information required by Iowa Code section 139A.3 and the following:

- (1) The stage of the disease process.
- (2) Clinical status.
- (3) Any treatment provided for the disease.
- (4) All household and other known contacts.
- (5) Whether household and other known contacts have been examined and the results of such examinations.

b. Other diseases that carry serious consequences or spread rapidly. A health care provider and a public, private, or hospital clinical laboratory shall immediately report any confirmed or suspected case of a common source epidemic or disease outbreak of unusual numbers by telephone to the department’s disease notification hotline at 1-800-362-2736.

1.4(2) Reporting of other reportable diseases. Cases of other reportable diseases and conditions not included in 1.4(1) shall be reported to the department at least weekly by mail, telephone or facsimile. If the department determines that reporting by mail hinders the application of organized control measures to protect the public health, the department may require that the disease or condition be reported by telephone.

1.4(3) Investigation of reportable diseases. A health care provider and a public, private, or hospital clinical laboratory shall assist in a disease investigation conducted by the department, a local board, or local department. A health care provider and a public, private, or hospital clinical laboratory shall provide the department, local board, or local department with all information necessary to conduct the investigation, including but not limited to medical records; exposure histories; medical histories; contact information; and test results necessary to the investigation, including positive, pending, and negative test results.

ITEM 3. Rescind rule 641—1.9(139A) and adopt the following **new** rule in lieu thereof:

641—1.9(135,139A) Quarantine and isolation.

1.9(1) Examination, testing and treatment of quarantinable diseases.

a. A health care provider who attends an individual with a suspected or active quarantinable disease shall make all

reasonable efforts in accordance with guidance from a local health department or the department to examine or cause all household and other known contacts of the individual to be examined by a physician. The physician shall promptly report to the department the results of such examination. If the individual refuses or is unable to undergo examination, the health care provider shall promptly report such information to the department.

b. When required by the department, all contacts not examined by a physician, including all adult and minor contacts, shall submit to a diagnostic test or tests. If any suspicious abnormality is found, steps satisfactory to the department shall be taken to refer the individual promptly to a physician or appropriate medical facility for further evaluation and, if necessary, treatment. The referring health care provider or facility shall notify the receiving health care provider or facility of the suspicious abnormality. When requested by the department, a physician shall report the results of the examination of a contact to the case or suspected case or incident.

c. Upon order of the department or local board of health, an individual with a suspected or active quarantinable disease shall not attend the workplace or school and shall not be present at other public places until the individual receives the approval of the department or a local board of health to engage in such activity. Upon order of the department or local board of health, employers, schools and other public places shall exclude an individual with a suspected or active quarantinable disease. An individual may also be excluded from other premises or facilities if the department or a local board of health determines the premises or facilities cannot be maintained in a manner adequate to protect others against the spread of the disease.

1.9(2) General provisions.

a. Voluntary confinement. Prior to instituting mandatory isolation or quarantine pursuant to this rule, the department or a local board of health may request that an individual or group of individuals voluntarily confine themselves to a private home or other facility.

b. Quarantine and isolation. The department and local boards of health are authorized to impose and enforce quarantine and isolation restrictions. Quarantine and isolation shall rarely be imposed by the department or by local boards of health. If a quarantinable disease occurs in Iowa, individuals with a suspected or active quarantinable disease and contacts to the case may be quarantined or isolated as the particular situation requires. Any quarantine or isolation imposed by the department or a local board of health shall be established and enforced in accordance with this rule.

1.9(3) Conditions and principles. The department and local boards of health shall adhere to all of the following conditions and principles when isolating or quarantining individuals or a group of individuals:

a. The isolation or quarantine shall be by the least restrictive means necessary to prevent the spread of a communicable or possibly communicable disease to others and may include, but not be limited to, confinement to private homes, other private premises, or public premises.

b. Isolated individuals shall be confined separately from quarantined individuals.

c. The health status of isolated or quarantined individuals shall be monitored regularly to determine if the individuals require further or continued isolation or quarantine.

d. If a quarantined individual subsequently becomes infected or is reasonably believed to have become infected with

PUBLIC HEALTH DEPARTMENT[641](cont'd)

a communicable or possibly communicable disease, the individual shall be promptly removed to isolation.

e. Isolated or quarantined individuals shall be immediately released when the department or local board of health determines that the individuals pose no substantial risk of transmitting a communicable or possibly communicable disease.

f. The needs of isolated or quarantined individuals shall be addressed in a systematic and competent fashion including, but not limited to, providing adequate food; clothing; shelter; means of communicating with those in and outside of isolation or quarantine; medication; and competent medical care.

g. The premises used for isolation or quarantine shall be maintained in a safe and hygienic manner and shall be designed to minimize the likelihood of further transmission of infection or other harm to isolated or quarantined individuals.

h. To the extent possible, cultural and religious beliefs shall be considered in addressing the needs of individuals in isolation or quarantine premises and in establishing and maintaining the premises.

1.9(4) Isolation or quarantine premises.

a. Sites of isolation or quarantine shall be prominently placarded with isolation or quarantine signs prescribed and furnished by the department and posted on all sides of the building wherever access is possible.

b. An individual subject to isolation or quarantine shall obey the rules and orders of the department or the local board of health and shall not go beyond the isolation or quarantine premises.

c. The department or a local board of health may authorize physicians, health care workers, or others access to individuals in isolation or quarantine as necessary to meet the needs of isolated or quarantined individuals.

d. No individual, other than an individual authorized by the department or a local board of health, shall enter isolation or quarantine premises. If the department has requested the assistance of law enforcement in enforcing the isolation or quarantine, the department shall provide law enforcement personnel with a list of individuals authorized to enter the isolation or quarantine premises.

e. Any individual entering an isolation or quarantine premises with or without authorization of the department or a local board of health may be isolated or quarantined pursuant to this rule.

1.9(5) Isolation and quarantine by local boards of health.

a. A local board of health may:

(1) Isolate individuals who are presumably or actually infected with a quarantinable disease;

(2) Quarantine individuals who have been exposed to a quarantinable disease;

(3) Establish and maintain places of isolation and quarantine; and

(4) Adopt emergency rules and issue orders as necessary to establish, maintain, and enforce isolation or quarantine.

b. Isolation and quarantine undertaken by a local board of health shall be accomplished according to the rules and regulations of the local board of health so long as such rules are not inconsistent with this chapter.

1.9(6) Isolation and quarantine by the Iowa department of public health.

a. Authority.

(1) The department, through the director, the department's medical director, or the director's or medical director's designee, may:

1. Isolate individuals or groups of individuals who are presumably or actually infected with a quarantinable disease; and

2. Quarantine individuals or groups of individuals who have been exposed to a quarantinable disease, including individuals who are unable or unwilling to undergo examination, testing, vaccination, or treatment, pursuant to 2003 Iowa Acts, chapter 33.

(2) The department may:

1. Establish and maintain places of isolation and quarantine; and

2. Adopt emergency rules and issue orders as necessary to establish, maintain, and enforce isolation or quarantine.

(3) Isolation and quarantine undertaken by the department, including isolation and quarantine undertaken by the department in the event of a public health disaster, shall be established pursuant to paragraph 1.9(6)“b” or “c.”

b. Temporary isolation and quarantine without notice. The department may temporarily isolate or quarantine an individual or groups of individuals through an oral order, without notice, only if delay in imposing the isolation or quarantine would significantly jeopardize the department's ability to prevent or limit the transmission of a communicable or possibly communicable disease to others. If the department imposes temporary isolation or quarantine of an individual or groups of individuals through an oral order, the department shall issue a written order as soon as is reasonably possible and in all cases within 24 hours of issuance of the oral order if continued isolation or quarantine is necessary to prevent or limit the transmission of a communicable or possibly communicable disease.

c. Written order. The department may isolate or quarantine an individual or groups of individuals through a written order issued pursuant to this rule.

(1) The written order shall include all of the following:

1. The identity of the individual, individuals, or groups of individuals subject to isolation or quarantine.

2. The premises subject to isolation or quarantine.

3. The date and time at which isolation or quarantine commences.

4. The suspected communicable disease.

5. A description of the less restrictive alternatives that were attempted and were unsuccessful, or the less restrictive alternatives that were considered and rejected, and the reasons such alternatives were rejected.

6. A statement of compliance with the conditions and principles for isolation and quarantine specified in subrule 1.9(3).

7. The legal authority under which the order is requested.

8. The medical basis upon which isolation or quarantine is justified.

9. A statement advising the individual, individuals, or groups of individuals of the right to appeal the written order pursuant to subrule 1.9(7) and the rights of individuals and groups of individuals subject to quarantine and isolation as listed in subrule 1.9(8).

10. A copy of this chapter and the relevant definitions of this rule.

(2) A copy of the written order shall be provided to the individual to be isolated or quarantined within 24 hours of issuance of the order in accordance with any applicable process authorized by the Iowa Rules of Civil Procedure. If the order applies to a group or groups of individuals and it is impractical to provide individual copies, the order may be

PUBLIC HEALTH DEPARTMENT[641](cont'd)

posted in a conspicuous place in the isolation or quarantine premises.

1.9(7) Appeal from order imposing isolation or quarantine.

a. Contested case. The subject of a department order imposing isolation or quarantine may appeal a written order and has the right to a contested case hearing regarding such appeal. The subject of a department order imposing isolation or quarantine may appeal the order by submitting a written appeal within ten days of receipt of the written order. The appeal shall be addressed to the Department of Public Health, Division of Epidemiology, Emergency Medical Services, and Disaster Operations, Lucas State Office Building, Des Moines, Iowa 50319-0075. Unless stayed by order of the director or a district court, the written order for quarantine or isolation shall remain in force and effect until the appeal is finally determined and disposed of upon its merits.

b. Presiding officer. The presiding officer in a contested case shall be the director or the director's designee. The director or the director's designee may be assisted by an administrative law judge in conducting the contested case hearing. The decision of the director or the director's designee shall be the department's final decision and is subject to judicial review in accordance with the provisions of Iowa Code chapter 17A.

c. Proceeding. The contested case hearing shall be conducted in accordance with the provisions contained at 641—Chapter 173. The hearing shall be held as soon as is practicable, and in no case later than ten days from the date of receipt of the appeal. The hearing may be held by telephonic or other electronic means if necessary to prevent additional exposure to the communicable or possibly communicable disease. In extraordinary circumstances and for good cause shown, the department may apply to continue the hearing date for up to ten additional days on a petition filed pursuant to this rule. The presiding officer may use discretion in granting a continuance giving due regard to the rights of the affected individuals, the protection of the public's health, and the availability of necessary witnesses and evidence.

d. Judicial review. The aggrieved party to the final decision of the department may petition for judicial review of that action pursuant to Iowa Code chapter 17A. Petitions for judicial review shall be filed within 30 days after the decision becomes final.

e. Immediate judicial review of department order. The department acknowledges that in certain circumstances the subject or subjects of a department order may desire immediate judicial review of a department order in lieu of proceeding with the contested case process. The department recognizes that the procedural step of pursuing exhaustion of administrative remedies may be inadequate for purposes of Iowa Code section 17A.19, and the department may consent to immediate jurisdiction of the district court when requested by the subject or subjects of a department order and justice so requires. Unless stayed by order of the director or a district court, the written order for quarantine or isolation shall remain in force and effect until the judicial review is finally determined and disposed of upon its merits.

1.9(8) Rights of individuals and groups of individuals subject to isolation or quarantine. Any individual or group of individuals subject to isolation or quarantine shall have the following rights:

- a. The right to be represented by legal counsel.
- b. The right to be provided with prior notice of the date, time, and location of any hearing.
- c. The right to participate in any hearing. The hearing may be held by telephonic or other electronic means if neces-

sary to prevent additional exposure to the communicable or possibly communicable disease.

d. The right to respond and present evidence and argument on the individual's own behalf in any hearing.

e. The right to cross-examine witnesses who testify against the individual.

f. The right to view and copy all records in the possession of the department which relate to the subject of the written order.

1.9(9) Consolidation of claims. In any proceeding brought pursuant to this rule, to promote the fair and efficient operation of justice and having given due regard to the rights of the affected individuals, the protection of the public's health, and the availability of necessary witnesses and evidence, the department or a court may order the consolidation of individual claims into group claims, if all of the following conditions exist:

a. The number of individuals involved or to be affected is so large that individual participation is impractical.

b. There are questions of law or fact common to the individual claims or rights to be determined.

c. The group claims or rights to be determined are typical of the affected individuals' claims or rights.

d. The entire group will be adequately represented in the consolidation.

1.9(10) Implementation and enforcement of isolation and quarantine.

a. Jurisdictional issues. The department has primary jurisdiction to isolate or quarantine individuals or groups of individuals if the communicable disease outbreak has affected more than one county or has multicounty, statewide, or interstate public health implications. When imposing isolation or quarantine, the department shall coordinate with the local health department as appropriate. If isolation or quarantine is imposed by the department, a local board of health or local health department may not alter, amend, modify, or rescind the isolation or quarantine order.

b. Assistance of local boards of health and local health departments. If isolation or quarantine is imposed by the department, the local boards of health and the local health departments in the affected areas shall assist in the implementation of the isolation or quarantine order.

c. Assistance of law enforcement. Pursuant to Iowa Code section 135.35, all peace officers of the state shall enforce and execute a lawful department order for isolation or quarantine within their respective jurisdictions. The department shall take all reasonable measures to minimize the risk of exposure to peace officers and others assisting with enforcement of an isolation or quarantine order.

d. Penalty. Pursuant to Iowa Code section 135.38, any individual who knowingly violates a lawful department order for isolation or quarantine, whether written or oral, shall be guilty of a simple misdemeanor. The court-ordered sentence may include a fine of up to \$500 and imprisonment not to exceed 30 days.

e. Enforcement action. The department may file a civil action in Polk County district court to enforce a department order for isolation or quarantine. Such action shall be filed in accordance with Iowa Rules of Civil Procedure.

ITEM 4. Amend **641—Chapter 1**, implementation clause, as follows:

These rules are intended to implement *Iowa Code Supplement sections 135.140, 135.144, and 139A.2* and Iowa Code sections ~~135.11(4), 135.100 to 135.103, 139A.2, 139A.3,~~

PUBLIC HEALTH DEPARTMENT[641](cont'd)

139A.4, 139A.5, 139A.9, 139A.21, 139A.31, 139A.37,
141A.1, 141A.2 and 141A.5.

[Filed 1/16/04, effective 3/10/04]

[Published 2/4/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC
Supplement 2/4/04.

ARC 3149B

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code Supplement section 135.24, the Department of Public Health hereby rescinds Chapter 88, "Volunteer Health Care Provider Program," Iowa Administrative Code, and adopts new Chapter 88 with the same title.

The rules in current Chapter 88 describe the eligibility of health care providers who provide free health care services through qualified programs to be defended and indemnified by the state of Iowa. New Chapter 88 adds psychologists, bachelor social workers, master social workers, independent social workers, marital and family therapists, mental health counselors, and pharmacists to the health care provider professions eligible for the program. New Chapter 88 also allows for eligible free clinics to apply for and receive clinic liability coverage. In addition, this new chapter further clarifies the rules included in current Chapter 88, which is being rescinded.

Notice of Intended Action was published in the November 26, 2003, Iowa Administrative Bulletin as **ARC 2975B**. Written or oral comments were submitted by individuals representing free medical clinics, the Iowa Medical Society, the Iowa Free Clinics Coalition, social workers, physician assistants, the Iowa Physician Assistant Society, and the Board of Medical Examiners. In response to those comments, the following changes from the Notice have been made.

- In 88.1(135), the definition of "volunteer health care provider" has been revised to include bachelor social workers and to change the reference to physician assistants from "practicing under a supervising physician" to "practicing under the supervision of a physician" to be consistent with Iowa Code section 148C.4 as amended by 2003 Iowa Acts, chapter 93, section 10.

- In 88.3(1)"a"(1), the Health Care Integrity and Protection Data Bank has been removed from the data bank information required for physicians and dentists.

- In 88.3(1)"a"(2), bachelor social workers have been added to the list of licensees eligible for protection.

- The entire text of 88.3(1)"a"(4) has been incorporated into 88.3(1)"a," introductory paragraph, for improved organization of information and now follows directly after "The applicant shall hold an active unrestricted license to practice in Iowa under Iowa Code chapter 148, 148C, 150, 150A, 151, 152, 153, 154B, 154C, 154D, or 155A."

- In 88.3(1)"b"(5) and 88.4(3)"e," the phrase "The public health purpose" has been changed to "A public health purpose" because there may be more than one public health purpose.

- In 88.4(6)"d," the requirement for retention of records for adults has been changed from six years to seven years, as the statute of limitations allows an additional year for execu-

tors to file suit in the case of a deceased patient. The requirement for retention of records for minors remains unchanged.

- In 88.5(1)"d"(1), the health care services for physicians and physician assistants has been revised to read "well-child examinations, annual adult examinations, diagnosis and treatment of acute and chronic conditions, health education, health maintenance, immunizations, and minor surgical procedures." The reference to minor surgical procedures that are provided by physicians and physician assistants should be consistent with those provided by advanced registered nurse practitioners. Minor surgical procedures are numerous and subject to change and should not be listed by procedure.

- In 88.5(1)"d"(8), the language has been changed to more specifically describe the services provided by psychologists.

- In 88.5(1)"d," health care services of bachelor social workers have been added in new 88.5(1)"d"(9), and subsequent subparagraphs have been renumbered accordingly.

- In 88.5(1)"d"(12) and (13), the language has been changed to more specifically describe the services provided by marital and family therapists and mental health counselors, respectively.

- In 88.5(1)"d"(14), covered health care services of pharmacists have been revised to add the words "and education" to the phrase "health screenings," and the subrule now reads as follows: "Pharmacists: for drug dispensing, patient counseling, health screenings and education, and immunizations."

- In 88.8(2), "volunteer health care provider" has been removed from the list of participants required "to take reasonable steps to prevent further or other injury from arising out of the same or similar incidents, situations or conditions, upon obtaining knowledge or becoming aware of an injury."

- In 88.10(135), the second sentence has been clarified by adding the phrase "of eligibility or registration." The sentence now reads as follows: "This does not preclude emergency summary suspension of eligibility or registration where appropriate under Iowa Code section 17A.18."

- To improve the organization of information regarding denial of registration, subrules 88.11(1) and 88.11(2), formerly contained in rule 88.11(135), effect of suspension or revocation, have been incorporated into new rule 88.12(135), registration denied. Rules 88.12(135) to 88.14(135) have been renumbered as 88.13(135) to 88.15(135).

- In 88.15(135), reporting requirements have been revised to remove the categories "patients by name," "volunteer health care provider name," and "health care services provided by the volunteer health care provider" from the required report. Aggregate information of numbers of patients served by the free clinic and of patient demographics by age, ethnicity and insurance status is required quarterly.

The following comments did not result in changes to the Notice:

- In 88.1(135), the definition of "charitable organization" requires the organization to have as its primary purpose the sponsorship or support of programs designed to improve the quality, awareness and availability of health care services to children and to serve as a funding mechanism for provision of health care services, including but not limited to immunizations, to children in this state. Free clinics report that they no longer find that this is their primary purpose. They do, however, see many adult parents of children covered by HAWK-I. A request was received for the removal of the requirement that children be the primary purpose of the organization. This revision would require a statutory change.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

- Requests for the addition of definitions of “emergency,” “reasonable grounds,” and “injury,” to 88.1(135) were received, but the definitions have not been added. “Emergency” is clearly covered in the agreement issued by VHCPP.

- A request was made to revise 88.3(1) because it requires more of licensees applying for the VHCPP than licensees that are state employees. However, the subrule has not been changed because requirements may vary among different government agencies.

- Paragraph 88.5(1)“c” and subrule 88.6(1) address covered health care services and defense and indemnification being limited to situations in which services were provided “by or under the direct supervision of the volunteer health care provider.” A comment was received that the program should defend and indemnify volunteer providers who are brought into a lawsuit by virtue of their volunteer work at the free clinic regardless of whether or not they are directly providing or supervising care. This coverage is described in the agreement issued by VHCPP and will not be included in Chapter 88.

- A request was made for 88.5(2) to include a process for determination, approval, or further definition because the phrase “excluding experimental procedures or procedures and treatments which lack sufficient evidence of clinical effectiveness” includes terms that are subjective in nature. The appropriate licensing board is relied upon for input in this situation.

- A comment stated that 88.6(135) should further clarify the state’s extension of the defense and indemnification to volunteers other than registered clinics and registered volunteer health care providers. The chapter clearly states in 88.4(6)“e” that only the volunteer health care provider is afforded protection under Iowa Code section 135.24.

- A comment was received regarding now renumbered 88.12(1), appeal procedure for denied registration, indicating that licensing boards should not have to prove their recommendation to deny nor have to share investigative materials before formal board action. This subrule will remain unchanged.

- A comment was received that the rules may need to address subrogation or how the program interacts if the provider/clinic has other professional liability insurance. The rules are not revised, as the definition of “indemnify” in 88.1(135) clarifies this information.

The State Board of Health adopted this amendment on January 14, 2004.

This amendment will become effective March 10, 2004.

This amendment is intended to implement Iowa Code Supplement section 135.24.

The following amendment is adopted.

Rescind 641—Chapter 88 and adopt the following **new** chapter in lieu thereof:

CHAPTER 88
VOLUNTEER HEALTH CARE
PROVIDER PROGRAM

641—88.1(135) Definitions. For the purpose of these rules, the following definitions shall apply:

“Charitable organization” means a charitable organization within the meaning of Section 501(c)(3) of the Internal Revenue Code which has as its primary purpose the sponsorship or support of programs designed to improve the quality, awareness, and availability of health care services to children and to serve as a funding mechanism for provision of health care

services, including but not limited to immunizations, to children in this state.

“Defend” means that the office of the attorney general shall provide the volunteer health care provider with legal representation at no cost to the volunteer health care provider.

“Department” means the Iowa department of public health.

“Eligibility agreement” means a signed contract, providing for defense and indemnification, between a volunteer health care provider or free clinic and the volunteer health care provider program (VHCPP).

“Free clinic” means a facility, other than a hospital or health care provider’s office, which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and which has as its sole purpose the provision of health care services without charge to individuals who are otherwise unable to pay for the services.

“Health care facility” means a residential care facility, a nursing facility, an intermediate care facility for persons with mental illness, or an intermediate care facility for persons with mental retardation.

“Health care services” means services received from a volunteer health care provider at a qualified program as provided in Iowa Code Supplement section 135.24 and these rules, and approved in a VHCPP eligibility or sponsor agreement.

“Indemnify” means that the state of Iowa shall pay all sums that the volunteer health care provider or free clinic holding an eligibility agreement with the VHCPP is legally obligated to pay as damages because of any claim made against the volunteer health care provider or free clinic which arises out of the provision of free health care services rendered or which should have been rendered by the volunteer health care provider or free clinic.

“Sponsor agreement” means a signed contract, providing for VHCPP participation by individual health care providers of free health care services, between a hospital, clinic, free clinic, health care facility, health care referral program, or charitable organization and the VHCPP.

“Volunteer health care provider” means a physician licensed pursuant to Iowa Code chapter 148, 150 or 150A; a physician assistant licensed pursuant to Iowa Code chapter 148C and practicing under the supervision of a physician; a chiropractor licensed pursuant to Iowa Code chapter 151; an advanced registered nurse practitioner, a licensed practical nurse or a registered nurse licensed pursuant to Iowa Code chapter 152; a dentist, dental assistant, or dental hygienist licensed or registered pursuant to Iowa Code chapter 153; a psychologist licensed pursuant to Iowa Code chapter 154B; a bachelor social worker, a master social worker, or an independent social worker licensed pursuant to Iowa Code chapter 154C; a marital and family therapist or mental health counselor licensed pursuant to Iowa Code chapter 154D; or a pharmacist licensed pursuant to Iowa Code chapter 155A, who has executed an eligibility agreement with the VHCPP.

“Volunteer health care provider program” or “VHCPP” means the volunteer health care provider program of the department.

641—88.2(135) Purpose. The VHCPP is established to defend and indemnify eligible volunteer health care providers and eligible free clinics providing free health care services through qualified programs as provided in Iowa Code Supplement section 135.24 and these rules.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

641—88.3(135) Eligibility for defense and indemnification coverage.

88.3(1) Volunteer health care provider eligibility. To be eligible for protection as an employee of the state under Iowa Code chapter 669 for a claim arising from covered health care services, a volunteer health care provider shall satisfy each of the following conditions at the time of the act or omission allegedly resulting in injury:

a. The applicant shall hold an active unrestricted license to practice in Iowa under Iowa Code chapter 148, 148C, 150, 150A, 151, 152, 153, 154B, 154C, 154D, or 155A. The applicant shall provide a sworn statement attesting that the license to practice is free of restrictions. The statement shall describe any disciplinary action that has ever been taken against the health care provider by any professional licensing authority or health care facility, including any voluntary surrender of license or other agreement involving the health care provider's license to practice or any restrictions on practice, suspension of privileges, or other sanctions. The statement shall also describe any malpractice suits that have been filed against the health care provider. The statement provided by a pharmacist volunteer health care provider shall also describe any disciplinary action that has ever been taken against any pharmacy in which the pharmacist has ever been owner, partner, or officer.

(1) Every physician and dentist shall authorize the release of information allowing certified statements to be sent to the board of medical examiners or board of dental examiners from the National Practitioner Data Bank, the Federation of State Medical Boards Disciplinary Data Bank, or State Dental Boards Disciplinary Data Bank, as appropriate, setting forth any malpractice judgment or award or disciplinary action involving the physician or dentist.

(2) Every chiropractor, bachelor social worker, master social worker, independent social worker, marriage and family therapist, mental health counselor, physician assistant, psychologist, licensed practical nurse, registered nurse, and advanced registered nurse practitioner shall request certified statements directly from the National Practitioner Data Bank—Health Care Integrity and Protection Data Bank setting forth any malpractice judgment or award or disciplinary action involving the requester, shall pay the cost for such certified statements and shall submit such certified statements as part of the VHCPP application. Every chiropractor shall also authorize the release of information allowing certified statements to be sent to the board of chiropractic examiners from the Chiropractic Information Network/Board Action Database (CINBAD) setting forth any malpractice judgment or award or disciplinary action involving the chiropractor.

(3) Every pharmacist shall authorize the release of information allowing certified statements to be sent to the board of pharmacy examiners from the National Association of Boards of Pharmacy setting forth any disciplinary action involving the pharmacist or any pharmacy in which the pharmacist has ever been owner, partner, or officer, and the pharmacist shall pay the cost for such certified statements. Every pharmacist shall also authorize the release of information from the pharmacist's malpractice insurance carrier to be sent to the board of pharmacy examiners, and the pharmacist shall pay the cost for such release. Information released from the pharmacist's malpractice insurance carrier shall include either the history and details of all claims that have been filed on behalf of the pharmacist or any pharmacy in which the pharmacist has ever been owner, partner, or officer, or confirmation that there have been no claims.

b. Application. The applicant shall submit the following information on forms provided by the VHCPP:

- (1) The patients to be served;
- (2) The health care services to be provided;
- (3) The site where health care services are to be provided;
- (4) The days and maximum number of hours when the free health care services will be provided each month at each site;

(5) A public health purpose that shall be served by the provision of free health care services to the patients in question.

c. The applicant shall submit a certified statement, which shall be submitted on forms provided by the VHCPP, attesting that the volunteer health care provider agrees to:

(1) Cooperate fully with the state in the defense of any claim or suit relating to participation in the VHCPP, including attending hearings, depositions and trials and assisting in securing and giving evidence, responding to discovery and obtaining the attendance of witnesses.

(2) Accept financial responsibility for personal expenses and costs incurred in the defense of any claim or suit related to participation in the VHCPP, including travel, meals, compensation for time and lost practice, and copying costs, and agree that the state will not compensate the volunteer health care provider for the volunteer health care provider's expenses or time needed for the defense of the claim or suit.

(3) Receive no direct monetary compensation of any kind for services provided in the VHCPP program.

(4) Comply with the eligibility agreement with the VHCPP concerning approved health care services and programs.

d. The applicant shall have a signed and current eligibility agreement with the VHCPP which identifies the covered health care services within the respective scope of practice and conditions of defense and indemnification as provided in rules 88.5(135) and 88.6(135). The eligibility agreement shall:

(1) Provide that the volunteer health care provider shall perform only those health care services identified and approved by the VHCPP;

(2) Identify the sponsor program, approved by the VHCPP through an application process, through which the health care services will be provided;

(3) Identify by category the patient groups to be served and the need for provision of free health care services;

(4) Identify the sites at which the free health care services will be provided;

(5) Identify the maximum amount of time the free health care services will be provided at the identified sites by the volunteer health care provider each month;

(6) Provide that the volunteer health care provider shall maintain proper records of the health care services; and

(7) Provide that the volunteer health care provider shall make no representations concerning eligibility for the VHCPP or eligibility of services for indemnification by the state except as authorized by the department.

88.3(2) Free clinic eligibility. To be eligible for protection as a state agency under Iowa Code chapter 669 for a claim arising from the provision of covered health care services at the free clinic, a free clinic shall satisfy each of the following conditions at the time of the act or omission allegedly resulting in injury:

a. The free clinic shall comply with subrules 88.4(1) through 88.4(6).

b. The free clinic shall provide a list of all health care providers who volunteer at the clinic.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

c. The free clinic shall submit proof that each health care professional volunteering at the free clinic either:

(1) Holds a current eligibility agreement with the VHCPP, or

(2) Holds current professional liability insurance coverage and an active unrestricted license to practice in Iowa under Iowa Code chapter 148, 148C, 150, 150A, 151, 152, 153, 154B, 154C, 154D, or 155A.

d. The free clinic shall submit a list of the clinic board of directors and contact information for the board of directors.

e. The free clinic shall submit proof of Section 501(c)(3) status.

641—88.4(135) Sponsor program eligibility. As a condition of sponsoring health care providers in the VHCPP, a hospital, clinic, free clinic, health care facility, health care referral program, or charitable organization shall satisfy each of the following conditions:

88.4(1) Licensure. The applicant program shall be licensed to the extent required by law for the facility in question.

88.4(2) If the program is a charitable organization within the meaning of Section 501(c)(3) of the Internal Revenue Code, the organization shall provide proof of Section 501(c)(3) status to the VHCPP.

88.4(3) Application. The applicant program shall submit the following information on forms provided by the VHCPP:

- a. The patients to be served;
- b. The health care services to be provided;
- c. The site where health care services are to be provided;
- d. The days and times when health care services are to be provided at each site;
- e. A public health purpose that shall be served by the provision of free health care services to the patients in question.

88.4(4) Certified statement. The applicant program shall submit a certified statement, which shall be submitted on forms provided by the VHCPP, attesting that the applicant program and its staff, employees and volunteers agree to:

- a. Cooperate fully with the state in the defense of any claim or suit relating to participation in the VHCPP, including attending hearings, depositions and trials and assisting in securing and giving evidence, responding to discovery and obtaining the attendance of witnesses;
- b. Accept financial responsibility for the applicant program's expenses and costs incurred in the defense of any claim or suit related to participation in the VHCPP, including travel, meals, compensation for time and lost practice, and copying costs, and agree that the state will not compensate the applicant program for expenses or time needed for the defense of the claim or suit;
- c. Receive no direct monetary compensation of any kind for health care services provided in the applicant program;
- d. Comply with the agreement with the VHCPP concerning approved health care services and programs.

88.4(5) General liability insurance. The applicant program shall submit proof of general liability insurance for the clinic site.

88.4(6) Agreement. A signed and current agreement shall exist with the VHCPP which shall:

- a. Provide that the applicant program shall perform only those health care services identified and approved by the VHCPP;
- b. Identify by category the patient groups to be served and the need for provision of free health care services;
- c. Identify the sites at which the free health care services will be provided;

d. Provide that the applicant shall maintain proper records of health care services for a period of seven years from the date of service or, in the case of a minor, for a period of one year after the minor has reached the age of majority; and

e. Provide that the applicant agrees that only the volunteer health care provider is afforded protection under Iowa Code section 135.24, and that the state assumes no obligation to the program, its employees, officers, or agents, unless the program is registered as an eligible free clinic in accordance with subrule 88.3(2).

641—88.5(135) Covered health care services. A volunteer health care provider holding a current eligibility agreement with the VHCPP shall be afforded the protection of an employee of the state under Iowa Code chapter 669 and a free clinic holding a current eligibility agreement with the VHCPP shall be afforded protection as an agency of the state under Iowa Code chapter 669, only for claims for injury proximately caused by a health care provider's provision of covered health care services.

88.5(1) Covered health care services are only those that are:

- a. Identified in the eligibility agreement with the VHCPP;
- b. In compliance with these rules;
- c. Provided by or under the direct supervision of the volunteer health care provider;
- d. Health care services of:

(1) Physicians and physician assistants for: well-child examinations, annual adult examinations, diagnosis and treatment of acute and chronic conditions, health education, health maintenance, immunizations, and minor surgical procedures.

(2) Chiropractors for: examinations, diagnosis and treatment, health education and health maintenance.

(3) Licensed practical nurses and registered nurses for: well-child examinations, annual adult examinations, treatment of acute and chronic conditions, health education, health maintenance, and immunizations.

(4) Advanced registered nurse practitioners for: well-child examinations, annual adult examinations, diagnosis and treatment of acute and chronic conditions, health education, health maintenance, immunizations and minor surgical procedures.

(5) Dentists for: dental examinations, diagnosis and treatment of acute and chronic conditions, health education, health maintenance and minor surgical procedures.

(6) Dental assistants for: intraoral services, extraoral services, infection control, radiography and removal of plaque or stain by toothbrush, floss, or rubber cup coronal polish.

(7) Dental hygienists for: assessments and screenings, health education, health maintenance and preventive services (cleaning, X-rays, sealants, fluoride treatments, fluoride varnish).

(8) Psychologists for: counseling and the use of psychological remedial measures with persons with adjustment or emotional problems.

(9) Bachelor social workers for: services which are within the scope of practice as defined by Iowa Code chapter 154C and the administrative rules which implement that chapter.

(10) Master social workers for: services which are within the scope of practice as defined by Iowa Code chapter 154C and the administrative rules which implement that chapter.

(11) Independent social workers for: services which are within the scope of practice as defined by Iowa Code chapter

PUBLIC HEALTH DEPARTMENT[641](cont'd)

154C and the administrative rules which implement that chapter.

(12) Marital and family therapists for: marital and family therapy.

(13) Mental health counselors for: mental health counseling.

(14) Pharmacists for: drug dispensing, patient counseling, health screenings and education, and immunizations.

88.5(2) Experimental procedures or procedures and treatments which lack sufficient evidence of clinical effectiveness are excluded from the program.

641—88.6(135) Defense and indemnification. The state shall defend and indemnify a volunteer health care provider or a free clinic for a claim arising from the VHCPP only to the extent provided by Iowa Code chapter 669 and Iowa Code Supplement section 135.24. Persons or entities other than the participating volunteer health care provider or free clinic are not considered state employees or state agencies under Iowa Code chapter 669. Defense and indemnification of the volunteer health care provider under Iowa Code chapter 669 and Iowa Code Supplement section 135.24 shall occur only if all of the following requirements are met:

88.6(1) The claim involves injury proximately caused by covered health care services which were identified and approved in the eligibility agreement with the VHCPP and then only to the extent the health care services were provided by or under the direct supervision of the volunteer health care provider, including claims based on negligent delegation of health care.

88.6(2) The claim arises from covered health care services that were performed at a site identified and approved in the eligibility agreement with the VHCPP.

88.6(3) The claim arises from covered health care services provided through a qualified program identified and approved in the volunteer health care provider's eligibility agreement with the VHCPP and which meets the requirements of rule 88.3(135).

88.6(4) The volunteer health care provider, free clinic, or sponsor program that provided the health care services receives no direct monetary compensation of any kind or promise to pay compensation for the health care services which resulted in injury.

88.6(5) The health care services are provided to a patient who is a member of a patient group identified in the eligibility agreement with the VHCPP.

88.6(6) The volunteer health care provider, free clinic, or sponsor program is eligible and registered as provided in rule 88.3(135).

641—88.7(135) Term of agreement.

88.7(1) Volunteer health care provider. The eligibility agreement with the VHCPP shall expire two years from the date of execution. Volunteer health care providers may apply for renewal by filing an application at least 30 days prior to expiration of the eligibility agreement.

88.7(2) Free clinic liability. The eligibility agreement with the VHCPP shall expire two years from the date of execution. The free clinic may apply for renewal by filing an application at least 30 days prior to expiration of the eligibility agreement.

88.7(3) Sponsor program. The sponsor agreement with the VHCPP shall expire two years from the date of execution. Sponsor programs may apply for renewal by filing an application at least 30 days prior to expiration of the sponsor agreement.

641—88.8(135) Reporting requirements and duties.

88.8(1) Upon obtaining knowledge or becoming aware of any injury allegedly arising out of the negligent rendering of, or the negligent failure to render, covered health care services under this program, a participating volunteer health care provider, free clinic, or sponsor program shall provide written notice to the VHCPP, as soon as practicable, containing, to the extent obtainable, the circumstance of the alleged injury, the names and addresses of the injured, and any other relevant information.

88.8(2) Upon obtaining knowledge or becoming aware of an injury as defined in subrule 88.8(1), the participating free clinic or sponsor program shall promptly take all reasonable steps to prevent further or other injury from arising out of the same or similar incidents, situations or conditions.

88.8(3) A participating volunteer health care provider, free clinic, or sponsor program shall immediately notify the Iowa Department of Justice, Special Litigation Division, Hoover State Office Building, Des Moines, Iowa 50319, of service or receipt of an original notice, petition, suit or claim seeking damages from the volunteer health care provider, free clinic or sponsor program related to participation in the VHCPP.

641—88.9(135) Revocation of eligibility and registration.

The VHCPP may suspend, revoke, or condition the eligibility and registration of a volunteer health care provider, free clinic or sponsor program for cause, including but not limited to:

1. Failure to comply with the eligibility or sponsor agreement with the VHCPP.

2. Violation of state law governing the respective scope of practice or other law governing the health care services provided under the VHCPP.

3. Making false, misleading, or fraudulent statements in connection with the VHCPP, including determination of eligibility of the health care provider, free clinic or sponsor program or handling of a claim against the health care provider, free clinic, sponsor program or the state.

4. Evidence of substance abuse or intoxication affecting the provision of health care services under the VHCPP.

5. Reasonable grounds to believe that the volunteer health care provider may have provided incompetent or inadequate care to a patient under the VHCPP or is likely to do so.

6. Reasonable grounds to believe that the volunteer health care provider's, free clinic's, or sponsor program's participation in the VHCPP may expose the state to undue risk.

7. Failure to immediately notify the VHCPP of any disciplinary action brought against the volunteer health care provider by the licensing board.

641—88.10(135) Procedure for revocation of eligibility and registration.

A proceeding for revocation of a volunteer health care provider's eligibility and registration or a free clinic's or sponsor program's eligibility and registration for participation shall be conducted as a contested case proceeding pursuant to Iowa Code chapter 17A and 641 IAC 173. This does not preclude emergency summary suspension of eligibility or registration where appropriate under Iowa Code section 17A.18. The VHCPP shall immediately notify the appropriate licensing board and the appropriate approved free clinic or sponsor program of revocation of a volunteer health care provider's registration.

641—88.11(135) Effect of suspension or revocation. If the VHCPP suspends or revokes a volunteer health care provider's or free clinic's eligibility, the action shall suspend or revoke future eligibility, but shall not negate defense and indemnification coverage for covered acts or omissions which

PUBLIC HEALTH DEPARTMENT[641](cont'd)

occurred during the effective dates of the eligibility agreement.

641—88.12(135) Registration denied.

88.12(1) Registration denied—appeal procedure. An applicant who has been denied registration by the VHCPP may appeal the denial and request a hearing on the issues related to the denial by serving a notice of the appeal and request for hearing to the Director, Iowa Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075, in writing, not more than 30 days following the date of the mailing of the notification of registration denial to the applicant or not more than 30 days following the date upon which the applicant was served notice if notification was made in the manner of service of an original notice. The request for hearing shall specifically delineate the facts to be contested and determined at the hearing.

88.12(2) Registration denied—hearing. If an applicant who has been denied registration by the VHCPP appeals the registration denial and requests a hearing pursuant to subrule 88.12(1), the hearing and subsequent procedures shall be pursuant to Iowa Code chapter 17A and 641 IAC 173.

641—88.13(135) Board notice of disciplinary action. The applicable state licensing board shall notify the VHCPP of the initiation of a contested case against a registered volunteer health care provider or the imposition of disciplinary action, including providing copies of any contested case decision or settlement agreement with the volunteer health care provider upon request of the VHCPP.

641—88.14(135) Effect of eligibility certification. The certification of a volunteer health care provider or free clinic

as eligible for participation in the VHCPP by the applicable state licensing board and the department is solely a determination that the state will defend and indemnify the volunteer health care provider or the eligible free clinic to the extent provided by Iowa Code Supplement section 135.24 and these rules. The certification is not an approval or indication of ability or competence and may not be represented as such. The hospital, clinic, free clinic, health care facility, health care referral program, or charitable organization through which the volunteer health care provider provides free health care services shall retain responsibility for determining that health care personnel are competent and capable of adequately performing the health care services to be provided.

641—88.15 (135) Reporting by volunteer health care provider and program. Within 60 days following each calendar quarter, the free clinic or program shall provide a report to the VHCPP. A reporting form will be provided by the VHCPP to the participating free clinic or sponsor program at the time the eligibility or sponsor agreement is approved by the VHCPP. At a minimum, the report shall include the number of free clinic patients receiving free health care services and patient demographics by age, ethnicity, and insurance status.

These rules are intended to implement Iowa Code Supplement section 135.24.

[Filed 1/16/04, effective 3/10/04]

[Published 2/4/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/4/04.

IOWA ADMINISTRATIVE BULLETIN
Customer Service Center
Department of Administrative Services
Hoover State Office Building, Level A
Des Moines, Iowa 50319

PRSRT STD
U.S. Postage
PAID
Des Moines, Iowa
Permit No. 1195
