



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

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

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

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)“a”]; agricultural credit corporation maximum loan rates [535.12]; and regional banking—notice of application and hearing [524.1905(2)].

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

KATHLEEN K. WEST, Administrative Code Editor
STEPHANIE A. HOFF, Deputy Editor

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CITATION of Administrative Rules

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

441 IAC 79	(Chapter)
441 IAC 79.1(249A)	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)“a”	(Paragraph)
441 IAC 79.1(1)“a”(1)	(Subparagraph)

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

Schedule for Rule Making 2007

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 27 '06	Jan. 17 '07	Feb. 6 '07	Feb. 21 '07	Feb. 23 '07	Mar. 14 '07	Apr. 18 '07	July 16 '07
Jan. 12	Jan. 31	Feb. 20	Mar. 7	Mar. 9	Mar. 28	May 2	July 30
Jan. 26	Feb. 14	Mar. 6	Mar. 21	Mar. 23	Apr. 11	May 16	Aug. 13
Feb. 9	Feb. 28	Mar. 20	Apr. 4	Apr. 6	Apr. 25	May 30	Aug. 27
Feb. 23	Mar. 14	Apr. 3	Apr. 18	Apr. 20	May 9	June 13	Sept. 10
Mar. 9	Mar. 28	Apr. 17	May 2	May 4	May 23	June 27	Sept. 24
Mar. 23	Apr. 11	May 1	May 16	***May 16***	June 6	July 11	Oct. 8
Apr. 6	Apr. 25	May 15	May 30	June 1	June 20	July 25	Oct. 22
Apr. 20	May 9	May 29	June 13	June 15	July 4	Aug. 8	Nov. 5
May 4	May 23	June 12	June 27	***June 27***	July 18	Aug. 22	Nov. 19
May 16	June 6	June 26	July 11	July 13	Aug. 1	Sept. 5	Dec. 3
June 1	June 20	July 10	July 25	July 27	Aug. 15	Sept. 19	Dec. 17
June 15	July 4	July 24	Aug. 8	Aug. 10	Aug. 29	Oct. 3	Dec. 31
June 27	July 18	Aug. 7	Aug. 22	***Aug. 22***	Sept. 12	Oct. 17	Jan. 14 '08
July 13	Aug. 1	Aug. 21	Sept. 5	Sept. 7	Sept. 26	Oct. 31	Jan. 28 '08
July 27	Aug. 15	Sept. 4	Sept. 19	Sept. 21	Oct. 10	Nov. 14	Feb. 11 '08
Aug. 10	Aug. 29	Sept. 18	Oct. 3	Oct. 5	Oct. 24	Nov. 28	Feb. 25 '08
Aug. 22	Sept. 12	Oct. 2	Oct. 17	Oct. 19	Nov. 7	Dec. 12	Mar. 10 '08
Sept. 7	Sept. 26	Oct. 16	Oct. 31	Nov. 2	Nov. 21	Dec. 26	Mar. 24 '08
Sept. 21	Oct. 10	Oct. 30	Nov. 14	***Nov. 14***	Dec. 5	Jan. 9 '08	Apr. 7 '08
Oct. 5	Oct. 24	Nov. 13	Nov. 28	Nov. 30	Dec. 19	Jan. 23 '08	Apr. 21 '08
Oct. 19	Nov. 7	Nov. 27	Dec. 12	***Dec. 12***	Jan. 2 '08	Feb. 6 '08	May 5 '08
Nov. 2	Nov. 21	Dec. 11	Dec. 26	***Dec. 26***	Jan. 16 '08	Feb. 20 '08	May 19 '08
Nov. 14	Dec. 5	Dec. 25	Jan. 9 '08	Jan. 11 '08	Jan. 30 '08	Mar. 5 '08	June 2 '08
Nov. 30	Dec. 19	Jan. 8 '08	Jan. 23 '08	Jan. 25 '08	Feb. 13 '08	Mar. 19 '08	June 16 '08
Dec. 12	Jan. 2 '08	Jan. 22 '08	Feb. 6 '08	Feb. 8 '08	Feb. 27 '08	Apr. 2 '08	June 30 '08
Dec. 26	Jan. 16 '08	Feb. 5 '08	Feb. 20 '08	Feb. 22 '08	Mar. 12 '08	Apr. 16 '08	July 14 '08

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
20	Friday, March 9, 2007	March 28, 2007
21	Friday, March 23, 2007	April 11, 2007
22	Friday, April 6, 2007	April 25, 2007

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*****

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The Administrative Rules Review Committee will hold a special meeting on Friday, March 2, 2007, at 8 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Motor vehicle fuel and antifreeze tests and standards, 85.33,
Notice ARC 5569B, Terminated ARC 5723B 2/28/07

ARCHITECTURAL EXAMINING BOARD[193B]

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DENTAL EXAMINERS BOARD[650]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"
 Licensure; registration; continuing education; dental assistant radiography;
 board referral to practitioner review committee, 1.1, 11.6(2)"h" to "m,"
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 Dental and dental hygiene examinations, 12.2, 12.4, Notice ARC 5730B 2/28/07
 Continuing education credit for Iowa jurisprudence courses,
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EDUCATION DEPARTMENT[281]"umbrella"
 International teacher exchange license, 14.120(4), Filed ARC 5757B 2/28/07
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 Exceptional learner program, 14.123(3), 15.1(1)"c," 15.10(2)"d," 15.12(2)"d," Filed ARC 5760B 2/28/07
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 Substitute authorization for paraeducators, 14.143, Notice ARC 5764B 2/28/07
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PUBLIC HEALTH DEPARTMENT[641]"umbrella"

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Grounds for discipline—voluntary agreements, 23.1(38), <u>Filed ARC 5746B</u>	2/28/07

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NATURAL RESOURCES DEPARTMENT[561]"umbrella"

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also Filed Emergency **ARC 5718B** 2/28/07

County grant program for veterans, ch 12, Notice **ARC 5721B,** also Filed Emergency **ARC 5720B** 2/28/07

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

Regular, statutory meetings are held the second Tuesday of each month at the seat of government as provided in Iowa Code section 17A.8. A special meeting may be called by the Chair at any place in the state and at any time.

EDITOR'S NOTE: Terms ending April 30, 2007.

Senator Michael Connolly
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Dubuque, Iowa 52001

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Burlington, Iowa 52601

Senator John P. Kibbie
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Mt. Pleasant, Iowa 52641

Representative David Jacoby
2308 North Ridge Drive
Coralville, Iowa 52241

Representative Linda Upmeyer
2175 Pine Avenue
Garner, Iowa 50438

Representative Philip Wise
503 Grand Avenue
Keokuk, Iowa 52632

James Larew
Administrative Rules Coordinator
Governor's Ex Officio Representative
Capitol, Room 11
Des Moines, Iowa 50319
Telephone (515)281-0208

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
CORRECTIONS DEPARTMENT[201]		
Organization and procedures, 1.1 to 1.8 IAB 2/14/07 ARC 5707B	First Floor Conference Room 510 E. 12th St. Des Moines, Iowa	March 6, 2007 1 to 3 p.m.
Visits to offenders, 20.2, 20.3, 20.5 IAB 2/14/07 ARC 5708B	First Floor Conference Room 510 E. 12th St. Des Moines, Iowa	March 6, 2007 1 to 3 p.m.
DENTAL EXAMINERS BOARD[650]		
Public health settings, 10.5(1) IAB 2/28/07 ARC 5726B	Conference Room, Suite D 400 SW 8th St. Des Moines, Iowa	March 20, 2007 2 p.m.
Dental and dental hygiene examinations, 12.2, 12.4 IAB 2/28/07 ARC 5730B	Conference Room, Suite D 400 SW 8th St. Des Moines, Iowa	March 20, 2007 2 p.m.
EDUCATIONAL EXAMINERS BOARD[282]		
Substitute authorization for paraeducators, 14.143 IAB 2/28/07 ARC 5764B	Rm. 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	March 21, 2007 1 p.m.
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Controlling pollution—permitting exemption, 22.1(2)“nn” IAB 1/31/07 ARC 5694B	Conference Rooms Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	March 5, 2007 2 p.m.
Controlling pollution—regional haze regulations, 22.9 IAB 1/31/07 ARC 5695B	Conference Rooms Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	March 2, 2007 10 a.m.
Ambient air quality—statewide standards, 28.1 IAB 1/31/07 ARC 5692B	Conference Rooms Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	March 5, 2007 1 p.m.
Wastewater construction and operation permits, 64.3(4), 64.6, 64.15 IAB 2/28/07 ARC 5753B	Fifth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	March 30, 2007 9 a.m.
Financial assurance for sanitary landfills, amendments to chs 103 to 106, 112, 114, 115, 118, 120 to 123 IAB 1/3/07 ARC 5633B	Fifth Floor West Conference Rm. Wallace State Office Bldg. Des Moines, Iowa	March 28, 2007 10 a.m. to 12 noon

HISTORICAL DIVISION[223]

Historical resource development program grants, ch 49 IAB 2/28/07 ARC 5759B	Third Floor West, Tone Board Rm. Historical Bldg. 600 E. Locust St. Des Moines, Iowa	March 21, 2007 10 a.m.
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LABOR SERVICES DIVISION[875]

Open records; amusement rides; asbestos removal, 1.12(3), 61.2(9), 155.1 IAB 2/28/07 ARC 5756B	Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa	March 21, 2007 9 a.m. (If requested)
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MEDICAL EXAMINERS BOARD[653]

Administrative and regulatory authority, 1.3(5), 1.6, 1.9 IAB 2/28/07 ARC 5722B	Board Office, Suite C 400 SW 8th St. Des Moines, Iowa	March 20, 2007 3 p.m.
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RACING AND GAMING COMMISSION[491]

General, 1.5(1), 4.4(4), 4.6(8), 5.4(14), 6.4(2), 10.4(17), 10.7, 11.4(4), 11.9(1), 12.14(7) IAB 2/14/07 ARC 5705B	Suite B 717 E. Court Des Moines, Iowa	March 6, 2007 9 a.m.
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REGENTS BOARD[681]

Admission of undergraduate students, 1.1 IAB 2/28/07 ARC 5748B (ICN Network)	Room 8, Building 6 DMACC 2006 S. Ankeny Blvd. Ankeny, Iowa	March 30, 2007 4 to 6 p.m.
	Room 160, Scheman Bldg. Iowa State Center, ISU Corner of Elwood and Lincoln Way Ames, Iowa	March 30, 2007 4 to 6 p.m.
	Room 107, North Hall University of Iowa End of North Madison St. Iowa City, Iowa	March 30, 2007 4 to 6 p.m.
	Room 130A, Schindler Hall University of Northern Iowa Corner of Hudson Rd. and 23rd St. Cedar Falls, Iowa	March 30, 2007 4 to 6 p.m.
	Room 1, Southern Prairie AEA 15 2814 N. Court St. Ottumwa, Iowa	March 30, 2007 4 to 6 p.m.
	ICN Rm., Burlington High School 421 Terrace Dr. Burlington, Iowa	March 30, 2007 4 to 6 p.m.

REGENTS BOARD[681] (Cont'd)

Rm. 12, Ft. Dodge High School 819 N. 25th St. Ft. Dodge, Iowa	March 30, 2007 4 to 6 p.m.
Rm. 1, Old Hospital Iowa Braille and Sight Saving School 1002 G Ave. Vinton, Iowa	March 30, 2007 4 to 6 p.m.
Rm. A-123, Dubuque High School 1800 Clarke Dr. Dubuque, Iowa	March 30, 2007 4 to 6 p.m.
Rm. 215, Sioux City East High School 5011 Mayhew Ave. Sioux City, Iowa	March 30, 2007 4 to 6 p.m.
Rm. 2, Iowa School for the Deaf 3501 Harry Langdon Blvd. Council Bluffs, Iowa	March 30, 2007 4 to 6 p.m.

TRANSPORTATION DEPARTMENT[761]

Public improvement quotation process for governmental entities, ch 180 IAB 2/28/07 ARC 5724B	First Floor S. Conference Rm. Administration Bldg., DOT 800 Lincoln Way Ames, Iowa	March 22, 2007 10 a.m. (If requested)
Interstate for-hire carriers, 529.1 IAB 2/14/07 ARC 5715B	DOT Conf. Rm., Park Fair Mall 100 Euclid Ave. Des Moines, Iowa	March 8, 2007 10 a.m. (If requested)

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]

War orphans educational assistance fund, 1.10, ch 9 IAB 2/28/07 ARC 5719B (See also ARC 5718B herein)	Bldg. A6A, Camp Dodge 7105 NW 70th Ave. Johnston, Iowa	March 22, 2007 10 a.m.
County grant program for veterans, ch 12 IAB 2/28/07 ARC 5721B (See also ARC 5720B herein)	Bldg. A6A, Camp Dodge 7105 NW 70th Ave. Johnston, Iowa	March 20, 2007 10 a.m.

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

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

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

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

The following list will be updated as changes occur:

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 Bureau[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]
 Interior Design Examining Board[193G]
 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]
 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]

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]
NATURAL RESOURCES DEPARTMENT[561]
 Energy and Geological Resources Division[565]
 Environmental Protection Commission[567]
 Natural Resource Commission[571]
 Preserves, State Advisory Board for[575]
PETROLEUM UNDERGROUND STORAGE TANK FUND
 BOARD, IOWA COMPREHENSIVE[591]
PREVENTION OF DISABILITIES POLICY COUNCIL[597]
PUBLIC DEFENSE DEPARTMENT[601]
 Homeland Security and Emergency Management Division[605]
 Military Division[611]
PUBLIC EMPLOYMENT RELATIONS BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
 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]
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, IOWA DEPARTMENT OF[801]
VETERINARY MEDICINE BOARD[811]
VOLUNTEER SERVICE, IOWA COMMISSION ON[817]
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]

ARC 5723B**AGRICULTURE AND LAND
STEWARDSHIP DEPARTMENT[21]****Notice of Termination**

Pursuant to the authority of Iowa Code sections 159.5(11) and 214A.2, the Department of Agriculture and Land Stewardship terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on November 22, 2006, as **ARC 5569B**, amending Chapter 85, "Weights and Measures," Iowa Administrative Code.

The Notice proposed to amend Chapter 85 by updating the references to uniform industry standards for motor fuel and antifreeze as mandated by Iowa Code section 214A.2.

The Department is terminating the rule making commenced in **ARC 5569B** because, simultaneously with its filing, the rule was also Adopted and Filed Emergency as **ARC 5570B**. The Department has concluded the public participation portion of the noticed rule making and did not receive any comments on the rule. As a result, the Department does not intend to make any modifications to the rule that was Adopted and Filed Emergency as **ARC 5570B**.

ARC 5726B**DENTAL EXAMINERS BOARD[650]****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 Dental Examiners hereby gives Notice of Intended Action to amend Chapter 10, "General Requirements," Iowa Administrative Code.

The amendment adds nursing facilities to the list of public health settings where public health supervision of a dental hygienist may take place.

This amendment is subject to waiver or variance pursuant to 650—Chapter 7.

Any interested person may make written comments or suggestions on the proposed amendment on or before March 20, 2007. Such written comments should be directed to Jennifer Hart, Executive Officer, Board of Dental Examiners, 400 SW 8th Street, Suite D, Des Moines, Iowa 50309-4687. E-mail may be sent to Jennifer.Hart@iowa.gov.

Also, there will be a public hearing on March 20, 2007, beginning at 2 p.m. in the Board Conference Room, 400 SW 8th Street, Suite D, Des Moines, Iowa. 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 person who plans to attend the public hearing and who may have special requirements, such as those related to hearing or mobility impairments, should contact the Board and advise of specific needs.

This amendment was approved at the January 18, 2007, meeting of the Board of Dental Examiners.

This amendment is intended to implement Iowa Code section 153.15.

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

The following amendment is proposed.

Amend subrule 10.5(1) as follows:

10.5(1) Public health settings defined. For the purposes of this rule, public health settings are limited to schools; Head Start programs; federally qualified health centers; public health dental vans; free clinics; nonprofit community health centers; *nursing facilities*; and federal, state, or local public health programs.

ARC 5730B**DENTAL EXAMINERS BOARD[650]****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 Dental Examiners hereby gives Notice of Intended Action to amend Chapter 12, "Dental and Dental Hygiene Examinations," Iowa Administrative Code.

The amendments clarify how examination failures will be counted for dental and dental hygiene examinees. The amendments also specify the requirements for dental and dental hygiene examinees to obtain remedial education following examination failures.

These amendments are subject to waiver or variance pursuant to 650—Chapter 7.

Any interested person may make written comments or suggestions on the proposed amendments on or before March 20, 2007. Such written comments should be directed to Jennifer Hart, Executive Officer, Board of Dental Examiners, 400 SW 8th Street, Suite D, Des Moines, Iowa 50309-4687. E-mail may be sent to Jennifer.Hart@iowa.gov.

Also, there will be a public hearing on March 20, 2007, beginning at 2 p.m. in the Board Conference Room, 400 SW 8th Street, Suite D, Des Moines, Iowa. 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 who may have special requirements, such as those related to hearing or mobility impairments, should contact the Board and advise of specific needs.

These amendments were approved at the January 18, 2007, meeting of the Board of Dental Examiners.

These amendments are intended to implement Iowa Code chapters 147 and 153.

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

The following amendments are proposed.

DENTAL EXAMINERS BOARD[650](cont'd)

ITEM 1. Amend 650—12.2(147,153) as follows:

650—12.2(147,153) System of retaking dental examinations.

12.2(1) Second examination. *Method of counting failures.*

a. ~~On the second examination attempt, a dental examinee shall be required to take only those sections of the examination in which the examinee did not achieve a score of at least 70 percent. If the second examination attempt was taken after April 1, 1995, the dental examinee shall be required to take only those sections of the examination in which the examinee did not achieve a score of at least 75 percent. Beginning January 1, 2001, a dental examinee who did not achieve a comprehensive passing score on the entire examination shall be required to retake the entire examination.~~ *Integrated format.* For the purposes of counting examination failures, the board shall utilize the policies adopted by CRDTS. A dental examinee who has not passed all five parts of the integrated examination format by June 30 following graduation from dental school shall have one examination failure recorded. The dental examinee must then retake all five parts of the examination in the traditional format.

b. *Traditional format.* For the purposes of counting examination failures, the board shall utilize the policies adopted by CRDTS. A dental examinee who fails one or more parts of the examination shall have one examination failure recorded. A dental examinee shall be required to retake only those parts of the examination that the examinee failed. A dental examinee who has not passed all five parts of the examination within the time frame specified by CRDTS shall be required to retake the entire examination.

b c. A dental examinee who fails the second has two examination failures in the traditional format will be required to complete remedial education requirements set forth in subrule 12.2(2).

12.2(2) Third Remedial education required prior to third examination.

a. Prior to the third examination attempt, a dental examinee must submit proof of additional formal education or clinical experience approved in advance by the board.

b. ~~At the third examination, prior to January 1, 2001, the dental examinee will be required to complete only those sections failed on the second attempt. After January 1, 2001, the dental examinee will be required to retake the entire examination.~~ A dental examinee shall be required to retake only those parts of the examination that the examinee failed. However, a dental examinee who has not passed all five parts of the examination within the time frame specified by CRDTS shall be required to retake the entire examination.

12.2(3) Fourth Remedial education required prior to fourth examination.

a. Prior to the fourth examination attempt, a dental examinee must submit proof of satisfactory completion of the equivalent of an additional senior year of an approved curriculum in dentistry at a university or school with an approved curriculum.

b. At the fourth examination, the dental examinee shall be required to retake all sections of the examination only those parts of the examination that the examinee failed. However, a dental examinee who has not passed all five parts of the examination within the time frame specified by CRDTS shall be required to retake the entire examination.

12.2(4) Subsequent failures. For the purposes of additional study prior to retakes, the fifth examination will be considered the same as the third.

12.2(5) Failures of other examinations. If a dental examinee applies for the American Board of Dental Examiners, Inc., the Central Regional Dental Testing Service, Inc., or the Western Regional Examining Board, Inc., examination after having failed any other state or regional examination, the failures shall be considered ADEX, CRDTS, or WREB failures for the purposes of retakes.

ITEM 2. Amend 650—12.4(147,153) as follows:

650—12.4(147,153) System of retaking dental hygiene examinations.

12.4(1) Second examination. *Method of counting failures.*

a. ~~On the second examination attempt, a dental hygiene examinee shall be required to achieve a score of at least 70 percent. Effective January 1, 2004, the examinee must attain a comprehensive score that meets the standard for passing established by ADEX, CRDTS, or WREB. For the purposes of counting examination failures, the board shall utilize the policies adopted by CRDTS.~~

b. A dental hygiene examinee who fails one or both parts of the examination shall have one examination failure recorded. A dental hygiene examinee shall be required to retake only those parts of the examination that the examinee failed. However, a dental hygiene examinee who has not passed both parts of the examination within the time frame specified by CRDTS shall be required to retake the entire examination.

b c. A dental hygiene examinee who fails the second has two examination failures will be required to complete the remedial education requirements set forth in subrule 12.4(2).

12.4(2) Third Remedial education required prior to third examination.

a. Prior to the third examination attempt, a dental hygiene examinee must submit proof of a minimum of 40 hours of additional formal education or a minimum of 40 hours of clinical experience that is approved in advance by the dental hygiene committee.

b. A dental hygiene examinee shall be required to retake only those parts of the examination that the examinee failed. However, a dental hygiene examinee who has not passed both parts of the examination within the time frame specified by CRDTS shall be required to retake the entire examination.

12.4(3) Fourth Remedial education required prior to fourth examination.

a. Prior to the fourth examination attempt, a dental hygiene examinee must submit proof of satisfactory completion of the equivalent of an additional semester of dental hygiene at a university or school approved by the dental hygiene committee.

b. A dental hygiene examinee shall be required to retake only those parts of the examination that the examinee failed. However, a dental hygiene examinee who has not passed both parts of the examination within the time frame specified by CRDTS shall be required to retake the entire examination.

12.4(4) Subsequent failures. For purposes of additional study prior to retakes, the fifth examination will be considered the same as the third.

12.4(5) Failures of other examinations. If a dental hygiene examinee applies for the American Board of Dental Examiners, Inc., the Central Regional Dental Testing Service, Inc., or the Western Regional Examining Board, Inc., examination after having failed any other state or regional examination, the failures shall be considered ADEX, CRDTS, or WREB failures for the purposes of retakes.

ARC 5764B
EDUCATIONAL EXAMINERS
BOARD[282]

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 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Iowa Administrative Code.

The proposed amendment will expand the ability of a paraeducator holding a substitute authorization to work in K-6 special education classrooms.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, March 21, 2007, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

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 amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, March 23, 2007. Written comments and suggestions should be addressed to Barbara F. Hendrickson, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to barbara.hendrickson@iowa.gov, or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

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

The following amendment is proposed.

Amend rule 282—14.143(272), introductory paragraph, as follows:

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

education classroom may be on the elementary school level as well as the middle school, junior high school, or high school level.

ARC 5753B

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.105(3), the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 64, "Wastewater Construction and Operation Permits," Iowa Administrative Code.

Proposed amendments to Chapter 64 reissue General Permit Nos. 1, 2 and 3 which authorize the discharge of storm water. General Permits 1 and 2 were issued in 1992 for a five-year duration, were reissued in 1997 and again in 2002 for additional five-year periods, and expire October 1, 2007. General Permit No. 3 was issued in 1997 for a five-year duration, was reissued in 2002 for an additional five-year period, and expires October 1, 2007. This action will renew all three permits, extending their coverage another five years to October 1, 2012. General permits for storm water discharges are required to be adopted as rules and are effective for no more than five years as specified in the Code of Iowa. Also, the stipulation that storm water discharge may commence 24 hours after the applicant submitted Notice of Intent for Coverage has been removed and replaced with a requirement that discharge not commence until the discharge authorization has been issued by the Department.

Copies of the proposed revised General Permit Nos. 1, 2 and 3 are available upon request from the Department at the address or telephone number below.

The proposed amendments to Chapter 64 also add a provision to subrule 64.6(6) which requires compliance responsibility transfers to be sent to the Department. Since 1999, land developers have been required to notify the Department when responsibility for compliance with the terms of General Permit No. 2 has been contractually transferred to those who have purchased lots within residential or commercial developments. These amendments allow the seller of the lots to transfer responsibility for maintaining permit coverage to the buyer of the lots. The reference to the minimum area required to be permitted is also being changed from five acres to one acre to reflect current federal and state regulation requirements. These amendments also remove the requirement that a Notice of Intent be submitted 24 hours prior to the date operation is to begin and remove the automatic authorization of storm water discharge upon submittal of a complete Notice of Intent.

The fee structure of the current permits has been retained.

It is not the intent of the Department that the textual changes in the general permits be included in the Iowa Administrative Code, but that these changes be made in the general permits themselves which are adopted by reference.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Any interested party may make written comments on the proposed amendments on or before March 30, 2007. Written comments should be directed to Joe Griffin, Storm Water Coordinator, Iowa Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319; fax (515)281-8895. Those who wish to convey their views orally should contact Joe Griffin at (515)281-7017 or at the Department's offices on the fifth floor of the Wallace State Office Building.

A public hearing will be held on March 30, 2007, at 9 a.m. in the Fifth Floor Conference Room of the Wallace State Office Building, at which time comments may be presented orally or submitted in writing.

Anyone who plans to attend the public hearing and has special requirements such as those related to hearing or mobility impairments should contact Joe Griffin and advise of special needs.

These amendments are intended to implement Iowa Code chapter 455B, division III, part 1.

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

The following amendments are proposed.

ITEM 1. Amend subparagraph **64.3(4)“b”(4)** as follows:

(4) For storm water discharge associated with industrial activity which initiates operation after October 1, 1992, with the exception of discharges identified in subparagraphs (2) and (3) of this paragraph, ~~at least 24 hours prior to the date operation is scheduled to begin where storm water discharge associated with industrial activity could occur as defined in rule 567—60.2(455B).~~

ITEM 2. Amend subrule 64.6(2) as follows:

64.6(2) Authorization to discharge under a general permit. Upon the submittal of a complete Notice of Intent in accordance with 64.6(1) and 64.3(4)“b,” the applicant is authorized to discharge, ~~unless notified by the department to the contrary after evaluation of the Notice of Intent by the department is complete and the determination has been made that the contents of the Notice of Intent satisfy the requirements of 567—Chapter 64.~~ The discharge authorization date for all storm water discharges associated with industrial activity that are in existence on or before October 1, 1992, shall be October 1, 1992. The applicant will receive notification by the department of coverage under the general permit. If any of the items required for filing a Notice of Intent specified in 64.6(1) are missing, the department will consider the application incomplete and will notify the applicant of the incomplete items.

ITEM 3. Amend subrule 64.6(6) as follows:

64.6(6) Transfer of ownership—construction activity part of a larger common plan of development. For construction activity which is part of a larger common plan of development, such as a housing or commercial development project, in the event a permittee transfers ownership of all or any part of property subject to NPDES General Permit No. 2, both the permittee and transferee shall be responsible for compliance with the provisions of the general permit for that portion of the project which has been transferred, including when the transferred property is less than ~~five acres~~ *one acre* in area, from and after the date the department receives written notice of the transfer, provided that:

a. The transferee is notified in writing of the existence and location of the general permit and pollution prevention

plan, and of the transferee's duty to comply, and proof of such notice is included with the notice to the department of the transfer.

b. If the transferee agrees, in writing, to become the sole responsible permittee for the property which has been transferred, then the transferee shall be solely responsible for compliance with the provisions of the general permit for the transferred property from and after the date the department receives written notice of the transferee's assumption of responsibility.

c. *If the transferee agrees, in writing, to obtain coverage under NPDES General Permit No. 2 for the property which has been transferred, then the transferee is required to obtain coverage under NPDES General Permit No. 2 for the transferred property from and after the date the department receives written notice of the transferee's assumption of responsibility for permit coverage. After the transferee has agreed, in writing, to obtain coverage under NPDES General Permit No. 2 for the transferred property and the department has received written notice of the transferee's assumption of responsibility for permit coverage for the transferred property, the authorization issued under NPDES General Permit No. 2 to the transferor for the transferred property shall be considered by the department as not providing NPDES permit coverage for the transferred property.*

d. *All notices sent to the department as described in this subrule shall contain the name of the development as submitted to the department in the original Notice of Intent and as modified by any subsequent written notices of name changes submitted to the department, the authorization number assigned to the authorization by the department, the legal description of the transferred property including lot number, if any, and any other information necessary to precisely locate the transferred property and to establish the legality of the document.*

ITEM 4. Amend rule 567—64.15(455B) as follows:

Amend subrule 64.15(1) as follows:

64.15(1) Storm Water Discharge Associated with Industrial Activity, NPDES General Permit No. 1, effective October 1, ~~2002~~ 2007, to October 1, ~~2007~~ 2012. Facilities assigned Standard Industrial Classification codes 1442, 2951, and 3273, and those facilities assigned Standard Industrial Classification codes 1422 and 1423 which are engaged primarily in rock crushing are not eligible for coverage under General Permit No. 1.

Amend subrule 64.15(2), introductory paragraph, as follows:

64.15(2) Storm Water Discharge Associated with Industrial Activity for Construction Activities, NPDES General Permit No. 2, effective October 1, ~~2002~~ 2007, to October 1, ~~2007~~ 2012.

Amend subrule 64.15(3) as follows:

64.15(3) Storm Water Discharge Associated with Industrial Activity from Asphalt Plants, Concrete Batch Plants, Rock Crushing Plants, and Construction Sand and Gravel Facilities, NPDES General Permit No. 3, effective October 1, ~~2002~~ 2007, to October 1, ~~2007~~ 2012. General Permit No. 3 authorizes storm water discharges from facilities primarily engaged in manufacturing asphalt paving mixtures and which are classified under Standard Industrial Classification 2951, primarily engaged in manufacturing Portland cement concrete and which are classified under Standard Industrial Classification 3273, those facilities assigned Standard Industrial Classifications 1422 ~~or~~ and 1423 which are primarily engaged in the crushing, grinding or pulverizing of limestone or granite, and construction sand and gravel facilities which

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

are classified under Standard Industrial Classification 1442. General Permit No. 3 does not authorize the discharge of water resulting from dewatering activities at rock quarries.

ARC 5759B

HISTORICAL DIVISION[223]

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 303.1 and 303.1A, the Department of Cultural Affairs hereby gives Notice of Intended Action to rescind Chapter 49, “Historical Resource Development Program,” and adopt new Chapter 49, “Historical Resource Development Program Grants,” Iowa Administrative Code.

The proposed rules delete program details that are unnecessarily specific and limiting at the administrative rules level.

Public comments concerning the proposed amendment will be accepted until 4:30 p.m. on March 21, 2007. Interested persons may submit written or oral comments by contacting Kathy Gourley, Department of Cultural Affairs, Historical Building, 600 East Locust Street, Des Moines, Iowa 50319-0290; fax (515)282-0502; E-mail kathy.gourley@iowa.gov. Persons who wish to convey their views orally should contact the Department of Cultural Affairs at (515) 281-6913.

Also, there will be a public hearing on March 21, 2007, at 10 a.m. at the above address in the Tone Board Room, Third Floor West, 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 rules.

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 Department and advise of specific needs.

This amendment is intended to implement Iowa Code chapter 303.

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

The following amendment is proposed.

Rescind 223—Chapter 49 and adopt the following **new** chapter in lieu thereof:

CHAPTER 49 HISTORICAL RESOURCE DEVELOPMENT PROGRAM GRANTS

223—49.1(303) Purpose. The historical resource development program provides funds to preserve, conserve, interpret and enhance, and to educate the public about, the historical resources of the state. These rules define parameters for the administration of grants through the historical resource development program.

223—49.2(303) Definitions. The definitions listed in Iowa Code section 17A.2 and rules 223—1.2(17A,303), 223—1.6(303), 223—13.2(303), 223—22.2(303), and 223—35.2(303) shall apply to terms as they are used throughout this chapter. In addition, the following definitions apply:

“Conservation” means action to chemically stabilize or physically protect historical documents or artifacts to ensure their long-term survival.

“Documentary collections” means collections of current or historical materials that are or might become valuable in interpreting Iowa history, including but not limited to government records, newspapers, photographic images, electronic records, manuscripts, and printed materials.

“Emergency” means a threat to a historical resource that is not the result of delinquency by the current owner and that requires timely action to prevent immediate loss of the resource.

“Grantee” means any applicant that receives grant funds.

“Historical resource” means any site that is listed by the state historic preservation officer on the National Register of Historic Places or personal property that has inherent historical value due to its association with the history of Iowa or the heritage of Iowa’s people.

“HRDP” means the historical resource development program as established in Iowa Code section 303.16.

“Interpretation” means the presentation of Iowa history to the public through exhibitions, exhibition catalogs, education programs, historical markers, and other appropriate means.

“Preservation” means the stabilization and rehabilitation of a property eligible for or listed on the National Register of Historic Places, or the salvaging or reformatting of information contained in a historical document or artifact by the use of various surrogate media.

“REAP” means the resource enhancement and protection Act as established in Iowa Code section 455A.16.

“REAP/HRDP steering committee” means the historical division’s staff committee appointed by the director and consisting of the grants manager, a division administrator, and professional staff members from historic preservation, museum, and documentary collections interest areas.

223—49.3(303) Funding policies. The grant programs shall be conducted according to published guidelines that outline funding priorities, review criteria, application forms, adjudication processes and grantee requirements. Programs include REAP/HRDP regular grants; REAP/HRDP emergency grants; and country school grants.

49.3(1) Grant programs shall require formal application and review prior to the awarding or denial of any funds. The application and awards process may vary in accordance with the nature and design of each grant program but shall follow published guidelines.

49.3(2) All funded projects shall comply with professional standards for historic preservation, museums, or documentary collections as follows:

a. Historic preservation projects shall adhere to the Secretary of the Interior’s Standards and Guidelines for Archeology and Historic Preservation and the Secretary of the Interior’s Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings.

b. Museum projects shall adhere to applicable national standards or follow technical guidelines generally accepted by the museum profession. Applicants shall demonstrate a commitment to providing, and the ability to provide, care for their collections on a long-term basis.

HISTORICAL DIVISION[223](cont'd)

c. Documentary collections projects shall adhere to national standards, where they apply, or otherwise follow technical guidelines generally accepted by the library, archives, and conservation communities. Applicants shall demonstrate a commitment to providing, and the ability to provide, care for their collections on a long-term basis.

49.3(3) Applications for grants shall be reviewed as follows:

a. Applications for REAP/HRDP emergency grants shall be evaluated by the REAP/HRDP steering committee. Awards shall be determined by majority vote of the steering committee.

b. Applications for REAP/HRDP regular grants and country school grants shall be evaluated by a review panel composed of a minimum of nine members, including at least six public members and three historical division staff members, as follows:

(1) Public members:

1. At least two Iowa museum professionals;
2. At least two members of the Iowa state national register of historic places nominations review committee;
3. At least two members of the Iowa historical records advisory board.

(2) Historical division staff members:

1. One professionally trained museum specialist;
2. One professionally trained historic preservation specialist;
3. One professionally trained archives specialist.

49.3(4) Review criteria scores shall be the official record of the proceedings of a review panel or steering committee meeting. Historical division staff shall, upon request, provide an applicant with a written record of these scores.

49.3(5) The review panel shall make grant award recommendations to the state historical society board of trustees. The state historical society board of trustees shall make grant award recommendations to the administrator of the historical division.

49.3(6) The historical division shall issue contracts for all funds awarded.

49.3(7) No state funds awarded under the historical resource development program shall be used by a grantee to meet the grantee's obligation to match other historical division or cultural affairs department grants or programs.

49.3(8) A grantee shall not utilize historical resource development program funds for any lobbying purpose.

49.3(9) A grantee shall credit the historical resource development program in all promotions, publicity, advertising, and printed materials relating to the grant-supported project, with the following credit line or a reasonable facsimile: "This program is supported in part by the State Historical Society of Iowa, Historical Resource Development Program." Noncompliance with this requirement shall jeopardize future funding of the grantee by the historical division.

49.3(10) The historical division may, for cause, find that a grantee is not in compliance with the requirements of this program or the terms of the contract. At the division's discretion, remedies for noncompliance may include penalties or the repayment of program funds. Reasons for a finding of noncompliance include but are not limited to: the grantee's use of program funds for activities not described in its application or not permitted under the program; the grantee's failure to complete approved activities in a timely manner; the grantee's failure to comply with any applicable professional standards, state rules, or federal regulations; the lack of a continuing capacity on the part of the grantee to carry out

the approved program in a timely manner; or violation of the terms of the contract.

223—49.4(303) Record keeping and retention. Grantees shall keep adequate records relating to the administration of a project, and particularly relating to all expenses incurred. These records shall be available for audit by representatives of the department and the state auditor's office. All records shall be retained in accordance with state laws.

223—49.5(303) Appeals.

49.5(1) Applicants or grantees may appeal a decision of the historical division on any of the following bases:

- a. The action was outside the statutory authority;
- b. The decision was influenced by a conflict of interest;
- c. The action violated state law, administrative rules, or policy;
- d. Insufficient public notice was given; or
- e. Alteration of the review and certification processes was detrimental to the applicant.

49.5(2) Written appeals shall be directed to the director of the department within 30 calendar days of notification of the decision. All appeals shall be mailed to the following address: Director, Department of Cultural Affairs, 600 East Locust Street, Des Moines, Iowa 50319-0290.

49.5(3) All appeals shall contain:

- a. The facts of the case;
- b. An argument in favor of the appeal; and
- c. The remedy sought.

49.5(4) The director of the department of cultural affairs shall consider and rule on the appeal after receiving all documentation from the appellant and shall notify the appellant in writing of the decision within 30 days of receipt of all documentation. The decision of the director of the department of cultural affairs shall be final except as provided in Iowa Code sections 17A.19 and 17A.20.

These rules are intended to implement Iowa Code chapter 303.

ARC 5758B**HUMAN SERVICES
DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 249A.4 and 600.22, the Department of Human Services proposes to amend Chapter 75, "Conditions of Eligibility," and Chapter 201, "Subsidized Adoption," Iowa Administrative Code.

These amendments change the Medicaid eligibility requirements for children who are in state-funded foster care or who receive an adoption subsidy payment. Iowa, along with 46 other states, is a member of the Interstate Compact on Adoption and Medical Assistance. Federal Medicaid regulations require Compact members to provide medical assistance coverage for all children who live in the state and receive an adoption subsidy funded under the federal Foster Care and Adoption Assistance Program (Title IV-E of the So-

HUMAN SERVICES DEPARTMENT[441](cont'd)

cial Security Act), regardless of what state entered into the subsidy agreement.

In 2006 Iowa Acts, chapter 1184, section 10(10), the General Assembly directed the Department to provide medical assistance reciprocity for children who receive an adoption subsidy but who are not eligible for funding under Title IV-E. These amendments provide that Iowa will furnish medical assistance coverage to children who live in Iowa but receive non-IV-E subsidized adoption payments from another state if that state has entered into a reciprocal agreement to do the same for Iowa children in similar circumstances who live in that state. This provision allows the child to be eligible for medical assistance without consideration of the family's income.

Individual states have some options in determining what services are covered under their Medicaid programs, so that coverage in another state may not be identical to the coverage offered by the state that entered into the adoption subsidy agreement. However, because each state requires providers to enroll in that state's program in order to receive medical assistance payments, it may be very difficult to find providers that will agree to enroll with another state to bill services for an individual child. Allowing the adopted child to receive medical assistance through the state where the family resides ensures that the family will have access to medical assistance providers equal to that of other state residents.

These amendments also clarify that children for whom Iowa has foster care adoption subsidy payment responsibility continue to be eligible for Iowa medical assistance even when placed out of state, unless eligible in the other state, pursuant to a reciprocal agreement or otherwise.

These amendments do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before March 21, 2007. Comments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515) 281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code sections 249A.4 and 600.23 and 2006 Iowa Acts, chapter 1184, section 10(10).

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

The following amendments are proposed.

ITEM 1. Amend subrule 75.1(10) as follows:

75.1(10) Individuals under age 21 living in a licensed foster care facility or in a private home pursuant to a subsidized adoption arrangement for whom the department has financial responsibility in whole or in part. ~~Medical~~ *When Iowa is responsible for foster care payment for a child pursuant to Iowa Code section 234.35 and rule 441—156.20(234) or has negotiated an agreement to pay an adoption subsidy for a child pursuant to rule 441—201.5(600), medical assistance will shall be available to all these individuals provided they are the child if:*

a. *The child lives in Iowa and is not otherwise eligible under a category for which federal financial participation is available.; or*

b. *The child lives in another state and is not eligible for benefits from the other state pursuant to a program funded under Title XIX of the federal Social Security Act, notwithstanding the residency requirements of 441—75.10(249A) and 441—75.53(249A).*

ITEM 2. Adopt ~~new~~ subrule 75.1(16) as follows:

75.1(16) Children receiving subsidized adoption payments from states providing reciprocal medical assistance benefits. Medical assistance shall be available to children under the age of 21 for whom an adoption assistance agreement with another state is in effect if all of the following conditions are met:

a. The child is residing in Iowa in a private home with the child's adoptive parent or parents.

b. Benefits funded under Title IV-E of the Social Security Act are not being paid for the child by any state.

c. Another state is currently paying an adoption subsidy for the child.

d. The state paying the adoption subsidy:

(1) Is a member of the interstate compact on adoption and medical assistance (ICAMA); and

(2) Provides medical assistance benefits pursuant to a program funded under Title XIX of the Social Security Act, under the optional group at Section 1902(a)(10)(A)(ii)(VIII) of the Act, to children residing in that state (at least until age 18) for whom there is a state adoption assistance agreement in effect with the state of Iowa other than under Title IV-E of the Social Security Act.

ITEM 3. Amend subrule 201.10(2) as follows:

201.10(2) Non-IV-E-eligible children:

a. Non-IV-E-eligible children from Iowa residing in Iowa shall be covered by Iowa's medical assistance.

b. Non-IV-E-eligible children from Iowa residing in another state shall ~~receive~~ *be covered by Iowa's medical assistance unless eligible for benefits from the other state of residence when the state has adopted the adoption assistance interstate compact and a contract between Iowa and the family's state of residence is completed pursuant to a program funded under Title XIX of the federal Social Security Act. Medical assistance available in the family's state of residence may vary from Iowa's medical assistance.*

c. Non-IV-E-eligible children from another state residing in Iowa shall ~~continue to be covered by the other state's Iowa's~~ *continue to be covered by the other state's Iowa's* medical assistance ~~unless the state has adopted the adoption assistance interstate compact and a contract between Iowa and the other state exists. if all of the following conditions are met:~~

(1) *The child is under the age of 21.*

(2) *The child is residing in Iowa in a private home with the child's adoptive parent or parents.*

(3) *Another state is currently paying an adoption subsidy for the child pursuant to an adoption assistance agreement in effect for the child with that state.*

(4) *The state paying the adoption subsidy is a member of the interstate compact on adoption and medical assistance (ICAMA).*

(5) *The state paying the adoption subsidy provides medical assistance benefits pursuant to a program funded under Title XIX of the Social Security Act, under the optional group at Section 1902(a)(10)(A)(ii)(VIII) of the Act, to children residing in that state (at least until age 18) for whom there is a state adoption assistance agreement in effect with the state of Iowa other than under Title IV-E of the Social Security Act.*

ARC 5756B**LABOR SERVICES DIVISION[875]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 22.11, 88A.3, and 88B.3, the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 1, "Description of Organization and Procedures Before the Division," Chapter 61, "Administration of Iowa Code Chapter 88A," and Chapter 155, "Asbestos Removal and Encapsulation," Iowa Administrative Code.

The proposed amendments delete outdated language relating to asbestos removal projects and requests for access to open records. The proposed amendments also remove from the amusement ride rules a sentence which is inconsistent with the statute.

The purposes of these amendments are to protect the safety and health of the public and to implement legislative intent.

If requested in accordance with Iowa Code section 17A.4(1)"b" by the close of business on March 20, 2007, a public hearing will be held on March 21, 2007, at 9 a.m. in the Capitol View Room at 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendments. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)242-5869 in advance to arrange access or other needed services.

Interested persons may submit written data, views, or arguments to be considered in adoption no later than March 21, 2007, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iwd.iowa.gov.

These amendments are intended to implement Iowa Code chapters 22, 88A, and 88B.

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

The following amendments are proposed.

ITEM 1. Amend subrule 1.12(3) as follows:

1.12(3) Request for access. A request for access to open records shall identify the particular record sought by name or description in order to facilitate the location of the record. ~~The custodian may require a request to be in writing.~~ Written requests shall include the name, address, and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

ITEM 2. Amend subrule 61.2(9) as follows:

61.2(9) Receipt and disbursement. Revenue from permits, annual inspections, reinspections or for any other services or requirements prescribed by the Act or the rules shall be paid to the division. Checks for these fees shall be made

payable to Division of Labor Services and mailed to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. ~~An operator is not required to make payment in any form for any service or any cause or purpose to an inspector or other representative of the commissioner.~~

ITEM 3. Amend rule **875—155.1(88B)**, definition of "asbestos project," as follows:

"Asbestos project" means any activity involving the removal or encapsulation of friable asbestos materials, other releases of asbestos such as by the operation of hand-operated or power-operated tools that may produce or release fibers of asbestos, or other substantial alteration of asbestos-containing, nonfriable material. ~~Any activities that do not qualify as construction pursuant to rule 875—150.2(91C) are not asbestos projects.~~

ARC 5722B**MEDICAL EXAMINERS
BOARD[653]****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 Medical Examiners hereby gives Notice of Intended Action to amend Chapter 1, "Administrative and Regulatory Authority," Iowa Administrative Code.

The Board approved the amendments at its regularly held meeting on February 1, 2007.

The proposed amendments update Chapter 1 as follows:

- Determining eligibility for renewal will be added under the authority of the Board.
- The monitoring committee will no longer oversee allied health issues.
- The dates and locations of Board meetings will be available from the Board's office or on the Board's Web site.
- Cross references will be updated in regard to the method of service, time of filing, and proof of mailing.

Any interested person may present written comments on the proposed amendments not later than 4:30 p.m. on March 20, 2007. Such written materials should be sent to Ann E. Mowery, Executive Director, Board of Medical Examiners, 400 S.W. 8th Street, Suite C, Des Moines, Iowa 50309-4686; or by E-mail to ann.mowery@iowa.gov.

There will be a public hearing on March 20, 2007, at 3 p.m. in the Board office, at which time persons may present their views either orally or in writing. The Board of Medical Examiners' office is located at 400 S.W. 8th Street, Suite C, Des Moines, Iowa.

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

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

The following amendments are proposed.

MEDICAL EXAMINERS BOARD[653](cont'd)

ITEM 1. Amend subrule **1.3(5)**, paragraph “**i**,” as follows:

i. Determine *eligibility for license renewal* and administer the renewal of licenses.

ITEM 2. Amend subrule **1.3(5)**, paragraph “**1**,” subparagraph (4), as follows:

(4) Monitoring committee. The committee oversees the monitoring of *physicians licensees* under board orders and makes recommendations to the board on these matters. The committee’s responsibilities include:

- ~~Serving as a liaison between the board and the board of physician assistant examiners where appropriate.~~

- ~~Reviewing and making recommendations to the full board on all matters relating to the licensure of acupuncturists.~~

ITEM 3. Amend rule 653—1.6(17A) as follows:

653—1.6(17A) Meetings. The board shall meet at least six times per year. Dates and locations of board meetings may be obtained from the board’s office *or on the board’s Web site at www.medicalboard.iowa.gov*.

Except as otherwise provided by statute, all board meetings shall be open, and the public shall be permitted to attend the meetings.

ITEM 4. Amend subrule **1.9(6)**, paragraph “**c**,” as follows:

c. Method of service, time of filing, and proof of mailing. Method of service, time of filing, and proof of mailing shall be as provided by ~~653—12.19(17A)~~ *25.11(17A)*.

ITEM 5. Amend subrule **1.9(8)**, paragraph “**b**,” as follows:

b. The date of issuance of an order or of a refusal to issue an order is as defined in ~~653—subrule 12.11(4)~~ *25.11(4)*.

ARC 5739B

PHARMACY EXAMINERS BOARD[657]

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 Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 8, “Universal Practice Standards,” Iowa Administrative Code.

The amendments were approved at the January 16-17, 2007, regular meeting of the Board of Pharmacy Examiners.

The proposed amendments establish requirements for a continuous quality improvement program or CQI program to be implemented and maintained in each pharmacy that provides pharmaceutical services to patients in Iowa. The CQI program will identify events to be recorded, processes to be followed upon discovery of a reportable event, event analysis and response procedures, and record-keeping requirements. The amendments also establish requirements related to stocking of bulk drug counting machines, establish a deadline for completion of the pharmacy licensure process, and

address a pharmacist’s refusal to fill a prescription or dispense a drug based on various factors including conscientious objection.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on March 30, 2007. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688, or by E-mail to terry.witkowski@iowa.gov.

These amendments are intended to implement Iowa Code sections 147.107, 155A.13, 155A.33, 155A.41.

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

The following amendments are proposed.

ITEM 1. Adopt **new** subrule 8.5(8) as follows:

8.5(8) Bulk counting machines. Unless bar-code scanning is required and utilized to verify the identity of each stock container of drugs utilized to restock a counting machine cell or bin, a pharmacist shall verify the accuracy of the drugs to be restocked prior to filling the counting machine cell or bin. A record identifying the individual who verified the drugs to be restocked, the individual who restocked the counting machine cell or bin, and the date shall be maintained. The pharmacy shall have a method to calibrate and verify the accuracy of the counting device and shall, at least quarterly, verify the accuracy of the device and maintain a dated record identifying the individual who performed the quarterly verification.

ITEM 2. Adopt **new** rule 657—8.10(147,155A) as follows:

657—8.10(147,155A) Refusal to fill prescription or dispense drug. Pharmacy personnel shall assist a patient requesting an unavailable drug, or a patient requesting a drug not provided based on the pharmacist’s conscientious objection and refusal, to identify another pharmacy or other lawful source that may be able to provide the drug.

8.10(1) Discretionary refusal. A pharmacist may exercise discretion and refuse to fill any prescription or dispense any drug based on any of the following factors:

a. The pharmacist is unsatisfied as to the legitimacy or appropriateness of the prescription presented.

b. The pharmacist is unsatisfied as to the validity of any photographic identification.

c. The pharmacist is unsatisfied as to the identity of the patient presenting a prescription or of any person acting on behalf of the patient.

8.10(2) Conscientious objection and refusal. A pharmacist may refuse to fill any prescription based on the pharmacist’s ethical or moral beliefs. The pharmacist shall notify the pharmacist’s employer prior to invoking a conscientious objection to the dispensing of any drug or class of drugs.

ITEM 3. Adopt **new** rule 657—8.26(155A) as follows:

657—8.26(155A) Continuous quality improvement program. Each pharmacy licensed to provide pharmaceutical services to patients in Iowa shall implement or participate in a continuous quality improvement program or CQI program. The CQI program is intended to be an ongoing, systematic

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program of standards and procedures to detect, identify, evaluate, and prevent medication errors, thereby improving medication therapy and the quality of patient care. A hospital pharmacy that participates as an active member of a hospitalwide CQI program that meets the objectives of this rule shall not be required to implement a new program pursuant to this rule.

8.26(1) Reportable program events. For purposes of this rule, a reportable program event or program event means the incorrect dispensing of a prescribed drug that is received by the patient or that is administered to the patient including:

a. A preventable medication error, including but not limited to:

- (1) An incorrect drug;
- (2) An incorrect drug strength;
- (3) An incorrect dosage form;
- (4) A drug received by the wrong patient; or
- (5) Inadequate or incorrect packaging, labeling, or directions.

b. Failure to identify and manage a significant or harmful incidence of:

- (1) Overutilization;
- (2) Therapeutic duplication;
- (3) Drug-disease contraindications;
- (4) Drug-drug interactions;
- (5) Incorrect drug dosage or duration of drug treatment;
- (6) Drug-allergy interactions; or
- (7) Clinical abuse or misuse.

8.26(2) Responsibility. The pharmacist in charge is responsible for ensuring that the pharmacy utilizes a CQI program consistent with the requirements of this rule. The pharmacist in charge may delegate program administration and monitoring, but the pharmacist in charge maintains ultimate responsibility for the validity and consistency of program activities.

8.26(3) Policies and procedures. Each pharmacy shall develop, implement, and adhere to written policies and procedures for the operation and management of the pharmacy's CQI program. A copy of the pharmacy's CQI program description and policies and procedures shall be maintained and readily available to all pharmacy personnel. The policies and procedures shall address, at a minimum, a planned process to:

- a. Train all pharmacy personnel in relevant phases of the CQI program;
- b. Identify and document reportable program events;
- c. Minimize the impact of reportable program events on patients;
- d. Analyze data collected to assess the causes and any contributing factors relating to reportable program events;
- e. Use the findings to formulate an appropriate response and to develop pharmacy systems and workflow processes designed to prevent and reduce reportable program events; and
- f. Periodically, but at least annually, meet with appropriate pharmacy personnel to review findings and inform personnel of changes that have been made to pharmacy policies, procedures, systems, or processes as a result of CQI program findings.

8.26(4) Event discovery and notification. As provided by the procedures of the CQI program, the pharmacist in charge or appropriate designee shall be informed of all reported and documented program events. All pharmacy personnel shall be trained to immediately inform the pharmacist on duty of any discovered or suspected program event. When the pharmacist on duty determines that a reportable program event has occurred, the pharmacist shall ensure that all reasonably necessary steps are taken to remedy any problems or poten-

tial problems for the patient and that those steps are documented. Those steps shall include, at a minimum, the following:

a. Notifying the patient or the patient's caregiver and the prescriber or other members of the patient's health care team as warranted;

b. Identifying and communicating directions or processes for correcting the error; and

c. Communicating instructions for minimizing any negative impact on the patient.

8.26(5) CQI program records. All CQI program records shall be maintained in the pharmacy and be available for inspection and copying by the board or its representative for at least two years from the date of the record. When a reportable program event occurs or is suspected to have occurred as the result of pharmacy operations, the program event shall be documented in a written or electronic storage record created solely for that purpose. Records of program events shall be maintained in an orderly manner and shall be filed chronologically by date of discovery.

a. The program event shall initially be documented as soon as practicable by the staff member who discovers the event or is informed of the event and, if that individual is not a pharmacist, a pharmacist shall be appropriately notified.

b. Program event documentation shall include a description of the event that provides sufficient information to permit categorization and analysis of the event and shall include:

- (1) The date and time the program event was discovered and the name of the staff person who discovered the event;
- (2) The names and titles of the individuals recording and reviewing or analyzing the program event information.

8.26(6) Program event analysis and response. An investigation and analysis of each reportable program event shall commence as soon as is reasonably possible, but no later than two business days following the date the program event is discovered or initially documented. All information and data collected and documented in the course of this investigation shall be analyzed, individually and collectively, to assess the cause and any factors contributing to the program event. The analysis shall include, at a minimum:

a. A consideration of the effects on the quality of the pharmacy system related to workflow processes, technology utilization and support, personnel training, and both professional and technical staffing levels;

b. Any recommendations for remedial changes to pharmacy policies, procedures, systems, or processes; and

c. The development of a set of indicators that a pharmacy will utilize to measure its program standards over a designated period of time.

ITEM 4. Adopt **new** subrule 8.35(8) as follows:

8.35(8) Failure to complete licensure. An application for a pharmacy license, including an application for registration pursuant to 657—Chapter 10, if applicable, will become null and void if the applicant fails to complete the licensure process within six months of receipt by the board of the required applications. The licensure process shall be complete upon the pharmacy's opening for business at the licensed location following an inspection rated as satisfactory by an agent of the board if such an inspection is required pursuant to this rule. When an applicant fails to timely complete the licensure process, fees submitted with applications will not be transferred or refunded.

ARC 5742B**PHARMACY EXAMINERS
BOARD[657]****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 Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 8, "Universal Practice Standards," and to adopt new Chapter 13, "Sterile Compounding Practices," Iowa Administrative Code.

The amendments were approved at the January 16-17, 2007, regular meeting of the Board of Pharmacy Examiners.

The proposed amendments rescind the current rule regarding sterile compounding and adopt a new chapter on the same topic. The new chapter defines terms relating to the sterile compounding of pharmaceuticals and establishes responsibilities relating to training and verifying compounding procedures. Requirements for written policies and procedures, references, containers, and labeling are identified. Preparation risk levels are defined, and requirements unique to each are identified. Physical environment requirements are identified, and environmental monitoring requirements are established. Quality assurance program components are identified.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on March 30, 2007. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by E-mail to terry.witkowski@iowa.gov.

These amendments are intended to implement Iowa Code sections 124.301, 126.10, 155A.2, 155A.4, 155A.13, 155A.13A, and 155A.28.

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

The following amendments are proposed.

ITEM 1. Rescind and reserve rule **657—8.30(126,155A)**.

ITEM 2. Adopt **new** 657—Chapter 13 as follows:

CHAPTER 13**STERILE COMPOUNDING PRACTICES**

657—13.1(124,126,155A) Purpose and scope. These rules establish standards and procedures for the preparation, labeling, and distribution of sterile preparations by licensed pharmacies pursuant to a physician's order or prescription; for sterile product quality and characteristics; and for pharmaceutical care. The standards and procedures outlined in this chapter apply to pharmacy practice when a preparation:

1. Is prepared according to the manufacturer's labeled instructions and requires other manipulations that expose the original contents to potential contamination;

2. Contains nonsterile ingredients or employs nonsterile components or devices that must be sterilized before administration; or

3. Is a biologic, diagnostic, drug, or nutrient that possesses characteristics of either "1" or "2" above and includes, but is not limited to, the following preparations that are required to be sterile when they are administered to patients: baths and soaks for live organs and tissues, injections (e.g., colloidal dispersions, emulsions, solutions, and suspensions), aqueous bronchial and nasal inhalations, irrigations for wounds and body cavities, ophthalmic drops and ointments, and tissue implants.

Standards and safe practices for the compounding of radioactive preparations are identified in 657—Chapter 16.

657—13.2(124,126,155A) Definitions. For the purposes of this chapter, the following definitions shall apply:

"Anteroom" or "ante area" means an ISO Class 8 or superior area where personnel perform hand hygiene and garbing procedures, staging of components, order entry, preparation labeling, and other high-particulate generating activities.

"Aseptic processing" means a method of preparing pharmaceutical products that involves the transfer of the product into the container and closure of the container using procedures designed to preclude contamination of drugs, packaging, equipment, or supplies by microorganisms during processing.

"Beyond-use date" means the date or time following compounding after which the preparation shall not be stored, transported, or administered.

"Biological safety cabinet, Class II or Class III" or "BSC" means a ventilated cabinet having an open front with inward airflow for personnel protection, downward HEPA-filtered laminar airflow for product protection, and HEPA-filtered exhausted air for environmental protection.

"Buffer area" or "cleanroom" means a room or area in which the concentration of airborne particles is controlled to meet an ISO Class 7 standard.

"Compounding" means the constitution, reconstitution, combination, dilution, or other process causing a change in the form, composition, or strength of any ingredient or of any other attribute of a product.

"Compounding aseptic isolator" or "CAI" means a form of barrier isolator specifically designed for compounding pharmaceutical ingredients or preparations.

"Critical surface" means any area that provides an opportunity for exposure to contamination during aseptic processing, including sterilized products, devices, components, and containers used in the preparation, packaging and transferring of compounded sterile preparations.

"Hazardous drug" means a pharmaceutical that is antineoplastic, carcinogenic, mutagenic, or teratogenic.

"HEPA" means high efficiency particulate air.

"High-risk preparation" means a sterile preparation that is compounded from nonsterile ingredients; that is compounded with nonsterile components, containers, or equipment and requires terminal sterilization; or that meets the conditions of rule 13.13(155A).

"ISO Class 5" or "Class 100 condition" means an atmospheric environment that contains less than 100 particles, 0.5 microns in diameter per cubic foot of air, according to federal standards.

"ISO Class 7" or "Class 10,000 condition" means an atmospheric environment that contains less than 10,000 par-

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icles, 0.5 microns in diameter per cubic foot of air, according to federal standards.

“ISO Class 8” or “Class 100,000 condition” means an atmospheric environment that contains less than 100,000 particles, 0.5 microns in diameter per cubic foot of air, according to federal standards.

“Laminar airflow workbench” or “LAFW” means an apparatus designed to provide an ISO Class 5 environment for the preparation of sterile products that uses air circulation in a defined direction that passes through a HEPA filter to remove the initial particles and the particles generated within the controlled environment.

“Low-risk preparation” means a sterile preparation that is compounded with sterile equipment, sterile ingredients, and sterile contact surfaces or that meets the conditions of rule 13.11(155A).

“Medium-risk preparation” means a sterile preparation that is compounded with sterile equipment, sterile ingredients, and sterile contact surfaces and involves complex or numerous manipulations of a sterile product or that meets the conditions of rule 13.12(155A).

“MFT” means a media-fill test as specified in rule 13.25(155A).

“Positive pressure room” means a room that is at a higher pressure compared to adjacent spaces, creating a net airflow out of the room.

“Preparation” or “compounded sterile preparation” means a drug or nutrient that is prepared in a licensed pharmacy or other health care-related facility pursuant to the order of a licensed prescriber, which preparation may or may not be sterile.

“Primary engineering control device” means a device or room that provides an ISO Class 5 environment during the compounding process. Such devices include, but may not be limited to, laminar airflow workbenches (LAFWs), biological safety cabinets (BSCs), and compounding aseptic isolators (CAIs).

“Product” means a commercially manufactured sterile drug or nutrient that has been evaluated for safety and efficacy by the FDA.

“Sterile compounding” means the aseptic processing in a clean air environment of any pharmaceutical including, but not limited to, the following preparations that are required to be sterile when they are administered to patients: baths and soaks for live organs and tissues, injections (e.g., colloidal dispersions, emulsions, solutions, and suspensions), aqueous bronchial and nasal inhalations, irrigations for wounds and body cavities, ophthalmic drops and ointments, and tissue implants.

657—13.3(155A) Responsibilities.

13.3(1) Pharmacist. Each pharmacy shall have a pharmacist responsible for ensuring that:

a. Preparations are accurately identified, measured, diluted, and mixed; and are correctly purified, sterilized, packaged, sealed, labeled, stored, dispensed, and distributed.

b. Appropriate cleanliness conditions are maintained, including preservation of the sterile environment during the compounding process.

c. Beyond-use dates are established based on direct testing or extrapolation from reliable literature sources. The pharmacy shall maintain written justification of the chosen beyond-use date or, if a written standard is not available, a maximum 24-hour expiration shall be used.

d. Equipment, apparatus, and devices used to compound a preparation are consistently capable of operating properly and within acceptable tolerance limits.

13.3(2) In-process checking procedure. Each pharmacy shall establish a written quality assurance procedure that includes the following in-process checks:

a. Appropriate procedures are followed for measuring, mixing, diluting, purifying, sterilizing, packaging, and labeling of the specific preparation.

b. Packaging selection is appropriate to preserve the sterility and strength of the preparation.

c. All functions performed by nonpharmacists are verified by the pharmacist before the preparation is dispensed to the patient.

13.3(3) Training documentation. All personnel involved with compounding, repackaging, or manipulating sterile preparations shall be adequately educated and trained. Training shall include written documentation certifying that compounding personnel are able to adequately complete the following activities:

a. Perform antiseptic hand cleansing and disinfection of nonsterile compounding surfaces.

b. Select and appropriately don protective garb.

c. Maintain or achieve sterility of preparations in ISO Class 5 primary engineering control devices.

d. Identify, weigh, and measure ingredients.

e. Manipulate sterile products aseptically, sterilize high-risk preparations, and label preparations.

f. Protect personnel and compounding environments from contamination by hazardous drugs.

657—13.4 Reserved.

657—13.5(155A) References required. The pharmacy shall have sufficient current reference materials related to sterile products and preparations. References may be printed or computer-accessed. In addition to meeting the requirements set forth in rule 657—6.3(155A), 657—7.3(155A), 657—15.4(155A), or 657—16.5(155A), as applicable, all pharmacies involved in sterile compounding shall maintain a minimum of one current reference, including access to current periodic updates, from each of the following categories:

1. A general information reference.

2. An injectable drug compatibility reference.

3. If the pharmacy is compounding hazardous drugs, a reference related to hazardous drugs.

657—13.6(126,155A) Policies and procedures. A written policy and procedure manual shall be prepared, implemented, maintained, and adhered to for the compounding, dispensing, delivery, administration, storage, and use of sterile preparations. The manual shall establish policies and procedures relating to subjects identified in this and other rules within this chapter.

13.6(1) Quality assurance program. The policy and procedure manual shall include a quality assurance program pursuant to rule 13.31(155A).

13.6(2) Sampling. The policy and procedure manual shall include procedures that require sampling of a preparation as provided in rule 13.29(126,155A) or if microbial contamination is suspected.

13.6(3) Preparation recall. The policy and procedure manual shall include procedures for the recall of dispensed preparations that fail to meet product quality standards.

13.6(4) Hazardous products and infectious waste. The policy and procedure manual shall include procedures for proper handling of hazardous drug products and infectious waste, if applicable.

13.6(5) Periodic review. The policy and procedure manual shall be periodically reviewed. Policies shall specify the

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frequency of review. The manual shall be available for inspection and copying by the board or agents of the board.

657—13.7(126,155A) Labeling requirements.

13.7(1) Patient-specific dispensing container. At the time of delivery, a patient-specific dispensing container used for a preparation shall bear a label with at least the following information:

- a. Name and quantity of all contents.
- b. Patient's name.
- c. For home care patient prescriptions, unique serial number or prescription number.
- d. Preparer's and reviewing pharmacist's initials or unique identifiers.
- e. Stability (beyond-use date) as set forth in the pharmacy's policy and procedure manual.
- f. The prescribed flow rate in ml/hr, if applicable.
- g. Auxiliary labels as needed.

13.7(2) Batch preparation. Each container of a batch preparation that is compounded in anticipation of later dispensing shall bear a label with at least the following information:

- a. Name and quantity of all contents.
- b. Internal code to identify the date and time of preparation and the preparer's and reviewing pharmacist's initials or unique identifiers.
- c. Stability (beyond-use date) as set forth in the pharmacy's policy and procedure manual.
- d. Auxiliary labels as needed.

657—13.8 and 13.9 Reserved.

657—13.10(126,155A) Microbial contamination risk levels. Preparations shall be assigned an appropriate risk level—low, medium or high—according to the corresponding probability of contaminating a preparation with microbial contamination such as microbial organisms, spores, and endotoxins, and chemical and physical contamination such as foreign chemicals and physical matter. The characteristics described in rules 13.11(155A), 13.12(155A), and 13.13(155A) are intended as guides to the diligence required in compounding at each risk level.

657—13.11(155A) Low-risk preparations.

13.11(1) Conditions defined. Preparations compounded under all of the following conditions are at a low risk of contamination.

- a. The preparations are compounded with aseptic manipulations entirely within ISO Class 5 or superior air quality using only sterile ingredients, products, components, and devices.
- b. The compounding involves only transferring, measuring, and mixing no more than three commercially manufactured sterile products and entries into one container (e.g., bag, vial) of sterile product to make the preparation.
- c. Manipulations are limited to aseptically opening ampoules, penetrating sterile stoppers on vials with sterile needles and syringes, and transferring sterile liquids in sterile syringes to sterile administration devices, containers of other sterile products, and containers for storage and dispensing.
- d. In the absence of the preparation's passing a sterility test and provided that the preparation is properly stored before administration, storage periods shall not exceed the following:

- (1) At controlled room temperature for 48 hours;
- (2) At a cold temperature for 14 days; or
- (3) In a solid-frozen state at minus 20 degrees Celsius or colder for 45 days.

13.11(2) Examples. Examples of low-risk compounding include:

- a. The single-volume transfer of sterile dosage forms from ampoules, bottles, bags, and vials using sterile syringes with sterile needles, other administration devices, and other sterile containers. When ampoules are employed, solution content shall be passed through a sterile filter to remove any particles.
- b. The manual measuring and mixing of no more than three manufactured products including an infusion or diluent solution to compound drug admixtures and nutritional solutions.

657—13.12(155A) Medium-risk preparations.

13.12(1) Conditions defined. Preparations compounded aseptically under low-risk conditions with one or more of the following additional conditions are at a medium risk of contamination.

- a. Multiple individual or small doses of sterile products are combined or pooled to prepare a sterile preparation for administration either to multiple patients or to one patient on multiple occasions.
- b. The compounding process includes complex aseptic manipulations other than the single-volume transfer.
- c. The compounding process requires an unusually long duration, such as that required to complete dissolution or homogeneous mixing.
- d. In the absence of the preparation's passing a sterility test and provided that the preparation is properly stored before administration, storage periods shall not exceed the following:

- (1) At controlled room temperature for 30 hours;
- (2) At a cold temperature for 9 days; or
- (3) In a solid-frozen state at minus 20 degrees Celsius or colder for 45 days.

13.12(2) Examples. Examples of medium-risk compounding include:

- a. Compounding total parenteral nutrition fluids, using manual or automated devices and involving multiple injections, detachments, or attachments of nutrient source products to the device or machine to deliver all nutritional components to a final sterile container.
- b. Filling reservoirs of injection or infusion devices with more than three sterile drug products and evacuating air from those reservoirs before dispensing the filled device.
- c. Transferring volumes from multiple ampoules or vials into one or more final sterile containers.

657—13.13(155A) High-risk preparations.

13.13(1) Conditions defined. Preparations that are either contaminated or likely to become contaminated with infectious microorganisms when compounded under any of the following conditions are at a high risk of contamination.

- a. Nonsterile ingredients, including manufactured products not intended for sterile use, are incorporated or a nonsterile device is used in the compounding process before terminal sterilization.
- b. Sterile contents of commercially manufactured products, preparations that lack effective antimicrobial preservatives, and sterile surfaces of devices and containers intended for the preparation, transfer, sterilization, and packaging of preparations are exposed to air quality inferior to ISO Class 5 for more than one hour.
- c. Nonsterile procedures such as weighing and mixing in air quality inferior to ISO Class 7 are performed before sterilization, compounding personnel are not properly garbed and

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gloved, or water-containing preparations are stored for more than six hours.

d. The chemical purity and content strength of bulk ingredients, whether the ingredients are in opened or unopened packages, are not verified by examination of labeling and documentation of suppliers or by direct determination.

e. For a sterilized high-risk preparation, in the absence of the preparation's passing a sterility test, the storage periods shall not exceed the following:

- (1) At controlled room temperature for 24 hours;
- (2) At a cold temperature for 3 days; or
- (3) In a solid-frozen state at minus 20 degrees Celsius or colder for 45 days.

13.13(2) Examples. Examples of high-risk compounding include:

- a. Dissolving nonsterile bulk drugs or nutrient powders to make solutions that will be terminally sterilized.
- b. Measuring and mixing sterile ingredients in nonsterile devices before sterilization is performed.
- c. Assuming, without appropriate evidence or direct determination, that packages of bulk ingredients contain at least 95 percent by weight of their active chemical moiety and have not been contaminated or adulterated between uses.
- d. Exposing the sterile ingredients and components used to prepare and package the preparation to room air quality inferior to ISO Class 5 for more than one hour.

657—13.14(155A) Immediate-use preparations. For the purpose of emergency or immediate patient care, pharmacies are exempted from requirements described in this chapter for low- and medium-risk preparations when all of the following criteria are met:

1. Only simple aseptic measuring and transfer manipulations are performed with not more than three sterile, nonhazardous commercial drug products including an infusion or diluent solution.
2. Unless required for the preparation, the compounding procedure occurs continuously without delays or interruptions and does not exceed one hour.
3. At no point during preparation are critical surfaces and ingredients of the preparation directly exposed to contact contamination, such as human touch, cosmetic flakes or particulates, blood, human body substances (e.g., nasal and oral excretions and secretions), and nonsterile inanimate sources.
4. Administration begins not later than two hours after compounding of the preparation has begun.
5. If administration has not begun within two hours after compounding of the preparation has begun, the preparation is promptly and safely discarded. Immediate-use preparations shall not be stored for later use.

657—13.15(155A) Utilization of single-dose and multiple-dose containers. Pharmacies utilizing single-dose and multiple-dose containers in sterile compounding shall comply with the following:

1. Single-dose containers that are opened or needle-punctured shall be used within one hour if opened in air quality conditions inferior to ISO Class 5.
2. Single-dose vials that are continuously exposed to ISO Class 5 air shall be used within six hours after initial needle puncture.
3. Opened single-dose ampoules shall not be stored for any period of time under any air quality conditions.
4. Multiple-dose containers that are entered or opened shall be used within 28 days of initial entry or opening unless otherwise specified by the manufacturer.

5. Multiple-dose and single-dose sterile products shall not be combined for use as multiple-dose applications.

657—13.16(155A) Utilization of proprietary bag and vial systems. Sterility storage and beyond-use times for attached and activated container pairs of drug products for intravascular administration shall follow manufacturers' instructions for handling and storage.

657—13.17 to 13.19 Reserved.

657—13.20(124,155A) Sterile preparation of hazardous drugs. Hazardous drugs shall only be prepared for administration under conditions that protect the pharmacy personnel in the preparation area. Hazardous drugs shall not be prepared as immediate-use preparations.

13.20(1) Storage and handling. Policies and procedures shall identify appropriate storage and handling of hazardous drugs to prevent contamination and personnel exposure.

13.20(2) Caution labeling and distribution. Preparations containing hazardous drugs shall be labeled on the primary container and placed in an overwrap bag that is also properly labeled. Prepared doses of dispensed hazardous drugs shall be labeled and distributed in a manner to minimize the risk of accidental rupture of the primary container. Proper labeling shall include any necessary precautions.

13.20(3) Preparation area. All hazardous drugs shall be compounded in a vertical flow Class II or Class III biological safety cabinet or in a compounding aseptic isolator containment and control device with biohazard control capabilities.

a. The ISO Class 5 BSC or CAI shall be placed in a contained environment where air pressure is negative or where the ISO Class 5 BSC or CAI is appropriately vented to the outside of the building.

b. If the pharmacy compounds fewer than five preparations per week in a BSC or CAI and uses a closed system vial transfer device to compound the preparations, the BSC or CAI may be located in a positive pressure room.

13.20(4) Protective apparel. Personnel compounding hazardous drugs shall wear protective apparel. Protective apparel shall include disposable, nonshedding coveralls or gowns with tight cuffs, face masks, eye protection, hair covers, double gloves, and shoe covers.

13.20(5) Techniques. Appropriate safety and containment techniques for compounding hazardous drugs shall be used in conjunction with the aseptic techniques required for processing sterile preparations.

13.20(6) Training required. All personnel who compound hazardous drugs shall be fully trained in the storage, handling, and disposal of these drugs. This training shall occur before personnel prepare or handle hazardous preparations and shall be verified and documented for each person at least annually.

13.20(7) Waste. Disposal of hazardous waste shall comply with all applicable local, state, and federal requirements.

13.20(8) Spills of hazardous drugs. Written procedures for handling both major and minor spills of hazardous drugs shall be developed, maintained, implemented, and adhered to. The procedures shall be maintained with the policies and procedures required in rule 13.6(155A).

657—13.21 and 13.22 Reserved.

657—13.23(124,155A) Verification of compounding accuracy and sterility. Compounding procedures and sterilization methods used for preparations require planned testing, monitoring, and documentation to demonstrate adherence to environmental quality requirements, personnel practices, and procedures critical to achieving and maintaining

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sterility. Pharmacist verification of a preparation shall include visual inspection of labeling, physical integrity, and expected appearance, including final fill amount.

657—13.24(124,155A) Sterilization methods. The selected sterilization method employed shall be based on experience and appropriate information sources.

13.24(1) Presterilization requirements for high-risk preparations.

a. During all compounding activities that precede terminal sterilization, such as weighing and mixing, compounding personnel shall be garbed and gloved in the same manner as when performing compounding in an ISO Class 5 environment. All presterilization procedures shall be completed in an ISO Class 8 or superior environment.

b. Immediately before use, all nonsterile measuring, mixing, and purifying devices used in the compounding process shall be thoroughly rinsed with sterile, pyrogen-free water, and then thoroughly drained or dried.

13.24(2) Sterilization methods for high-risk preparations.

a. Sterilization by filtration.

(1) Sterile filters used to sterile filter preparations shall be pyrogen-free and have a nominal porosity of 0.22 microns. The filter dimensions and liquid material to be sterile filtered shall permit the sterilization process to be completed rapidly without the replacement of the filter during the filtering process.

(2) Compounding personnel shall ascertain that selected filters will achieve sterilization of the specific preparation.

(3) Sterilization by filtration shall be performed entirely within an ISO Class 5 or superior air quality environment.

b. Thermal sterilization. Use of saturated steam under pressure, or autoclaving, is the preferred method to terminally sterilize aqueous preparations.

(1) All materials shall be exposed to steam at 121 degrees Celsius under the recommended pressure and duration, verified by testing the sterility of the finished preparation.

(2) The description of steam sterilization conditions and duration for specific preparations shall be included in written documentation maintained in the compounding facility.

(3) Before or during entry into final containers, all high-risk preparations in solution form that are subjected to terminal steam sterilization shall pass through a filter with nominal porosity not larger than 1.2 microns.

c. Dry heat sterilization. Dry heat sterilization shall be completed in an oven designed for sterilization and shall be used only for those materials that cannot be sterilized by steam. The effectiveness of dry heat sterilization shall be verified using appropriate biological indicators and temperature-sensing devices.

13.24(3) Records. Record requirements for high-risk preparations shall include documentation of the following:

a. Lot numbers of nonsterile components used in compounding high-risk preparations.

b. Sterilization records including methods used for each preparation.

13.24(4) Testing and quarantine requirements. All high-risk preparations that are prepared in groups of 25 or more identical single-dose containers or in multiple-dose vials for administration to multiple patients, or that are exposed longer than 12 hours at 2 to 8 degrees Celsius and longer than 6 hours at warmer than 8 degrees Celsius, shall be quarantined and tested to ensure that they are sterile before they are dispensed or administered.

13.24(5) Release of preparations prior to receipt of testing results. If a preparation may be needed before the results of sterility testing have been received, the pharmacy shall have

a written procedure requiring daily observation of incubating test specimens and immediate recall of the dispensed preparations when there is any evidence of microbial growth in the test specimens.

13.24(6) Bacterial endotoxin (pyrogen) testing. All high-risk preparations, except those for inhalation and ophthalmic administration, that are prepared in groups of more than 25 identical individual single-dose containers, or in multiple-dose vials for administration to multiple patients, or exposed longer than 12 hours at 2 to 8 degrees Celsius and longer than 6 hours at warmer than 8 degrees Celsius before they are sterilized, shall be tested to ensure that they do not contain excessive bacterial endotoxins.

657—13.25(155A) Media-fill testing by personnel. The pharmacy shall develop, maintain, and implement written procedures that include appropriate media-fill testing by personnel authorized to compound preparations. Tests shall be performed without interruption in an ISO Class 5 environment under conditions that closely simulate the stressful conditions encountered during compounding of the specific risk level preparations for which the test is intended. The pharmacy shall maintain records of media-fill testing performed, and results of testing procedures shall be available to the board or agents of the board. Compounding personnel whose media-fill test vials result in gross microbial colonization shall be immediately retrained and reevaluated by expert compounding personnel to ensure correction of all aseptic practice deficiencies.

13.25(1) Low-risk MFT procedure. Each person authorized to compound low-risk preparations shall annually perform an appropriate successful MFT procedure. The following is an example of a low-risk MFT procedure:

1. Using the same sterile 10-ml syringe and vented needle combination, aseptically transferring three sets of four 5-ml aliquots of sterile soybean-casein digest medium into separate sealed, empty sterile 30-ml clear vials (i.e., four 5-ml aliquots into each of three 30-ml vials);

2. Affixing sterile adhesive seal closures onto the three filled vials;

3. Incubating the vials at temperatures between 25 and 35 degrees Celsius for 14 days. Failure is indicated by visible turbidity in the medium on or before the passage of 14 days.

13.25(2) Medium-risk MFT procedure. Each person authorized to compound medium-risk preparations shall annually perform an appropriate successful MFT procedure. The following is an example of a medium-risk MFT procedure:

1. Aseptically transferring six 100-ml aliquots of sterile soybean-casein digest medium by gravity through separate tubing sets into separate evacuated sterile containers;

2. Arranging the six containers as three pairs and using a sterile 10-ml syringe and 18-gauge needle combination to exchange two 5-ml aliquots of medium from one container to the other container in the pair (for example, adding 5-ml aliquot from the first container to the second container in the pair, agitating the second container for 10 seconds, and transferring 5-ml aliquot from the second container back to the first container in the pair; then agitating the first container for 10 seconds and transferring the next 5-ml aliquot from the first container back to the second container in the pair; and repeating the procedure for each pair of containers);

3. Aseptically injecting a 5-ml aliquot of medium from each container into a sealed, empty sterile 10-ml clear vial using a sterile 10-ml syringe and vented needle. Affixing sterile adhesive seals to the rubber closures on the three filled vials and incubating the vials at temperatures within a range of 20 to 35 degrees Celsius for 14 days. Failure is indicated

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by visible turbidity in the medium on or before the passage of 14 days.

13.25(3) High-risk MFT procedure. Each person authorized to compound high-risk preparations shall semiannually perform an appropriate successful MFT procedure. The following is an example of a high-risk MFT procedure:

1. Dissolving 3 gm of nonsterile commercially available soybean-casein digest medium in 100 ml of nonbacteriostatic water to make a 3 percent solution;

2. Drawing 25 ml of the medium into each of three 30-ml sterile syringes. Transferring 5 ml from each syringe into separate sterile 10-ml vials. These vials are the positive controls to generate exponential microbial growth, which is indicated by visible turbidity upon incubation;

3. Under aseptic conditions and using aseptic techniques, affixing a sterile 0.2 micron porosity filter unit and a 20-gauge needle to each syringe. Injecting the next 10 ml from each syringe into three separate 10-ml sterile vials. Repeating the process into three more vials. Labeling all vials, affixing sterile adhesive seals to the closure of the nine vials, and incubating them at temperatures between 25 and 35 degrees Celsius. Inspecting for microbial growth over 14 days. Failure is indicated by visible turbidity in the medium on or before the passage of 14 days.

657—13.26 Reserved.

657—13.27(124,126,155A) Physical environment requirements. The pharmacy shall have a designated area for compounding sterile preparations, with entry restricted to designated personnel. The area shall be used only for sterile compounding. The area shall be structurally isolated from other areas and shall be designed to avoid unnecessary traffic and airflow disturbances. The area shall be of sufficient size to accommodate at least one primary engineering control device and to provide for the storage of drugs and supplies under appropriate temperature, light, moisture, sanitation, ventilation, and security conditions.

13.27(1) Requirement for primary engineering control device. The primary engineering control device shall be capable of maintaining at least ISO Class 5 air quality in the area where critical objects are exposed and critical activities are performed. The device shall be capable of maintaining ISO Class 5 air quality during normal activity. A primary engineering control device includes, but is not limited to, a horizontal or vertical laminar airflow hood or CAI.

13.27(2) Placement of primary engineering control device. The primary engineering control device shall be placed in a cleanroom or buffer area where HEPA filters are employed and the air quality is maintained at ISO Class 7. This area shall have cleanable, nonshedding, smooth surfaces; all junctures shall be coved; and all cracks and crevices shall be caulked. The ceiling shall be impervious and hydrophobic. The buffer area shall not contain any drains or sinks. Only the furniture, equipment, supplies and other material required for compounding activities to be performed shall be brought into the room. Such items brought into the room shall be cleaned and disinfected. Placement in buffer areas and cleanrooms of objects and devices not essential to the compounding process is dictated by the measured effect of those objects and devices on the required environmental quality of air atmospheres and surfaces.

13.27(3) Exception for placement of CAI. The CAI shall be placed in an ISO Class 7 cleanroom unless the CAI meets each of the following conditions:

a. The CAI provides isolation from the room and maintains ISO Class 5 conditions when ingredients, components,

and devices are transferred into and out of the CAI during the preparation process.

b. The manufacturer provides documentation verifying that the CAI meets the standard in paragraph "a" when the CAI is located in an environment inferior to ISO Class 7.

13.27(4) Anteroom requirements. An anteroom or ante area shall be located adjacent to the buffer area and maintained at ISO Class 8 air quality. This area is to be used for unpacking and disinfecting supplies for storage and for hand sanitizing and gowning. If the sterile preparation area is to be used only for the compounding of low- and medium-risk preparations, the ante area shall be clearly demarcated for the compounding of low- and medium-risk preparations. If the sterile preparation area is to be used for the compounding of high-risk preparations, the ante area shall be physically separated from the buffer area.

13.27(5) Delayed implementation. A pharmacy whose sterile compounding area is in substantial compliance with the physical and structural requirements of this rule shall be authorized to engage in the compounding of sterile preparations pursuant to the practice standards established by this chapter and subject to the following:

a. Any pharmacy that commences, on or after [the effective date of this rule], new construction or remodeling of a pharmacy sterile compounding area shall comply with the physical and structural requirements of this rule.

b. Any pharmacy engaged in the compounding of sterile preparations shall, no later than December 31, 2010, complete any necessary changes or improvements to the sterile compounding area to ensure compliance with the physical and structural requirements of this rule.

657—13.28(155A) Cleaning, maintenance, and supplies. The pharmacy shall have appropriate equipment and supplies and documented procedures for maintaining an environment suitable for the aseptic processing of sterile preparations.

13.28(1) Supplies and equipment. Required supplies and equipment shall include, but may not be limited to, the following:

a. Appropriate attire including nonshedding coveralls or gowns, head and facial covers, face masks, appropriate gloves, and shoe covers.

b. A sink with hot and cold running water, with bactericidal soap available for the purpose of hand and forearm scrubs, which shall be located convenient to the area used for compounding sterile preparations but outside the buffer area.

13.28(2) Documented procedures. Documented procedures shall include, but not be limited to, the following:

a. Specific cleaning procedures and frequencies for each compounding area involved.

b. Identification of the individual responsible for completing each procedure.

c. A list of approved cleaning agents for each procedure.

d. A written plan and schedule for the evaluation of airborne microorganisms in each controlled air environment (e.g., LAFW, barrier isolators, buffer area, and ante room).

e. Equipment calibration, annual maintenance, and monitoring of proper function of equipment, apparatus, and devices used to compound sterile preparations.

f. An appropriate cleansing and garbing procedure shall be implemented and followed. Coveralls and gowns may be hung outside the entry in the buffer area and reused for one shift, provided they are not visibly soiled.

g. When a CAI is the primary engineering control device used for high-risk compounding, the above procedures are required unless the manufacturer can provide written documentation based on validated environmental testing that any

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component of the garbing and gloving procedures is not required.

657—13.29(126,155A) Environmental monitoring requirements.

13.29(1) Certification required. All cleanrooms, laminar airflow hoods, and barrier isolators shall be certified by an independent contractor according to Federal Standard 209E, or National Sanitation Foundation Standard 49, for operational efficiency at least every six months and whenever the device or room is relocated or altered or whenever major service to the facility is performed. Inspection and certification records shall be maintained for two years from the date of certification.

13.29(2) Procedures required. The pharmacy shall establish written procedures appropriate for the risk level preparations compounded by the pharmacy. The procedures shall include environmental testing, end testing, and evaluation of validation results.

a. Air sampling. Microbial sampling of air within the primary engineering control devices, buffer areas, and anterooms is required on a monthly basis for pharmacies engaging in low- and medium-risk compounding and weekly for pharmacies engaging in high-risk compounding.

b. Pressure differential monitoring. A pressure gauge or velocity meter shall be installed to monitor the pressure differential or airflow between the buffer area and the anteroom and between the anteroom and the general pharmacy area. The gauge/meter shall alert the pharmacy when air conditions do not meet recommended conditions, and all compounding shall be discontinued until the alarm condition is corrected. If the gauge/meter is incapable of alerting the pharmacy to inappropriate conditions, the pharmacy shall monitor and review the gauge/meter daily and document the results in a log.

657—13.30 Reserved.

657—13.31(155A) Quality assurance (QA). The pharmacy shall establish, implement, and document an ongoing quality assurance program that maintains and improves facilities, equipment, personnel performance, and the provision of patient care.

13.31(1) Physical performance QA. The portion of the quality assurance program that monitors facilities, equipment, and personnel performance shall include, but need not be limited to, the following:

a. Methods for verification of automated compounding devices for parenteral nutrition compounding.

b. Methods for sampling finished preparations to ensure that the pharmacy is capable of consistently preparing sterile preparations that meet appropriate risk level specifications and to ensure product integrity.

c. Procedures for inspection of all prescription orders, written compounding procedures, preparation records, and materials used to compound at all contamination risk levels, to ensure accuracy of ingredients, aseptic mixing, sterilizing, packaging, labeling, and expected physical appearance of the finished preparation.

d. Procedures for visual inspection of preparations to ensure the absence of particulate matter in solutions, the absence of leakage from vials and bags, and the accuracy and thoroughness of labeling.

e. Procedures for review of all orders and packages of ingredients to ensure that the correct ingredients and quantity of ingredients were compounded.

f. Methods for routine disinfection and air quality testing of the direct compounding environment to minimize mi-

crobial surface contamination and maintain ISO Class 5 air quality.

g. Methods for ensuring personnel qualifications, training, and performance, including periodic performance of applicable MFT procedures.

h. Procedures for visual confirmation that compounding personnel are properly donning and wearing appropriate items and types of protective garments.

i. Methods for establishing beyond-use dates of preparations.

13.31(2) Care outcomes QA. The portion of the quality assurance program that monitors patient care shall include, but need not be limited to, the following:

a. Utilizing specific procedures for recording, filing, and evaluating reports of adverse events and the quality of preparation identified in the adverse event.

b. Utilizing written policies and procedures that include specific procedures or instructions for receiving, acknowledging, and dating the receipt of products.

c. Reviewing documented patient training required pursuant to rule 13.32(155A).

d. Ensuring that a qualified pharmacist is available and accessible at all times to respond to the questions and needs of other health professionals, the patient, or the patient's caregiver.

e. Identifying activities and processes that are deemed high-risk, high-volume, or problem-prone and providing effective corrective actions to remedy these activities and processes.

657—13.32(155A) Patient or caregiver education and training. If sterile preparations are provided to the patient in the home environment, the pharmacist, in conjunction with nursing or medical personnel, shall verify and document the patient's or caregiver's training and competence in managing the type of prescribed therapy.

13.32(1) Pharmacist involvement. A pharmacist shall be actively involved in patient training processes relating to drug compounding, labeling, administration, storage, stability, compatibility, or disposal. The pharmacist shall continually reassess the patient's or caregiver's competency in these areas.

13.32(2) Demonstration and practice. Training programs shall include hands-on demonstrations and practice with actual items that the patient or caregiver is expected to use in managing the specific type of therapy.

13.32(3) Additional training tools. Printed materials and posttraining verbal counseling shall be used periodically, as appropriate, to reinforce initial training programs and to ensure the patient's or caregiver's continuing correct and complete fulfillment of responsibilities.

657—13.33(124,155A) Storage and delivery of sterile preparations. The pharmacy is responsible for proper packaging, handling, transport, and storage of preparations compounded and dispensed by the pharmacy including appropriate education, training, and supervision of pharmacy and non-pharmacy personnel responsible for such functions. The pharmacy shall establish, maintain, and implement written policies and procedures to ensure product quality and packaging integrity until the preparation is administered.

13.33(1) Storage areas. Controlled temperature storage areas within the pharmacy shall be monitored at least once daily and the results documented on a temperature log. Temperature-sensing mechanisms shall be suitably placed within the storage space to accurately reflect the area's temperature.

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13.33(2) Packaging, handling and transport. Appropriate policies and procedures shall be established, maintained, and implemented by the pharmacy with the involvement of other departments or services whose personnel are responsible for preparation or handling functions outside the pharmacy.

a. Policies and procedures shall include instruction in proper hand washing, aseptic techniques, site care, and change of administration sets to ensure the quality and sterility of the preparation.

b. A pharmacy that compounds or prepares products or devices or uses techniques where in-line filtration, automated infusion control devices, or replenishment of drug products into reservoirs of portable infusion pumps is required shall implement policies and procedures to address the special needs related to those products and techniques.

c. Policies and procedures shall provide for the return to the pharmacy of unused preparations for appropriate disposition. Appropriate disposition may include redispensing only if the continuing quality and sterility of the preparation can be fully ensured. The pharmacy shall be the sole authority for determining whether a preparation that was not administered as originally intended can be used for an alternate patient or under alternate conditions.

d. Policies and procedures regarding the handling of hazardous preparations shall identify safeguards intended to maintain the integrity of the preparations and to minimize the exposure potential of these products to the environment and to personnel who have contact with the products.

These rules are intended to implement Iowa Code sections 124.301, 126.10, 155A.2, 155A.4, 155A.13, 155A.13A, and 155A.28.

ARC 5740B**PHARMACY EXAMINERS
BOARD[657]****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 Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 9, “Automated Medication Distribution Systems,” Iowa Administrative Code.

The amendments were approved at the January 16-17, 2007, regular meeting of the Board of Pharmacy Examiners.

The proposed amendments clarify the requirements for a pharmacist’s check and verification of each dose of a prescription medication before the medication is removed from the pharmacy and stocked by a nonpharmacist into a component of an automated medication distribution system.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on March 30, 2007. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E,

Des Moines, Iowa 50309-4688, or by E-mail to terry.witkowski@iowa.gov.

These amendments are intended to implement Iowa Code sections 147.107, 155A.13, and 155A.33.

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

The following amendments are proposed.

ITEM 1. Amend **657—Chapter 9**, parenthetical implementation statutes, by striking “79GA,ch182” wherever it appears and inserting “147,155A” in lieu thereof.

ITEM 2. Amend rule 657—9.7(147,155A) as follows:

657—9.7(147,155A) Decentralized unit dose AMDS. Decentralized unit dose AMDS may be utilized in two ways. Either subrule 9.7(1) or subrule 9.7(2) shall apply, based on the utilization of the decentralized unit dose AMDS. *Under either method, a pharmacist shall check every dose prepared for the AMDS component prior to releasing the drugs from the pharmacy.*

9.7(1) Floor-stock distribution. If the decentralized unit dose AMDS is utilized for the storage and dispensing of floor-stock medications only, medications may be restocked into components by an appropriately trained pharmacy technician following pharmacist verification in the pharmacy of ~~medications~~ *each dose of medication* to be restocked.

9.7(2) Other than floor-stock distribution. If the decentralized unit dose AMDS is utilized for medications other than floor-stock medications, including but not limited to medications intended for first-dose administration or medications otherwise dispensed in unit dose cassettes, the following shall apply:

a. Pharmacist or nurse verification. When bar coding or other technology-based verification is not utilized to check the accuracy of medication doses stocked in dispensing components, *a pharmacist shall check each medication dose prior to releasing the drugs from the pharmacy. Following restocking of medication doses into the AMDS component, a pharmacist or a nurse shall verify that 100 percent of all medication doses are accurately placed in each medication bin of each dispensing component.* Policies, procedures, and safeguards shall be developed and implemented that control, while ensuring availability and access to needed medications, utilization of medications added to the dispensing component prior to pharmacist or nurse verification of the addition. Policies and procedures shall also provide for documentation identifying the individual who provides verification of medications stocked in dispensing components.

b. Bar coding or technology-based verification. When bar coding or other technology-based verification is utilized and a pharmacist is not filling the dispensing component, *a pharmacist shall check each medication dose prior to releasing the drugs from the pharmacy.* ~~the~~ The quality assurance plan shall provide for random verification by a pharmacist as described in this paragraph. The plan shall provide that, one day each month, all medication doses or bins contained in 5 percent of the components utilized within the system be verified by a pharmacist. ~~Or~~ *Alternatively*, the plan shall provide that, one day each month, 5 percent of the medication doses or bins contained in each component utilized within the system be verified by a pharmacist. If, however, the system includes fewer than five components, a pharmacist shall, one day each month, verify all medication doses or bins contained in one component utilized within the system. A phar-

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macy may petition the board pursuant to 657—Chapter 34 for a variance for an alternate pharmacist verification process.

9.7(3) No change.

ITEM 3. Amend **657—Chapter 9**, implementation clause, as follows:

These rules are intended to implement 2001 Iowa Acts, chapter 182, section 5(10), paragraph “i.” Iowa Code sections 147.107, 155A.13, and 155A.33.

ARC 5741B

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Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 124.301 and 147.76, the Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 10, “Controlled Substances,” Iowa Administrative Code.

The amendments were approved at the January 16-17, 2007, regular meeting of the Board of Pharmacy Examiners.

The proposed amendments revise rule 10.21(124,155A), pertaining to dispensing Schedule V controlled drugs without a prescription, to exclude methamphetamine precursor substances and propose a new rule establishing criteria, in compliance with both federal and state laws, for dispensing products containing ephedrine, pseudoephedrine, and phenylpropanolamine without a prescription. The proposed amendments also establish requirements for a perpetual inventory of Schedule II controlled substances in Iowa pharmacies and amend the requirements for a physical inventory of controlled substances by changing the interval between physical inventories from biennial to annual, changing the period for retention of the written inventory record from four years to two years, and requiring that counts of hydrocodone-containing products be exact rather than estimated. New subrule 10.34(7) establishes the criteria for use of the DEA Controlled Substances Ordering System (CSOS) as an alternative to the multicopy paper DEA Form 222 for ordering or distributing Schedule I and II controlled substances. Additionally, rule 657—10.16(124) is amended to more clearly identify situations that require the completion and submission of a report of theft or loss of controlled substances.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on March 30, 2007. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688, or by E-mail to terry.witkowski@iowa.gov.

These amendments are intended to implement Iowa Code sections 124.301, 124.306, 124.307, 124.308, 155A.2, and 155A.13.

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

The following amendments are proposed.

ITEM 1. Amend rule 657—10.16(124) as follows:

657—10.16(124) Report of theft or loss. A registrant shall report in writing, on forms provided by the board, any theft or significant loss of any controlled substance, *when the loss is attributable to other than inadvertent error*, upon discovery of the theft or loss. The report shall be submitted to the board office within two weeks of the discovery of the theft or loss. Thefts shall be reported whether or not the controlled substances are subsequently recovered or the responsible parties are identified and action is taken against them. A copy of the report shall be maintained in the files of the registrant.

ITEM 2. Amend rule 657—10.31(124,155A) as follows:

657—10.31(124,155A) Dispensing Schedule V controlled substances without a prescription. A controlled substance listed in Schedule V, which substance is not a prescription drug as determined under the federal Food, Drug and Cosmetic Act, *and excepting products containing ephedrine, pseudoephedrine, or phenylpropanolamine*, may be dispensed or administered without a prescription by a pharmacist to a purchaser at retail pursuant to the conditions of this rule.

10.31(1) Who may dispense. Dispensing shall be by a licensed Iowa pharmacist or by a registered pharmacist-intern under the direct supervision of a pharmacist preceptor.

~~a. Except as provided in this subrule, dispensing shall not be by a pharmacy technician or other nonpharmacist employee even if under the direct supervision of a pharmacist.~~

~~b. This subrule does not prohibit, after the pharmacist has fulfilled the professional and legal responsibilities set forth in this rule and has authorized the dispensing of the substance, the completion of the actual cash or credit transaction or the delivery of the substance by a nonpharmacist.~~

10.31(2) Frequency and quantity. Dispensing at retail to the same purchaser in any 48-hour period shall be limited to no more than one of the following quantities of a Schedule V controlled substance:

a. 240 cc (8 ounces) of any controlled substance containing opium;

b. 120 cc (4 ounces) of any other controlled substance, ~~except as provided in subrule 10.31(7);~~

c. 48 dosage units of any controlled substance containing opium;

d. 24 dosage units of any other controlled substance, ~~except as provided in subrule 10.31(7).~~

10.31(3) Age of purchaser. The purchaser shall be at least 18 years of age.

10.31(4) Identification. The pharmacist shall require every purchaser under this rule not known by the pharmacist to present a government-issued photo identification, including proof of age when appropriate.

~~10.31(5) Record. Except as provided in subrule 10.31(7),~~ a bound record book for dispensing of Schedule V controlled substances pursuant to this rule shall be maintained by the pharmacist. The book shall contain the name and address of each purchaser, the name and quantity of controlled substance purchased, the date of each purchase, and the name or unique identification of the pharmacist *or pharmacist-intern who dispensed approved the dispensing of the substance to the purchaser.*

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10.31(6) Prescription not required under other laws. No other federal or state law or regulation requires a prescription prior to distributing or dispensing a Schedule V *controlled* substance.

10.31(7) ~~Dispensing pseudoephedrine-containing products. Dispensing at retail to the same purchaser within any 30-day period shall be limited to products collectively containing no more than 7,500 mg of pseudoephedrine.~~

~~a.—A legible dispensing record shall be created and maintained for the dispensing of pseudoephedrine products pursuant to this subrule. The record shall contain the name and address of each purchaser, the name and quantity of the product purchased including the total milligrams of pseudoephedrine contained in the product, the date of each purchase, and the name or unique identification of the pharmacist who dispensed the product to the purchaser. The record may be maintained using one of the following options:~~

~~(1) A hard-copy record.~~

~~(2) A record in the pharmacy's electronic prescription dispensing record-keeping system.~~

~~(3) A record in an electronic data collection system that captures each of the data elements required by this subrule. The electronic data collection system shall be capable of producing a hard-copy printout of the records upon request by the board or its representative or to such other persons or governmental agencies authorized by law to receive such information.~~

~~b.—Dispensing of pseudoephedrine products pursuant to this subrule shall comply with other provisions of this rule for the dispensing of Schedule V substances including who may dispense a substance and the age and identification of the purchaser.~~

ITEM 3. Adopt **new** rule 657—10.32(124,155A) as follows:

657—10.32(124,155A) Dispensing products containing ephedrine, pseudoephedrine, or phenylpropanolamine.

A product containing ephedrine, pseudoephedrine, or phenylpropanolamine, which substance is a Schedule V controlled substance and is not listed in another controlled substance schedule, may be dispensed or administered without a prescription by a pharmacist to a purchaser at retail pursuant to the conditions of this rule.

10.32(1) Who may dispense. Dispensing shall be by a licensed Iowa pharmacist or by a registered pharmacist-intern under the direct supervision of a pharmacist preceptor. This subrule does not prohibit, after the pharmacist has fulfilled the professional and legal responsibilities set forth in this rule and has authorized the dispensing of the substance, the completion of the actual cash or credit transaction or the delivery of the substance by a nonpharmacist.

10.32(2) Packaging of nonliquid forms. A nonliquid form of a product containing ephedrine, pseudoephedrine, or phenylpropanolamine includes gel caps. Nonliquid forms of these products to be sold pursuant to this rule shall be packaged either in blister packaging with each blister containing no more than two dosage units or, if blister packs are technically infeasible, in unit dose packets or pouches.

10.32(3) Frequency and quantity. Dispensing at retail to the same purchaser within any 30-day period shall be limited to products collectively containing no more than 7,500 mg of ephedrine, pseudoephedrine, or phenylpropanolamine; dispensing at retail to the same purchaser within a single calendar day shall not exceed 3,600 mg.

10.32(4) Age of purchaser. The purchaser shall be at least 18 years of age.

10.32(5) Identification. The pharmacist shall require every purchaser under this rule to present a government-issued photo identification, including proof of age when appropriate. The pharmacist shall be responsible for verifying that the name on the identification matches the name provided by the purchaser and that the photo image depicts the purchaser.

10.32(6) Record. A legible dispensing record shall be created and maintained for the dispensing of ephedrine, pseudoephedrine, and phenylpropanolamine products pursuant to this rule.

a. Record contents. The record shall contain the following:

(1) The name, address, and signature of the purchaser.

(2) The name and quantity of the product purchased, including the total milligrams of ephedrine, pseudoephedrine, or phenylpropanolamine contained in the product.

(3) The date and time of the purchase.

(4) The name or unique identification of the pharmacist or pharmacist-intern who approved the dispensing of the product.

b. Record format. The record shall be maintained using one of the following options:

(1) A hard-copy record maintained in a bound logbook.

(2) A record in the pharmacy's electronic prescription dispensing record-keeping system.

(3) A record in an electronic data collection system that captures each of the data elements required by this subrule. The electronic data collection system shall be capable of producing a hard-copy printout of a record upon request by the board or its representative or to such other persons or governmental agencies authorized by law to receive such information.

10.32(7) Notice required. The following notice shall be included in the logbook required pursuant to subrule 10.32(6) or shall be displayed in the dispensing area and be visible to the public:

“WARNING: Section 1001 of Title 18, United States Code, states that whoever, with respect to the logbook, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any materially false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry, shall be fined not more than \$250,000 if an individual or \$500,000 if an organization, imprisoned not more than five years, or both.”

ITEM 4. Adopt **new** rule 657—10.33(124,155A) as follows:

657—10.33(124,155A) Schedule II perpetual inventory in pharmacy.

Each pharmacy located in Iowa that dispenses Schedule II controlled substances shall maintain a perpetual inventory system for all Schedule II controlled substances pursuant to the requirements of this rule. All records relating to the perpetual inventory shall be maintained by the pharmacy and shall be available for inspection and copying by the board or its representative for a period of two years from the date of the record.

10.33(1) Record format. The perpetual inventory record may be maintained in a manual or an electronic record format. Any electronic record shall provide for hard-copy printout of all transactions recorded in the perpetual inventory record for any specified period of time and shall state the current inventory quantities of each drug at the time the record is printed.

10.33(2) Information included. The perpetual inventory record shall identify all receipts for and disbursements of

PHARMACY EXAMINERS BOARD[657](cont'd)

Schedule II controlled substances by drug or by national drug code (NDC) number. The record shall be updated to identify each prescription filled and each shipment received. The record shall also include incident reports and reconciliation records pursuant to subrules 10.33(3) and 10.33(4).

10.33(3) Changes to a record. If a perpetual inventory record is able to be changed, the individual making a change to the record shall complete an incident report documenting the change. The incident report shall identify the specific information that was changed including the information before and after the change, shall identify the individual making the change, and shall include the date and the reason the record was changed. If the electronic record system documents within the perpetual inventory record all of the information that must be included in an incident report, a separate report is not required.

10.33(4) Monthly reconciliation. The pharmacist in charge shall be responsible for reconciling the physical inventory of all Schedule II controlled substances with the perpetual inventory balance on a monthly basis. In case of any discrepancies between the physical inventory and the perpetual inventory, the pharmacist in charge shall determine the need for further investigation or the need to report to the board. The reconciliation process may be completed using either of the following procedures or a combination thereof:

a. The dispensing pharmacist verifies that the physical inventory matches the perpetual inventory following each dispensing and documents that reconciliation in the perpetual inventory record. If controlled substances are maintained on the patient care unit, the nurse or other responsible licensed health care provider verifies that the physical inventory matches the perpetual inventory following each dispensing and documents that reconciliation in the perpetual inventory record. All discrepancies shall be reported to the pharmacist in charge. If any Schedule II controlled substances in the pharmacy's current inventory have been dispensed and verified in this manner within the month, and there are no discrepancies noted, no additional reconciliation action is required. A drug that has had no activity within the month shall be reconciled pursuant to paragraph "b" of this subrule.

b. A physical count of all Schedule II controlled substances is taken each month, and that count is compared to the perpetual inventory record balance. The individual performing this function shall record the date, the time, the individual's initials or unique identification, and any discrepancies between the physical inventory and the perpetual inventory. Any discrepancies between the physical inventory and the perpetual inventory shall be reported to the pharmacist in charge.

ITEM 5. Amend subrule 10.34(6) as follows:

10.34(6) Ordering or distributing Schedule I or II *controlled* substances – *DEA Form 222*. Except as otherwise provided by *subrule 10.34(7)* and under federal law, a DEA Form 222 is required for each distribution of a Schedule I or II controlled substance. An order form may be executed only on behalf of the registrant named on the order form and only if the registrant's DEA and Iowa registrations for the substances being purchased have not expired or been revoked or suspended by the issuing agency.

a. Order forms shall be obtained, executed, and filled pursuant to DEA requirements. Each form shall be complete, legible, and properly prepared, executed, ~~or~~ and endorsed and shall contain no alteration, erasure, or change of any ~~description~~ *kind*.

b. The purchaser shall submit Copy 1 and Copy 2 of the order form to the supplier.

c. The purchaser shall maintain Copy 3 of the order form in the files of the registrant. Upon receipt of the substances from the supplier, the purchaser shall record on Copy 3 of the order form the quantity of each substance received, and the date of receipt, and shall initial each ~~record of receipt line~~ *identifying a substance received*.

d. The supplier shall record on Copy 1 and Copy 2 of the order form the quantity of each substance distributed to the purchaser and the date on which the shipment is made. The supplier shall maintain Copy 1 of the order form in the files of the supplier and shall forward Copy 2 of the order form to the DEA district office.

e. Order forms shall be maintained separately from all other records of the registrant.

f. Each unaccepted, defective, or otherwise "void" order form and any attached statement or other documents relating to any order form shall be maintained in the files of the registrant.

g. If the registration of any purchaser of Schedule I or II controlled substances is terminated for any reason, or if the ~~registrant changes~~ name or address *of the registrant* as shown on the registration *is changed*, the registrant shall return all unused order forms to the DEA district office.

ITEM 6. Adopt new subrule 10.34(7) as follows:

10.34(7) Ordering or distributing Schedule I or II controlled substances – electronic ordering system. A registrant authorized to order or distribute Schedule I or II controlled substances via the DEA Controlled Substances Ordering System (CSOS) shall comply with the requirements of the DEA relating to that system, including the maintenance and security of digital certificates, signatures, and passwords and all record-keeping and reporting requirements.

a. For an electronic order to be valid, the purchaser shall sign the electronic order with a digital signature issued to the purchaser or the purchaser's agent by the DEA.

b. An electronic order may include controlled substances that are not in Schedules I and II and may also include noncontrolled substances.

c. A purchaser shall submit an order to a specific wholesale distributor appropriately licensed to distribute in Iowa.

d. Prior to filling an order, a supplier shall verify the integrity of the signature and the order, verify that the digital certificate has not expired, check the validity of the certificate, and verify the registrant's authority to order the controlled substances.

e. The supplier shall retain an electronic record of every order, including a record of the number of commercial or bulk containers furnished for each item and the date on which the supplier shipped the containers to the purchaser. The shipping record shall be linked to the electronic record of the order. Unless otherwise provided under federal law, a supplier shall ship the controlled substances to the registered location associated with the digital certificate used to sign the order.

f. If an order cannot be filled for any reason, the supplier shall notify the purchaser and provide a statement as to the reason the order cannot be filled. When a purchaser receives such a statement from a supplier, the purchaser shall electronically link the statement of nonacceptance to the original electronic order. Neither a purchaser nor a supplier may correct a defective order; the purchaser must issue a new order for the order to be filled.

g. When a purchaser receives a shipment, the purchaser shall create a record of the quantity of each item received and the date received. The record shall be electronically linked to the original order and shall identify the individual reconcil-

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ing the order. A purchaser shall, for each order filled, retain the original signed order and all linked records for that order for two years. The purchaser shall also retain all copies of each unfilled or defective order and each linked statement.

h. A supplier shall retain each original order filled and all linked records for two years. A supplier shall, for each electronic order filled, forward to the DEA within two business days either a copy of the electronic order or an electronic report of the order in a format specified by the DEA.

i. Records of CSOS electronic orders and all linked records shall be maintained by a supplier and a purchaser for two years following the date of shipment or receipt, respectively. Records may be maintained electronically or in hard-copy format. Records that are maintained electronically shall be readily retrievable from all other records, shall be easily readable or easily rendered into a readable format, shall be readily retrievable at the registered location, and shall be made available to the board, to the board's agents, or to the DEA upon request. Records maintained in hard-copy format shall be maintained in the same manner as DEA Form 222.

ITEM 7. Amend rule 657—10.35(124,155A) as follows:

657—10.35(124,155A) Inventory requirements Physical count and record of inventory. Responsibility for ~~taking any~~ *ensuring that a required inventory rests is timely completed shall rest* with the registrant or, in the case of a registered business, shall rest with the owner of the business. A registrant or owner of a registered business may delegate the actual taking of any inventory. The person or persons responsible for taking the inventory shall sign the completed inventory record.

10.35(1) Record and procedure. Each inventory record, *except the monthly count required pursuant to subrule 10.33(4)*, shall comply with the requirements of this subrule and shall be maintained for a minimum of ~~four~~ *two* years from the date of the inventory.

a. Each inventory shall contain a complete and accurate record of all controlled substances on hand on the date and at the time the inventory is taken.

b. Each inventory shall be maintained in ~~written~~ *a handwritten*, typewritten, or *electronically* printed form at the registered location. An inventory of Schedule II controlled substances shall be maintained separately from an inventory of all other controlled substances.

c. Controlled substances shall be deemed to be on hand if they are in the possession of or under the control of the registrant. These shall include prescriptions prepared for dispensing to a patient but not yet delivered to the patient, *substances maintained in emergency medical services programs or care facility emergency supplies, outdated or adulterated substances pending destruction*, and substances stored in a warehouse on behalf of the registrant.

d. A separate inventory shall be made for each registered location and for each independent activity registered except as otherwise provided under federal law.

e. The inventory shall be taken ~~as of~~ *prior to* opening of business or ~~as of~~ *following* the close of business on the inventory date, and the inventory record shall identify either opening or close of business.

f. The inventory record, unless otherwise provided under federal law, shall include the following information:

- (1) The name of the substance;
- (2) The strength and dosage form of the substance; *and*
- (3) The quantity of the substance; *and*
- (4) ~~The number of commercial containers of each strength and dosage form of the substance.~~

g. ~~If the substance is~~ *For all substances* listed in Schedule I or II, *and for all solid oral and injectable hydrocodone-containing products*, the quantity shall be an exact count or measure of the substance.

h. ~~If the substance is~~ *For all substances* listed in Schedule III, IV, or V, *except for hydrocodone-containing products identified in paragraph "g" herein*, the quantity may be an estimated count or measure of the substance unless the container has been opened and originally held more than 1,000 100 dosage units. If the *opened* commercial container originally held more than 1,000 100 dosage units, an exact count of the contents shall be made. *Liquid oral hydrocodone-containing products packaged in incremented containers shall be measured to the nearest increment; products packaged in nonincremented containers may be estimated to the nearest one-fourth container.*

10.35(2) Initial inventory. A new registrant shall take an inventory of all stocks of controlled substances on hand on the date the new registrant first engages in the manufacture, distribution, or dispensing of controlled substances. If the registrant commences business or the registered activity with no controlled substances on hand, the initial inventory shall record that fact.

10.35(3) Biennial Annual inventory. After the initial inventory is taken, a registrant shall take a new inventory of all stocks of controlled substances on hand at least ~~every two~~ *years annually*. The *biennial annual* inventory may be taken on any date that is within ~~two years~~ *one year* of the previous ~~biennial~~ inventory date.

10.35(4) Change of ownership. Both the current owner and the prospective owner shall be responsible for ~~taking~~ *ensuring that* an inventory of all controlled substances *is timely completed* whenever there is a change of ownership of any pharmacy or drug wholesaler licensed pursuant to Iowa Code section 155A.13 or 155A.17, respectively.

10.35(5) Change of pharmacist in charge (PIC). An inventory of all controlled substances shall be completed whenever there is a change of PIC. The inventory shall be taken at the close of business of the last day of the terminating PIC's employment and before opening for business the first day of the new PIC's employment. A single inventory shall be sufficient if there is no lapse between employment of the terminating PIC and the new PIC.

10.35(6) Change of registered location. A registrant shall take an inventory of all controlled substances whenever there is a change of registered location. The inventory shall be taken at the close of business of the last day at the location being vacated. This inventory shall serve as the ending inventory for the location being vacated as well as a record of starting inventory for the new location.

10.35(7) Discontinuing registered activity. A registrant shall take an inventory of controlled substances at the close of business of the last day the registrant is engaged in registered activities. If the registrant is selling or transferring the remaining controlled substances to another registrant, this inventory shall serve as the ending inventory for the registrant discontinuing business as well as a record of additional or starting inventory for the registrant to whom the substances are transferred.

10.35(8) Newly controlled substances. On the effective date of the addition of a previously noncontrolled substance to any schedule of controlled substances, any registrant who possesses the newly controlled substance shall take an inventory of all stocks of the substance on hand. ~~The~~ *That initial* inventory record shall be maintained with the most recent controlled substances inventory *record*. Thereafter, the new-

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ly controlled substance shall be included in each inventory made by the registrant.

ARC 5743B

PHARMACY EXAMINERS BOARD[657]

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 147.76 and 155A.17, the Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 17, "Wholesale Drug Licenses," Iowa Administrative Code.

The amendments were approved at the January 16-17, 2007, regular meeting of the Board of Pharmacy Examiners.

The proposed amendments establish a deadline for completion of the wholesale drug licensure process, describe misrepresentative deeds and unethical conduct or behavior, and establish the licensed drug wholesaler's responsibility for the actions of the wholesaler's "managerial agent" as defined in rule 657—17.6(155A).

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on March 30, 2007. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688, or by E-mail to terry.witkowski@iowa.gov.

These amendments are intended to implement Iowa Code section 155A.17.

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

The following amendments are proposed.

ITEM 1. Adopt **new** subrule 17.3(6) as follows:

17.3(6) Failure to complete licensure process. An application for a wholesale drug license, including an application for registration pursuant to 657—Chapter 10, if applicable, will become null and void if the applicant fails to complete the licensure process within six months of receipt by the board of the required applications. The licensure process shall be complete upon the wholesaler's opening for business at the licensed location following an inspection rated as satisfactory by an agent of the board if such an inspection is required pursuant to this rule. When an applicant fails to timely complete the licensure process, fees submitted with applications will not be transferred or refunded.

ITEM 2. Adopt **new** rule 657—17.6(155A) as follows:

657—17.6(155A) Responsibility for conduct. A licensed drug wholesaler shall be held responsible for actions of the wholesaler's managerial agent when the conduct of the agent

may fairly be assumed to represent the policy of the wholesaler. "Managerial agent" includes, but is not necessarily limited to, an officer or director of a corporation or an association or a partner of a partnership, and includes a person having management responsibility for submissions to the FDA regarding the development or approval of any drug product; the production, quality assurance, or quality control of any drug product; or research and development of any drug product.

17.6(1) Misrepresentative deeds. A managerial agent shall not make any statement intended to deceive, misrepresent, or mislead anyone, or be a party to or an accessory to any fraudulent or deceitful practice or transaction in the manufacture, distribution, or marketing of prescription drugs.

17.6(2) Unethical conduct or behavior. A managerial agent shall not exhibit unethical behavior in connection with the manufacture, distribution, or marketing of prescription drugs or refuse to provide reasonable information or answer reasonable questions for the benefit of a health professional or a patient. Unethical behavior shall include, but not be limited to, the following acts: verbal abuse, coercion, intimidation, harassment, sexual advances, threats, degradation of character, indecent or obscene conduct, and theft.

ARC 5744B

PHARMACY EXAMINERS BOARD[657]

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 124.301 and 147.76, the Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 22, "Unit Dose, Alternative Packaging, and Emergency Boxes," Iowa Administrative Code.

The amendments were approved at the January 16-17, 2007, regular meeting of the Board of Pharmacy Examiners.

The proposed amendments emphasize that drugs included in the emergency/first dose drug supply provided by a pharmacy to a care facility shall be limited to the drugs necessary to meet the emergency needs of the facility's patients and that the drug supply is not intended to relieve the provider pharmacy of the responsibility for ensuring timely delivery of each patient's medications. The amendments also provide that the drugs maintained in an emergency/first dose drug supply be made available for the treatment of all facility patients, without discrimination, and that any service charge assessed for the administration of a drug from the emergency/first dose drug supply shall be assessed to each patient to whom a drug from that drug supply is administered, regardless of the patient's choice of pharmacy for routine pharmaceutical services.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on March 30, 2007. Such written materi-

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als may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688, or by E-mail to terry.witkowski@iowa.gov.

These amendments are intended to implement Iowa Code sections 124.301, 124.306, 155A.13, and 155A.15.

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

The following amendments are proposed.

ITEM 1. Amend subrule 22.7(1) as follows:

22.7(1) Emergency/first dose drug supplies. All contents of the emergency/first dose drug supply shall be provided by one *provider* pharmacy designated by the facility, *and the drug supply shall be available to meet the needs of all patients of the facility, without penalty or discrimination.* The provider pharmacy shall be properly registered with the federal Drug Enforcement Administration (DEA) and the board and shall be currently licensed by the board. The provider pharmacist, the consultant pharmacist, the director of nursing of the facility, and the medical director of the facility, or their respective designees, shall jointly determine and prepare a list of drugs necessary for prompt use in patient care that will be available in the emergency/first dose drug supply. Drugs shall be listed by identity and quantity, *shall be limited to drugs necessary to meet the emergency needs of the patients served,* and shall be periodically reviewed ~~per~~ *pursuant to* policy. Careful patient planning should be a cooperative effort between the pharmacy and the facility to make drugs available, and this supply ~~should~~ *shall* only be used for emergency or unanticipated needs. *The intent of the emergency/first dose drug supply is not to relieve a pharmacy of the responsibility for timely provision of a patient's routine drug needs; the intent is to ensure that a supply of drugs is available to each patient in case of urgent need.* The drugs in the emergency/first dose drug supply are the responsibility of the pharmacy and, therefore, shall not be used or altered in any way except as provided in this rule.

ITEM 2. Amend subrule 22.7(7) as follows:

22.7(7) Procedures.

a. The consultant or provider pharmacist shall, in communication with the director of nursing of the facility and the medical director of the facility, or their respective designees, develop and implement written policies and procedures to ensure compliance with this rule.

b. The provider pharmacy shall keep a record of each prescription drug stored in the emergency/first dose drug supply and the number of doses provided.

c. The facility shall keep a complete record of the use of prescription drugs from the emergency/first dose drug supply for two years following such use. The record shall include the patient's name, the date of use, the name of the drug used, the strength of the drug, the number of doses used, the name of the prescriber authorizing the administration, and the initials or unique identification of the person administering the dose.

d. *The drugs maintained in the emergency/first dose drug supply shall be available for the emergency pharmaceutical care of all facility patients, without penalty or discrimination. If a service charge is assessed for the administration of a drug from the emergency/first dose drug supply, the same reasonable service charge shall be assessed to each patient to whom a drug from the emergency/first dose drug supply is*

administered, regardless of the patient's choice of pharmacy for pharmaceutical services.

ARC 5748B

REGENTS BOARD[681]

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 262.9(3), the Board of Regents hereby gives Notice of Intended Action to amend Chapter 1, "Admission Rules Common to the Three State Universities," Iowa Administrative Code.

The proposed amendment provides the Board of Regents the ability to modify admission requirements.

Any interested person may make written comments on this amendment on or before March 30, 2007, addressed to Diana Gonzalez, Board of Regents, State of Iowa, 11260 Aurora Avenue, Urbandale, Iowa 50322-7905; fax (515)281-6420; or E-mail gonzalez@iastate.edu.

A public hearing will be held on Friday, March 30, 2007, from 4 to 6 p.m., at which time persons may present their views either orally or in writing. At the hearing, the Board of Regents will ask those persons present to give their names and addresses for the record and to confine their remarks to the subject of the amendment. This hearing will originate from Building 6 of Des Moines Area Community College in Ankeny and will be accessible over the Iowa Communications Network (ICN) from the following sites:

Room 8, Building 6
Des Moines Area Community College
2006 S. Ankeny Blvd.
Ankeny, Iowa

Room 160, Scheman Building
Iowa State Center
Iowa State University
Corner of Elwood and Lincoln Way
Ames, Iowa

Room 107, North Hall
University of Iowa
End of North Madison St.
Iowa City, Iowa

Room 130A, Schindler Hall
University of Northern Iowa
Corner of Hudson Rd. and 23rd St.
Cedar Falls, Iowa

Room 1
Southern Prairie AEA 15
2814 N. Court St.
Ottumwa, Iowa

ICN Room
Burlington High School
421 Terrace Dr.
Burlington, Iowa

REGENTS BOARD[681](cont'd)

Room 12
Ft. Dodge High School
819 N. 25th St.
Ft. Dodge, Iowa

Room 1, Old Hospital
Iowa Braille and Sight Saving School
1002 G Ave.
Vinton, Iowa

Room A-123
Dubuque High School
1800 Clarke Dr.
Dubuque, Iowa

Room 215
Sioux City East High School
5011 Mayhew Ave.
Sioux City, Iowa

Room 2
Iowa School for the Deaf
3501 Harry Langdon Blvd.
Council Bluffs, Iowa

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 Board of Regents at (515)281-3934 to advise of specific needs.

A waiver provision is not included. The Board has adopted a uniform waiver rule, which may be found at 681 IAC 19.18(17A).

This amendment is intended to implement Iowa Code section 262.9(3).

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

The following amendment is proposed.

Amend rule 681—1.1(262) as follows:

681—1.1(262) Admission of undergraduate students directly from high school. Students desiring admission to the University of Iowa, Iowa State University, or the University of Northern Iowa must meet the requirements in this rule and also any special requirements for the curriculum, school, or college of their choice.

1.1(1) Application. Applicants must submit a formal application for admission, together with the appropriate application fee as approved by the state board of regents pursuant to Iowa Code subsection 262.9(18) and detailed in rule 681—1.7(262), and have their secondary school provide a transcript of their academic record, including credits and grades, rank in class, and certification of graduation. Applicants must also submit *SAT Reasoning Test* or *ACT* scores from the American College Test (ACT) or the Scholastic Aptitude Test (SAT), or the equivalent, as determined by each university. The Test of English as a Foreign Language (TOEFL) is required of foreign students whose first language is not English. Applicants whose primary language is not English must also meet the English language proficiency requirement specified by each university. Applicants may be required to submit additional information or data to support their applications.

1.1(2) Regent admission index (RAI).

a. Effective for students who seek admission in fall 2009 and thereafter, decisions on admission to a regent university are based on the following four factors: performance on

standardized tests (*SAT Reasoning Test* or *ACT*); high school grade point average (GPA); high school percentile rank in class; and number of high school courses completed in the core subject areas. These factors are used in the following equation to calculate a regent admission index (RAI):

$$RAI = (2 \times ACT \text{ composite score}) + (1 \times \text{high school rank expressed as a percentile}) + (20 \times \text{high school grade point average}) + (5 \times \text{number of high school courses completed in the core subject areas})$$

NOTE: For purposes of calculating the regent admission index, the ACT composite score has a top value of 36 (SAT scores will be converted to ACT composite equivalents); high school rank is expressed as a percentile with 99 percent as the top value; high school GPA is expressed in a four-point scale; and number of high school courses completed in the core subject areas is expressed in terms of years or fractions of years of study.

~~1.1(1) b.~~ Graduates of approved Iowa high schools who have the subject matter background as recommended required by each university and who rank in the upper one-half of their graduating class meet the regent admission index of 245 required for automatic admission will be admitted to any regent university. Applicants who are not in the upper one-half of their graduating class do not meet the regent admission index of 245 for automatic admission or for whom a regent admission index cannot be calculated may, after an individual review of their academic and test records, and at the discretion of the admissions officers:

a. (1) Be admitted unconditionally,

b. (2) Be admitted conditionally,

c. (3) Be required to enroll for a tryout period during a preceding summer session, or

d. (4) Be denied admission.

~~1.1(2) 1.1(3)~~ Graduates of accredited approved high schools in other states may be held to higher academic standards, but must meet at least the same requirements as graduates of Iowa high schools. The options for conditional admission or summer tryout enrollment may not necessarily be offered to these students.

~~1.1(3) 1.1(4)~~ Applicants who are graduates of nonapproved high schools will be considered for admission in a manner similar to applicants from approved high schools, but additional emphasis will be given to scores obtained on standardized examinations.

~~1.1(4) 1.1(5)~~ Applicants who are not high school graduates, but whose classes have graduated, may be considered for admission. They These applicants will be required to submit all academic data to the extent that it exists and achieve scores on standardized examinations which will demonstrate that they are adequately prepared for academic study.

~~1.1(6) Early admission.~~

a. Students with superior academic records may be admitted, on an individual basis, for part-time university study while enrolled in high school or during the summers prior to high school graduation.

b. In rare situations, exceptional students may be admitted as full-time students to a regent university before completing high school. Early admission to a regent university is provided to serve persons whose academic achievement and personal and intellectual maturity clearly suggest readiness for collegiate level study. Each university will specify requirements and conditions for early admission.

This rule is intended to implement Iowa Code section 262.9(3).

ARC 5724B**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 314.1A, the Department of Transportation hereby gives Notice of Intended Action to adopt Chapter 180, "Public Improvement Quotation Process for Governmental Entities," Iowa Administrative Code.

2006 Iowa Acts, chapter 1017, section 14, (Iowa Code section 26.14) requires a governmental entity to solicit competitive quotations for a public improvement when the estimated total cost of the public improvement exceeds the competitive quotation threshold established in this section (as adjusted pursuant to Iowa Code section 314.1B), but is less than the competitive bid threshold established in section 3 of the legislation (Iowa Code section 26.3). Section 28 of the legislation (Iowa Code section 314.1A) requires the Department to adopt rules prescribing the manner by which governmental entities shall administer the quotation process. These new rules implement this rule-making requirement.

These rules were developed in conjunction with the Vertical Infrastructure Advisory Committee, which is composed of representatives of cities, counties, school boards, private contractors and labor.

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, Office of Policy and Legislative Services, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address: julie.fitzgerald@dot.iowa.gov.
5. Be received by the Office of Policy and Legislative Services no later than March 20, 2007.

A meeting to hear requested oral presentations is scheduled for Thursday, March 22, 2007, at 10 a.m. in the Administration Building, First Floor South Conference Room, Department of Transportation, 800 Lincoln Way, Ames, 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 Office of Policy and Legislative Services at the address listed in this Notice by April 2, 2007.

These rules are intended to implement Iowa Code sections 26.2, 26.13, 26.14, 314.1A, 314.1B, and 573.2.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be

available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

Proposed rule-making action:

Adopt the following **new** chapter:

CHAPTER 180**PUBLIC IMPROVEMENT QUOTATION
PROCESS FOR GOVERNMENTAL ENTITIES**

761—180.1(314) Purpose. The purpose of these rules is to prescribe the manner by which governmental entities shall administer competitive quotations for public improvement contracts, in accordance with Iowa Code section 26.14.

761—180.2(314) Contact information. Questions regarding this chapter may be directed to the Office of Facilities Support, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

761—180.3(314) Definitions.

"Estimated total cost of a public improvement" means the estimated total cost to the governmental entity to construct a public improvement, including the cost of labor, materials, equipment, and supplies, but excluding the cost of architectural or engineering design services and inspection.

"Governmental entity" means the state, political subdivisions of the state, public school corporations, and all officers, boards, or commissions empowered by law to enter into contracts for the construction of public improvements, excluding the state board of regents and the state department of transportation.

"Public improvement" means a building or construction work which is constructed under the control of a governmental entity and is paid for in whole or in part with funds of the governmental entity, including a building or improvement constructed or operated jointly with any other public or private agency, but excluding urban renewal demolition and low-rent housing projects, industrial aid projects authorized under Iowa Code chapter 419, emergency work or repair or maintenance work performed by employees of a governmental entity, and excluding a highway, bridge, or culvert project, and excluding construction or repair or maintenance work performed for a city utility under Iowa Code chapter 388 by its employees or performed for a rural water district under Iowa Code chapter 357A by its employees.

"Repair or maintenance work" means the preservation of a road, street, bridge, culvert, storm sewer, sanitary sewer, or other public facility (vertical infrastructure) so that it remains in sound or proper condition, including minor replacements and additions as necessary to restore the public facility to its original condition with the same design.

"Responsible quotation" means a quotation submitted by a contractor who is capable of performing the work. To be considered responsible, the contractor must possess the necessary financial and technical capability to perform the work, as well as the ability to complete the work as demonstrated by past performance or other appropriate considerations.

"Responsive quotation" means a quotation in which the contractor agrees to do everything required by the governmental entity's solicitation of quotations and by the plans and specifications and other related documents, without any conditions, qualifications or exclusions.

"Vertical infrastructure" means buildings, all appurtenant structures, utilities, incidental street improvements including sidewalks, site development features, recreational trails, and parking facilities. Vertical infrastructure does not include

TRANSPORTATION DEPARTMENT[761](cont'd)

any work constructed in conjunction with or ancillary to highway, street, bridge or culvert projects, including but not limited to utilities and sidewalks.

761—180.4(314) Types of projects.

180.4(1) Public improvement. A public improvement involves new construction, reconstruction, or an improvement that results in betterment to a facility by improving either the original design of the facility or the function of the facility.

180.4(2) Repair or maintenance work. Repair or maintenance work involves work that is needed to keep or restore a facility so that it may continue to operate according to its original function or design. Repair or maintenance work may be performed by employees of a governmental entity regardless of the estimated total cost of the repair or maintenance work. If a governmental entity is unable to perform the work using its own employees, the governmental entity must follow the appropriate public improvement process set out in Iowa Code section 26.3 or 26.14, based on the estimated total cost of the work.

761—180.5(314) Solicitation of quotations.

180.5(1) A governmental entity shall solicit competitive quotations for a public improvement when the estimated total cost of the public improvement exceeds the competitive quotation threshold established in Iowa Code section 26.14, as adjusted pursuant to Iowa Code section 314.1B, but is less than the competitive bid threshold established in Iowa Code section 26.3, as adjusted pursuant to Iowa Code section 314.1B. The adjusted thresholds are published on the following Web site: http://www.iowadot.gov/local_systems/publications/bid_limits.htm.

180.5(2) The governmental entity shall make a good-faith effort to obtain quotations for the work from at least two contractors regularly engaged in such work prior to letting a contract. Quotations shall be obtained by means of either an oral or a written solicitation directed to not less than two contractors.

180.5(3) Each solicitation shall include a description of the work to be performed, and plans and specifications for the work prepared by an architect or engineer if required by Iowa Code chapter 542B or 544A. (See 193B—Chapter 5 or rule 193C—1.5(542B) for additional guidelines.) In its solicitation, the governmental entity shall advise each contractor that it has an opportunity to inspect the work site. Each contractor requesting to inspect the work site shall be provided an equal and adequate opportunity to do so.

180.5(4) Additional information deemed pertinent by the governmental entity, or requested by a contractor, may be provided by the governmental entity if the same information is provided to all contractors from which quotations are solicited. If the information is provided in written form to a contractor, it shall be provided in the same form to all contractors from which quotations are solicited.

180.5(5) In its solicitation, the governmental entity shall:

- a. Specify the required form and content of quotations. (See rule 761—180.7(314).)
- b. Require that quotations be filed by a particular time, at a particular location and with a particular office or representative of the governmental entity.
- c. Establish the acceptable method(s) for delivery of quotations. The governmental entity may specify any or all of the following methods of delivery: mail, facsimile, electronic mail, or delivery in-hand.

180.5(6) As required by Iowa Code section 573.2, the governmental entity shall in its solicitation inform quoting contractors of the obligation of the contractor awarded the

contract to provide a performance and payment bond to secure the performance and timely completion of the work and to secure the payment of subcontractors and suppliers.

180.5(7) In its solicitation, the governmental entity may require each quoting contractor to:

a. Provide along with its quotation a quotation bond, or other quotation security or evidence of its responsibility, to assure that it will enter into a contract to perform the work and that it will provide the required performance and payment bond.

b. Commit to the execution of a contract for the work in a form required by the governmental entity.

c. Commit to commencement and completion dates for the work as directed by the governmental entity.

d. File evidence of insurance, as specified by the governmental entity, with its quotation, or commit to filing such evidence of insurance upon award of the contract to perform the work.

180.5(8) In its solicitation, the governmental entity may provide that it will issue special sales tax exemption certificates to contractors and subcontractors, pursuant to Iowa Code section 423.3, subsection 80.

761—180.6(314) Submission of competitive quotation by governmental entity. The governmental entity may itself file a competitive quotation to perform the work. The governmental entity's quotation shall be filed in the same manner as it requires quotations to be filed by contractors except as provided in subrule 180.7(3).

761—180.7(314) Form and content of competitive quotations.

180.7(1) A competitive quotation filed by a contractor or by the governmental entity shall be in writing and shall include the total price for labor, equipment, materials and supplies required to perform the work. A contractor shall not be required to include in its quotation or in individual quotation items a breakdown of costs for labor, materials, equipment and supplies. Competitive quotations filed by contractors shall include all other information, documentation or commitments required by the governmental entity in its solicitation of quotations.

180.7(2) If the governmental entity in its solicitation indicates its intention to file a competing quotation, contractors shall also separately identify in their quotations the premium cost for the required performance and payment bond and an estimate of the sales and fuel taxes they will incur in performing the work. However, if in its solicitation the governmental entity provides for the issuance of sales tax exemption certificates to the contractor and subcontractors performing the work, quoting contractors shall not include or separately identify estimated sales tax in their quotations.

180.7(3) A quotation submitted by a governmental entity need not include the information, documents or commitments required of quoting contractors in subrule 180.5(7). A governmental entity is not required to submit a performance and payment bond.

180.7(4) The governmental entity may require that quotations from contractors be submitted on a form prescribed by the governmental entity, provided the form complies with the requirements of these rules.

761—180.8(314) Evaluation of competitive quotations.

180.8(1) If a quoting contractor does not file a quotation in the form required by the governmental entity, or does not provide all information or documentation or make all commitments required by the governmental entity, or does not sign the quotation if required by the governmental entity, the

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quotation shall be determined to be nonresponsive and shall be rejected by the governmental entity.

180.8(2) If the governmental entity submits a quotation to perform the work, paragraphs "a" to "c" of this subrule are applicable. If the governmental entity does not submit a quotation, these paragraphs do not apply.

a. Because the governmental entity is not required to pay sales tax or fuel tax or to submit a performance and payment bond in connection with work performed by governmental employees using governmental equipment, each contractor's total quotation shall be adjusted to deduct the amounts identified in the quotation for estimated sales and fuel taxes and the bond premium. The amount of each contractor's adjusted quotation shall then be compared to the amount of the quotation submitted by the governmental entity for the purpose of determining if the governmental entity's quotation is the lowest responsive, responsible quotation.

b. If in its solicitation the governmental entity provides for the issuance of sales tax exemption certificates to the contractor and subcontractors performing the work, quoting contractors shall not include or separately identify estimated sales tax in their quotations, and the governmental entity shall not deduct estimated sales tax from the contractors' quotations for the purpose of determining if the governmental entity's quotation is the lowest responsive, responsible quotation.

c. The governmental entity may require the contractor to which the work is awarded to provide documentation of the premium cost incurred by it for the performance and payment bond and of all sales and fuel taxes paid by it and its subcontractors in connection with the work. The governmental entity may decline to pay the amounts identified by the contractor in its quotation for the bond premium and estimated sales and fuel taxes if these amounts are not properly documented as having been paid.

761—180.9(314) Award of contract and subsequent procedures.

180.9(1) Except as provided in subrule 180.9(3), the governmental entity shall award the contract for the work to the contractor submitting the lowest responsive, responsible quotation, subject to Iowa Code section 26.9, or the governmental entity may reject all of the quotations. A contract shall be considered awarded when the governmental entity unconditionally accepts and approves the lowest responsive, responsible quotation. The governing body of the governmental entity shall record the approved quotation in its meeting minutes.

180.9(2) The governing body of a governmental entity may delegate the authority to award and execute contracts, or to award contracts and authorize the work to proceed, to an officer or employee of the governmental entity, provided that an award approved outside a meeting of the governing body shall be reported in the meeting minutes of the next regular meeting of the governing body.

180.9(3) If no quotations are received from contractors to perform the work or if the governmental entity's estimated cost to do the work with its employees, as reflected in its quotation, is less than the lowest responsive, responsible quotation received from a contractor, the governmental entity may authorize its employees to perform the work.

180.9(4) Upon the submission of the required performance and payment bond by the contractor to which the contract has been awarded and upon approval of the bond by the governmental entity, the governmental entity shall execute a contract to perform the work or shall authorize the contractor to proceed with the work.

180.9(5) Upon execution of the contract by the contractor and the governmental entity or upon authorization to proceed by the governmental entity and acknowledgment thereof by the contractor, the governmental entity shall release the quotation bonds or other quotation security submitted with the quotations received.

180.9(6) If the governmental entity is a city and the cost of the work will exceed the amount provided for in Iowa Code section 380.4, the governing body is required to pass a resolution approving the expenditure.

761—180.10(314) Retained funds. In addition to requiring the contractor to submit a performance and payment bond, the governmental entity is required to retain funds from each payment to the contractor for the benefit of subcontractors and suppliers, as provided in Iowa Code chapter 573, and is required to release retained funds upon substantial completion of the work, as provided in Iowa Code section 26.13.

These rules are intended to implement Iowa Code sections 26.2, 26.13, 26.14, 314.1A, 314.1B, and 573.2.

NOTICE—PUBLIC FUNDS INTEREST RATES

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions James E. Forney, Superintendent of Banking Thomas B. Gronstal, and Auditor of State David A. Vaudt have established today the following rates of interest for public obligations and special assessments. The usury rate for February is 6.50%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

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

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

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

New official state interest rates, effective February 12, 2007, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

NOTICE—PUBLIC FUNDS INTEREST RATES(cont'd)

TIME DEPOSITS

7-31 days	Minimum 1.85%
32-89 days	Minimum 2.85%
90-179 days	Minimum 3.25%
180-364 days	Minimum 3.65%
One year to 397 days	Minimum 3.85%
More than 397 days	Minimum 4.90%

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

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

ARC 5719B**VETERANS AFFAIRS, IOWA
DEPARTMENT OF[801]****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 35A.3(2), the Commission of Veterans Affairs proposes to amend Chapter 1, "Organization and Procedures," and to adopt new Chapter 9, "War Orphans Educational Assistance Fund," Iowa Administrative Code.

The War Orphans Educational Aid Program has been in operation since the early 1990s. The Eighty-first General Assembly amended the statute governing the War Orphans Educational Aid Program in 2006 Iowa Acts, House File 2792, sections 35, 36, and 37. These proposed amendments implement the changes required by the General Assembly. The rule for the program is removed from Chapter 1 and placed in new Chapter 9.

Pursuant to 2006 Iowa Acts, House File 2792, the War Orphans Educational Aid Fund has been renamed the War Orphans Educational Assistance Fund, and a new program has been established for the children of persons who died on or after September 11, 2001, during active federal military service. In addition, the original program will remain in effect only for the children of persons who died prior to September 11, 2001, during active federal military service. The purpose of the original program is to provide assistance to war orphans to be used to defray the expenses of tuition, matriculation, laboratory and similar fees, books and supplies, board, lodging, and any other reasonably necessary expense for attendance in Iowa at an educational or training institution of college grade, or in a business or vocational training school with standards approved by the Iowa Department of Veterans

Affairs. The amount of payment is limited to \$600 per person per year, with a lifetime maximum of \$3,000 per person. The child must have lived in Iowa for two years preceding the application and must be the child of a person who died during active federal military service while serving in the armed forces or during active federal military service in the Iowa National Guard or other military component of the United States.

The requirements for the new program established for the children of persons who died on or after September 11, 2001, during active federal military service are similar to those for the existing program, including the requirement that the child must have lived in Iowa for two years preceding the application and must attend school in Iowa. However, the amount of payment is increased to \$5,500 per year or the amount of the child's established financial need, whichever is less, with a lifetime limit of \$27,500.

Under the new program, uses for the money remain the same, but attendance is limited to a community college established under Iowa Code chapter 260C or an institution of higher education governed by the State Board of Regents.

These amendments do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 801—4.14(17A,35D).

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 5718B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held March 22, 2007, at 10 a.m. at Camp Dodge, Bldg. A6A, 7105 NW 70th Avenue, Johnston, Iowa.

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. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Iowa Department of Veterans Affairs, Camp Dodge, 7105 NW 70th Avenue, Johnston, Iowa 50131, or at (515)242-5331, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)242-5331.

Any interested person may make written comments or suggestions on the proposed amendments on or before March 22, 2007. Written comments and suggestions should be addressed to Patrick Palmersheim, Executive Director, at the above address, sent by E-mail to Patrick.Palmersheim@iowa.gov, or sent by fax to (515)242-5659.

These amendments are intended to implement Iowa Code sections 35.8, 35.9, 35.10 and 35.11.

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

ARC 5721B**VETERANS AFFAIRS, IOWA
DEPARTMENT OF[801]****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 35A.3(2), the Commission of Veterans Affairs proposes to adopt new Chapter 12, “County Grant Program for Veterans,” Iowa Administrative Code.

The Eighty-first General Assembly enacted 2006 Iowa Acts, House File 2797 [chapter 1185], section 34, which appropriated up to \$1 million to the Iowa Department of Veterans Affairs for the fiscal year beginning July 1, 2006, and ending June 30, 2007, for the purpose of providing matching grants to counties in order to improve services to veterans.

These rules establish the requirements for counties to receive funding from the County Grant Program for Veterans. To be eligible for these funds, a county must match the funds and must also submit a report to the Department identifying the impact of the grant on increasing services to veterans.

These rules do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Commission’s general rule on exceptions at 801—4.14(17A,35D).

These rules were also Adopted and Filed Emergency and are published herein as **ARC 5720B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested party or persons may present their views either orally or in writing at a public hearing that will be held Tuesday, March 20, 2007, at 10 a.m. at Camp Dodge, Building A6A, 7105 NW 70th Avenue, Johnston, Iowa.

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 rules. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Iowa Department of Veterans Affairs, Camp Dodge, 7105 NW 70th Avenue, Johnston, Iowa 50131, or at (515)242-5331, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)242-5331.

Any interested person may make written comments or suggestions on the proposed rules on or before March 20, 2007. Written comments and suggestions may be addressed to Patrick Palmersheim, Executive Director, at the above address, sent by E-mail to Patrick.Palmersheim@iowa.gov, or sent by fax to (515)242-5659.

These rules are intended to implement 2006 Iowa Acts, chapter 1185, section 34.

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

ARC 5745B

MEDICAL EXAMINERS
BOARD[653]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3, the Board of Medical Examiners hereby amends Chapter 8, "Fees," Chapter 9, "Permanent Physician Licensure," Chapter 10, "Resident, Special and Temporary Physician Licensure," Chapter 11, "Continuing Education and Mandatory Training for Identifying and Reporting Abuse," and Chapter 17, "Licensure of Acupuncturists," Iowa Administrative Code.

The amendments impose a service charge for making a service available on line, eliminate the current convenience fee, and update the Board's Web site address.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on January 3, 2007, as **ARC 5631B**. The Board received no public comment. These amendments are identical to those published under Notice of Intended Action.

The Board finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these amendments should be waived because the amendments confer a benefit to licensure applicants, licensees and the public who will be able to access many more services on line than are now available.

The Board adopted the amendments during a telephone conference call held on February 8, 2007.

These amendments are intended to implement Iowa Code section 147.80.

These amendments shall become effective March 1, 2007.

The following amendments are adopted.

ITEM 1. Amend rule 653—8.1(147,148,272C) as follows:

653—8.1(147,148,272C) Definitions.

"Board" means the Iowa board of medical examiners.

"Service charge" means the amount charged for making a service available on line and is in addition to the actual fee for a service itself. For example, one who renews a license on line will pay the license renewal fee and a service charge.

ITEM 2. Amend subrule **8.4(1)**, paragraph "c," as follows:

c. Renewal of an active license to practice, \$500 if renewal is made via paper application or \$400 if renewal is made via on-line application, per biennial period or a prorated portion thereof if the current license was issued for a period of less than 24 months. ~~A convenience fee will be charged for on-line renewal.~~

ITEM 3. Amend rule **653—8.9(147,148,272C)**, numbered paragraph "1," as follows:

1. Iowa Code and Iowa Administrative Code access, no fee, available at www.docboard.org/ia www.medicalboard.iowa.gov.

ITEM 4. Amend rule **653—9.1(147,148,150,150A)** by adding the following **new** definition in alphabetical order:

"Service charge" means the amount charged for making a service available on line and is in addition to the actual fee for a service itself. For example, one who renews a license on line will pay the license renewal fee and a service charge.

ITEM 5. Amend subrule **9.11(3)**, paragraph "a," as follows:

a. The renewal fee is \$500 if the renewal is made via paper application or \$400 if the renewal is made via on-line application, per biennial period or a prorated portion thereof if the current license was issued for a period of less than 24 months. ~~A convenience fee will be charged for on-line renewal.~~

ITEM 6. Amend rule **653—10.1(147,148,150,150A)** by adding the following **new** definition in alphabetical order:

"Service charge" means the amount charged for making a service available on line and is in addition to the actual fee for a service itself. For example, one who renews a license on line will pay the license renewal fee and a service charge.

ITEM 7. Amend rule **653—11.1(272C)** by adding the following **new** definition in alphabetical order:

"Service charge" means the amount charged for making a service available on line and is in addition to the actual fee for a service itself. For example, one who renews a license on line will pay the license renewal fee and a service charge.

ITEM 8. Amend rule **653—17.3(148E)** by adding the following **new** definition in alphabetical order:

"Service charge" means the amount charged for making a service available on line and is in addition to the actual fee for a service itself. For example, one who renews a license on line will pay the license renewal fee and a service charge.

[Filed Emergency After Notice 2/8/07, effective 3/1/07]

[Published 2/28/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/28/07.

ARC 5718B

VETERANS AFFAIRS, IOWA
DEPARTMENT OF[801]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 35A.3(2), the Commission of Veterans Affairs hereby amends Chapter 1, "Organization and Procedures," and adopts new Chapter 9, "War Orphans Educational Assistance Fund," Iowa Administrative Code.

The War Orphans Educational Aid Program has been in operation since the early 1990s. The Eighty-first General Assembly amended the statute governing the War Orphans Educational Aid Program in 2006 Iowa Acts, House File 2792, sections 35, 36, and 37. These amendments implement the changes required by the General Assembly. The rule for the program is removed from Chapter 1 and placed in new Chapter 9.

Pursuant to 2006 Iowa Acts, House File 2792, the War Orphans Educational Aid Fund has been renamed the War Orphans Educational Assistance Fund, and a new program has been established for the children of persons who died on or after September 11, 2001, during active federal military service. In addition, the original program will remain in effect only for the children of persons who died prior to September 11, 2001, during active federal military service. The purpose of the original program is to provide assistance to war orphans to be used to defray the expenses of tuition, matriculation, laboratory and similar fees, books and supplies, board,

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801](cont'd)

lodging, and any other reasonably necessary expense for attendance in Iowa at an educational or training institution of college grade, or in a business or vocational training school with standards approved by the Iowa Department of Veterans Affairs. The amount of payment is limited to \$600 per person per year, with a lifetime maximum of \$3,000 per person. The child must have lived in Iowa for two years preceding the application and must be the child of a person who died during active federal military service while serving in the armed forces or during active federal military service in the Iowa National Guard or other military component of the United States.

The requirements for the new program established for the children of persons who died on or after September 11, 2001, during active federal military service are similar to those for the existing program, including the requirement that the child must have lived in Iowa for two years preceding the application and must attend school in Iowa. However, the amount of payment is increased to \$5,500 per year or the amount of the child's established financial need, whichever is less, with a lifetime limit of \$27,500.

Under the new program, uses for the money remain the same, but attendance is limited to a community college established under Iowa Code chapter 260C or an institution of higher education governed by the State Board of Regents.

The Commission of Veterans Affairs adopted these amendments on January 3, 2007. The Commission finds that notice and public participation are impracticable because the Department must implement the new program as soon as possible. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(2).

The Commission finds that these amendments confer a benefit to war orphans by increasing available funding for educational assistance. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these amendments is waived.

These amendments do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Commission's general rule on waivers at 801—4.14(17A,35D).

These amendments are also published herein under Notice of Intended Action as **ARC 5719B** to allow for public comment.

These amendments are intended to implement Iowa Code sections 35.8, 35.9, 35.10, and 35.11.

These amendments became effective January 29, 2007.

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

The following amendments are adopted.

ITEM 1. Rescind and reserve rule **801—1.10(35,35A)**.

ITEM 2. Adopt the following **new** chapter:

CHAPTER 9

WAR ORPHANS EDUCATIONAL ASSISTANCE FUND

801—9.1(35) War orphans educational assistance fund. The war orphans educational assistance fund shall be administered in accordance with Iowa Code sections 35.9 and 35.10. The amount of educational assistance allowed eligible war orphans is based upon an appropriation made by the Iowa general assembly on an annual basis.

801—9.2(35) Program for children of veterans who died before September 11, 2001.

9.2(1) Definition. For the purposes of this rule, a war orphan is:

a. The child of a man or woman who died in service or as a result of such service before September 11, 2001, during one of the following periods:

(1) World War I between April 6, 1917, and June 2, 1921, inclusive.

(2) World War II between September 16, 1940, and December 31, 1946, inclusive.

(3) The Korean Conflict between June 25, 1950, and January 31, 1955, inclusive.

(4) The Vietnam Conflict between August 5, 1964, and May 7, 1975, inclusive.

(5) The Persian Gulf Conflict between August 2, 1990, and the date the President or the Congress of the United States declares a permanent cessation of hostilities, inclusive.

(6) While serving in the military or naval forces of the United States, to include members of the reserve components performing service or duties required or authorized under Chapter 39, United States Code, and Title 32, United States Code, Sections 502 through 505.

(7) Active state service required or authorized under Iowa Code chapter 29A, or as a result of such service.

b. The child of a national guardsman or other member of a reserve component who died or was killed in the performance of training or other duties ordered by competent federal or state authorities.

9.2(2) Residency requirement. A war orphan shall have lived in the state of Iowa for at least two years immediately preceding the filing of an application.

9.2(3) School requirement. A war orphan shall attend in this state any educational or training institution of college grade or any business or vocational training school with standards approved by the department.

9.2(4) Amount of payment. In no case shall payment of war orphans educational assistance be in excess of \$600 per person per year. There is a lifetime maximum of \$3,000 per person.

801—9.3(35) Program for children of veterans who died on or after September 11, 2001.

9.3(1) Definition. For the purposes of this rule, a war orphan is:

a. The child of a man or woman who died in service or as a result of such service on or after September 11, 2001, as follows:

(1) While serving in the military or naval forces of the United States, to include members of the reserve components performing service or duties required or authorized under Chapter 39, United States Code, and Title 32, United States Code, Sections 502 through 505.

(2) Active state service required or authorized under Iowa Code chapter 29A, or as a result of such service.

b. The child of a national guardsman or other member of a reserve component who died or was killed in the performance of training or other duties ordered by competent federal or state authorities.

9.3(2) Residency requirement. A war orphan shall have lived in the state of Iowa for at least two years immediately preceding the filing of an application.

9.3(3) School requirement. A war orphan shall attend in this state a community college established under Iowa Code chapter 260C or an institution of higher education governed by the state board of regents.

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9.3(4) Amount of payment. In no case shall payment of war orphans educational assistance be in excess of \$5,500 per person per year or the amount of the child's established financial need, whichever is less. There is a lifetime maximum of \$27,500 per person.

801—9.4(35) General requirements.

9.4(1) Method of payment.

a. The department shall make payment directly to the school by quarters, semesters, or periods, however the school operates.

b. No payments shall be made directly to the war orphan.

c. Full-time students are honored for higher payments over part-time students. Payments shall be prorated by the department on behalf of a war orphan on the basis of time spent in school.

d. The school shall submit triplicate billing to the executive director thereby certifying that a war orphan is in attendance and the number of hours of attendance.

9.4(2) How assistance may be used. War orphans educational assistance may be used to defray the expenses of tuition, matriculation, laboratory and similar fees, books and supplies, board, lodging, and any other reasonably necessary expense for the child or children attending a school meeting the requirements set forth above.

9.4(3) Scholastic and financial standing. War orphans educational assistance is a gift from the state of Iowa to eligible war orphans and is given regardless of scholastic or financial standing.

9.4(4) Unrestricted factors. There are no restrictions on war orphans with respect to age, number of years of planned attendance at a school of learning, or marital status.

801—9.5(35) Application process.

9.5(1) Application. Upon request, war orphans educational assistance applications may be obtained from the executive director at the address as set out in 801—subrule 1.3(1).

a. The war orphan shall complete the application in ink, by typewriter, or by computer, and the application shall be returned to the executive director.

b. A copy of the war orphan's birth certificate and proof of death of the veteran parent shall be included with the completed application. Proof of death of the veteran parent while in service may be a telegram, letter, or certified verification from the U.S. Department of Defense. Proof of death after service is a copy of a death certificate.

9.5(2) Verification. The executive director shall verify the service-connected death of a war veteran with the U.S. Department of Veterans Affairs.

These rules are intended to implement Iowa Code sections 35.8, 35.9, 35.10 and 35.11.

[Filed Emergency 1/29/07, effective 1/29/07]

[Published 2/28/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/28/07.

ARC 5720B

**VETERANS AFFAIRS, IOWA
DEPARTMENT OF[801]**

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 35A.3(2), the Commission of Veterans Affairs adopts new Chapter 12, "County Grant Program for Veterans," Iowa Administrative Code.

The Eighty-first General Assembly enacted 2006 Iowa Acts, House File 2797 [chapter 1185], section 34, which appropriated up to \$1 million to the Iowa Department of Veterans Affairs for the fiscal year beginning July 1, 2006, and ending June 30, 2007, for the purpose of providing matching grants to counties in order to improve services to veterans.

These rules establish the requirements for counties to receive funding from the County Grant Program for Veterans. To be eligible for these funds, a county must match the funds and must also submit a report to the Department identifying the impact of the grant on increasing services to veterans.

The Commission of Veterans Affairs adopted these rules on January 3, 2007.

The Commission finds that notice and public participation are impracticable since the Department must implement the program as soon as possible because the moneys are to be expended during fiscal year 2007. Therefore, these rules are filed pursuant to Iowa Code section 17A.4(2).

The Commission finds that these rules confer a benefit to veterans by increasing available funding for services. Therefore, these rules are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these rules is waived.

These rules do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Commission's general rule on exceptions at 801—4.14(17A,35D).

These rules are also published herein under Notice of Intended Action as **ARC 5721B** to allow for public comment.

These rules are intended to implement 2006 Iowa Acts, chapter 1185, section 34.

These rules became effective January 29, 2007.

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

The following **new** chapter is adopted.

CHAPTER 12

COUNTY GRANT PROGRAM FOR VETERANS

801—12.1(81GA,ch1185) Purpose. 2006 Iowa Acts, chapter 1185, section 34, enacts the county grant program for veterans. The general assembly appropriated a total of \$1 million to the Iowa department of veterans affairs to fund this program. The purpose and legislative intent of this grant program is to improve delivery of services by the various county commissions of veteran affairs to veterans in their respective counties.

801—12.2(81GA,ch1185) Grant amounts. The Iowa department of veterans affairs shall award grants in amounts up to a maximum of \$10,000 to each county submitting an application that is approved by the department. In order to

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801](cont'd)

qualify for a grant, a county must agree to expend an amount of county funds equal to the amount of the approved grant.

801—12.3(81GA,ch1185) Application procedure. Counties that wish to apply for a grant shall submit an application to the Iowa Department of Veterans Affairs, Camp Dodge, Building A6A, 7105 NW 70th Avenue, Johnston, Iowa 50131. The application shall contain the following:

12.3(1) Application summary. The application summary shall consist of a brief description of the proposed project and the signatures of a member of the board of supervisors and a member of the county veteran affairs commission.

12.3(2) Narrative. The narrative shall explain the proposed project for which the funds will be used. The narrative must address the assessment factors listed in rule 801—12.4(81GA,ch1185). The assessment factors may be addressed in any sequence that is logical for the proposed project, but all factors should be identified and addressed. Any factors that are not addressed in the application may result in a reduced opportunity for funding of the project.

12.3(3) Proposed budget. The budget for the project should be developed for fiscal year 2007. It is understood that funding for subsequent years is dependent upon future legislative appropriations.

12.3(4) Letters of intent. If the proposed project involves additional funding from other sources, letters of intent to support the project are required from those additional sources.

801—12.4(81GA,ch1185) Assessment of applications. The Iowa department of veterans affairs will make decisions on the applications based upon the following factors:

12.4(1) Need. The needs of the local veteran population that currently are not being addressed or that are not being addressed adequately are clearly identified.

12.4(2) Goals. The goals of the project are clearly outlined, and the sources of the services to be provided are clearly identified.

12.4(3) Results. A time line for the delivery of the proposed services is included. Quantitative measurements of success appropriate to the project are clearly identified and are expected to address the identified needs.

12.4(4) Innovation. The project addresses the implementation of new practices and methods for addressing the needs of the veteran community and improvement of delivery of services.

12.4(5) Accountability and project monitoring. The application demonstrates financial accountability and provides mechanisms to ensure proper evaluation of the project.

801—12.5(81GA,ch1185) Application decision. The director of the Iowa department of veterans affairs shall notify each county that submits an application of the department's decision regarding the county's application. An explanation of the reasons for the rejection of a project application and suggestions for improvement shall accompany project denials.

801—12.6(81GA,ch1185) Grant agreement. Each county that is awarded a grant will be required to enter into an agreement with the Iowa department of veterans affairs that specifies the reporting requirements. A written report shall be due to the department by August 15, 2007, and shall provide an assessment of the project, including measurable outcomes such as increased opportunities to publicize veterans' benefits, the number of outreach visits conducted to allow veterans to apply for benefits, the number of applications for benefits filed as a direct result of the project, and increased opportunities for veteran involvement in local veterans' organizations.

801—12.7(81GA,ch1185) Appeals. Applicants that are dissatisfied with the decision of the director of the Iowa department of veterans affairs may file an appeal with the Iowa commission of veterans affairs. The written appeal must be received within 15 working days of the date of the notice of decision; must be based on a contention that the process was conducted outside of statutory authority, violated state or federal law, policy or rules, did not provide adequate public notice, was altered without adequate public notice, or involved conflicts of interest by staff; and must include a request that the commission review the decision and the reasons for the appeal.

The Iowa commission of veterans affairs shall review the appeal at its next regularly scheduled meeting and shall issue a final decision.

These rules are intended to implement 2006 Iowa Acts, chapter 1185, section 34.

[Filed Emergency 1/29/07, effective 1/29/07]

[Published 2/28/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/28/07.

ARC 5727B**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 1, "Administration," Chapter 11, "Licensure to Practice Dentistry or Dental Hygiene," Chapter 13, "Special Licenses," Chapter 14, "Renewal," Chapter 15, "Fees," Chapter 20, "Dental Assistants," Chapter 22, "Dental Assistant Radiography Qualification," Chapter 25, "Continuing Education," Chapter 27, "Standards of Practice and Principles of Professional Ethics," Chapter 28, "Designation of Specialty," Chapter 29, "Deep Sedation/General Anesthesia, Conscious Sedation and Nitrous Oxide Inhalation Analgesia," and Chapter 35, "Iowa Practitioner Review Committee," Iowa Administrative Code.

The amendments make the following changes:

Item 1 clarifies that a person with a lapsed license, permit, or registration continues to hold the privilege of licensure, but may not practice until the license, permit, or registration is reinstated. Item 2 eliminates a provision that requires an applicant for dental hygiene licensure by credentials to establish that the state from which the applicant comes also grants licensure by credentials to Iowa applicants. A similar provision for dentists was eliminated several years ago.

Items 3, 6, 7, 10, 12, 13, 17, and 18 change the renewal term of licenses, registrations, and permits. Previously, licenses, permits, and registrations expired at the end of June. Licenses, permits, or registrations will now expire on August 31. All licenses, permits, and registrations will be granted an automatic two-month extension. The late renewal period and continuing education compliance period have also been changed accordingly. The change in the renewal term will allow the Board to receive revenue at the beginning of the fiscal year and then plan expenditures accordingly. In accordance with 2006 Iowa Acts, House File 2748, the Board will no longer receive an appropriation and must ensure sufficient revenue is available to cover expenditures.

Item 4 specifies the application requirements for faculty permit holders. Item 5 requires applicants for a temporary permit to have at least three years of active practice in another state. This will ensure that applicants have a positive practice history prior to providing services in Iowa.

Item 8 clarifies the fee required for reinstatement of a lapsed license or registration. Item 9 establishes the license, permit, and renewal fees. The fees remain the same. Item 10 strikes "78GA,ch1002" from the parenthetical implementation statute for rules 650—20.1(153,78GA,ch1002) to 650—20.12(153,78GA,ch1002) and eliminates a typographical error that refers to dental radiography as an extraoral service. Item 11 clarifies that a dental assistant may provide dental radiography with the direct supervision of a dentist.

Item 14 sets a maximum number of hours required for reinstatement of an inactive practitioner. The number of hours is consistent with the maximum number of hours required to reinstate a lapsed license. Item 15 corrects an Iowa Code reference that has changed. Item 16 corrects the definition of the prosthodontics dental specialty.

Item 19 clarifies that the Iowa Practitioner Review Committee (IPRC) may disclose a practitioner's participation in the program if the practitioner is referred to the Board for noncompliance. In addition, Item 19 allows the Board to re-

fer a practitioner who is the subject of a Board order to the IPRC for monitoring by the IPRC.

These amendments are subject to waiver at the sole discretion of the Board in accordance with 650—Chapter 7. However, fees are not subject to waiver pursuant to 650—15.9(17A,147,153,272C).

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 22, 2006, as **ARC 5568B**. A public hearing on the amendments was held on December 12, 2006. One written comment was received. These amendments are identical to those published under Notice.

These amendments were approved at the January 18, 2007, regular meeting of the Board of Dental Examiners. The Board of Dental Examiners ratified the recommendation of the Dental Hygiene Committee of the Board regarding the changes that affect dental hygienists.

These amendments are intended to implement Iowa Code chapters 147, 153, and 272C.

These amendments will become effective on April 4, 2007.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 1, 11, 13 to 15, 20, 22, 25, 27 to 29, 35] is being omitted. These amendments are identical to those published under Notice as **ARC 5568B**, IAB 11/22/06.

[Filed 2/5/07, effective 4/4/07]

[Published 2/28/07]

[For replacement pages for IAC, see IAC Supplement 2/28/07.]

ARC 5728B**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 25, "Continuing Education," Iowa Administrative Code.

The amendment allows licensees or registrants to obtain continuing education credit for courses in Iowa jurisprudence.

This amendment is not subject to waiver or variance pursuant to 650—Chapter 7, as it expands the list of acceptable courses that licensees or registrants may choose to take.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 27, 2006, as **ARC 5405B**. A public hearing on the amendment was held on October 17, 2006. One written comment was received. In response to that comment, minor changes to the amendment published under Notice were made. Paragraph "b" in subrule 25.3(7) now lists only those courses that are acceptable for continuing education credit, and a new paragraph "c" was created to list courses that are unacceptable for continuing education credit. The list of unacceptable courses has not changed.

This amendment was approved at the January 18, 2007, meeting of the Board of Dental Examiners.

This amendment is intended to implement Iowa Code chapters 17A, 147 and 153.

This amendment will become effective on April 4, 2007.

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The following amendment is adopted.

Amend subrule **25.3(7)** as follows:

Amend paragraph **"b"** as follows:

b. ~~Unacceptable subject matter includes personal development, business aspects of practice, personnel management, government regulations, insurance, collective bargaining, and community service presentations. While desirable, those subjects are not applicable to dental skills, knowledge, and competence. Therefore, such courses will receive no credit toward renewal. The board may deny credit for any course. Courses Acceptable subject matter includes courses in patient treatment record keeping, risk management, communication and OSHA regulations are acceptable subject matter. A course on Iowa jurisprudence that has been prior approved by the board is also acceptable subject matter.~~

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

c. Unacceptable subject matter includes personal development, business aspects of practice, personnel management, government regulations, insurance, collective bargaining, and community service presentations. While desirable, those subjects are not applicable to dental skills, knowledge, and competence. Therefore, such courses will receive no credit toward renewal. The board may deny credit for any course.

[Filed 2/5/07, effective 4/4/07]

[Published 2/28/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/28/07.

ARC 5729B

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.

These amendments clarify training, facility, and equipment requirements for applicants for deep sedation/general anesthesia and conscious sedation permits. The amendments also increase the amount that the Board may recoup for the cost of an on-site evaluation of the facility where sedation services are provided. Only actual costs will be assessed, up to a maximum of \$500.

These amendments are subject to waiver at the sole discretion of the Board in accordance with 650—Chapter 7. However, application fees are not subject to waiver pursuant to 650—15.9(17A,147,153,272C).

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 27, 2006, as **ARC 5406B**. A public hearing on the amendment was held on October 17, 2006. Five written comments were received. In response to those comments, the Board has eliminated Item 3 from the noticed rules, which proposed a new subrule 29.4(9) that would have restricted a dentist from utilizing conscious sedation on pediatric or medically compromised patients unless the dentist had completed an accredited residency program. The Board has asked the Anesthesia Credentials Committee to study this issue further.

These amendments were approved at the January 18, 2007, regular meeting of the Board of Dental Examiners.

These amendments are intended to implement Iowa Code chapters 147, 153, and 272C.

These amendments will become effective on April 4, 2007.

The following amendments are adopted.

ITEM 1. Amend subrules 29.3(1) to 29.3(7) as follows:

29.3(1) No change.

a. No change.

b. Has formal training in airway management; ~~or~~ *and*

c. Has completed a minimum of one year of advanced training in anesthesiology and related academic subjects beyond the undergraduate dental school level in a training program approved by the board; ~~or~~.

d. ~~Is a diplomate of the American Board of Oral and Maxillofacial Surgery; or~~

e. ~~Is eligible for examination by the American Board of Oral and Maxillofacial Surgery; or~~

f. ~~Is a member of the American Association of Oral and Maxillofacial Surgeons; or~~

g. ~~Is a Fellow of the American Dental Society of Anesthesiology.~~

29.3(2) ~~When an applicant has not met the above requirements, the applicant must complete a remedial training program in anesthesiology and related academic subjects beyond the undergraduate dental school level. The remedial training program must be prior approved by the board. The applicant may be subject to professional evaluation as part of the application process. The professional evaluation shall be conducted by the Anesthesia Credentials Committee and include, at a minimum, evaluation of the applicant's knowledge of case management and airway management.~~

29.3(3) ~~29.3(2)~~ A dentist using deep sedation/general anesthesia shall maintain a properly equipped facility. The facility shall maintain and the dentist shall *maintain and* be trained on the following equipment at *each facility where sedation is provided*: anesthesia or analgesia machine, EKG monitor, positive pressure oxygen, suction, laryngoscope and blades, endotracheal tubes, magill forceps, oral airways, stethoscope, blood pressure monitoring device, pulse oximeter, emergency drugs, defibrillator. ~~The facility shall be staffed with trained auxiliary personnel capable of reasonably handling procedures, problems and emergencies incident to the administration of conscious sedation. A licensee may submit a request to the board for waiver of an exemption from any of the provisions of this subrule. Waiver Exemption requests will be considered by the board on an individual basis, and shall be granted only if the board determines that there is a reasonable basis for the waiver exemption.~~

29.3(3) *The dentist shall ensure that each facility where sedation services are provided is staffed with trained auxiliary personnel capable of reasonably handling procedures, problems and emergencies incident to the administration of general anesthesia. Auxiliary personnel shall maintain current certification in basic life support and be capable of administering basic life support.*

29.3(4) A dentist administering deep sedation/general anesthesia must document and maintain current, successful completion of an Advanced Cardiac Life Support (ACLS) course ~~and the auxiliary personnel shall maintain current certification in basic life support and be capable of administering basic life support.~~

29.3(5) A dentist who is performing a procedure for which deep sedation/general anesthesia was induced shall

DENTAL EXAMINERS BOARD[650](cont'd)

not administer the general anesthetic and monitor the patient without the presence and assistance of at least two qualified auxiliary personnel in the room who are qualified under subrule 29.3(4) 29.3(3).

29.3(6) No change.

29.3(7) A licensed dentist who has been utilizing deep sedation/general anesthesia in a competent manner for the five-year period preceding July 9, 1986, but has not had the benefit of formal training as outlined in this rule, may apply for a permit provided the dentist fulfills the provisions set forth in 29.3(2), 29.3(3), 29.3(4), and 29.3(5).

ITEM 2. Amend subrules 29.4(1) to 29.4(6) as follows:

29.4(1) A permit may be issued to a licensed dentist to use conscious sedation on an outpatient basis for dental patients provided the dentist meets the following requirements:

a. Has successfully completed a training program approved by the board that meets Parts I and III of the American Dental Association Council on Dental Education Guidelines; and

b. Has formal training in airway management; or

c. Has submitted evidence of successful completion of conscious sedation experience at the graduate level, which is approved by the board. The applicant shall document this experience by specifying the type of experience; the number of hours; the length of training; and the number of patient contact hours including documentation of the number of supervised conscious sedation cases; or

d. Has successfully completed a formal training program, approved by the board, which included physical evaluation, IV sedation, airway management, monitoring, basic life support and emergency management.

29.4(2) When an applicant has not met the above requirements, the applicant must complete a remedial training program in conscious sedation and related academic subjects beyond the undergraduate dental school level. The remedial training program shall be prior approved by the board. The applicant may be subject to professional evaluation as part of the application process. The professional evaluation shall be conducted by the anesthesia credentials committee and include at a minimum the evaluation of the applicant's knowledge of case management and airway management.

29.4(3) 29.4(2) A dentist utilizing conscious sedation shall maintain a properly equipped facility. The facility shall maintain and the dentist shall maintain and be trained on the following equipment at each facility where sedation is provided: anesthesia or analgesia machine, EKG monitor, positive pressure oxygen, suction, laryngoscope and blades, endotracheal tubes, magill forceps, oral airways, stethoscope, blood pressure monitoring device, pulse oximeter, emergency drugs, defibrillator. The facility shall be staffed with trained auxiliary personnel capable of reasonably handling procedures, problems and emergencies incident to the administration of general anesthesia. A licensee may submit a request to the board for waiver of an exemption from any of the provisions of this subrule. Waiver Exemption requests will be considered by the board on an individual basis and shall be granted only if the board determines that there is a reasonable basis for the waiver exemption.

29.4(3) The dentist shall ensure that each facility where sedation services are provided is staffed with trained auxiliary personnel capable of reasonably handling procedures, problems and emergencies incident to the administration of general anesthesia. Auxiliary personnel shall maintain current certification in basic life support and be capable of administering basic life support.

29.4(4) A dentist administering conscious sedation must document and maintain current, successful completion of an Advanced Cardiac Life Support (ACLS) course, and the auxiliary personnel shall maintain certification in basic life support and be capable of administering basic life support.

29.4(5) A dentist who is performing a procedure for which conscious sedation is being employed shall not administer the pharmacologic agents and monitor the patient without the presence and assistance of at least one qualified auxiliary personnel in the room who is qualified under subrule 29.4(4) 29.4(3).

29.4(6) A licensed dentist who has been utilizing conscious sedation on an outpatient basis in a competent manner for five years preceding July 9, 1986, but has not had the benefit of formal training as outlined in this rule, may apply for a permit provided the dentist fulfills the provisions set forth in subrules 29.4(2), 29.4(3), 29.4(4) and 29.4(5).

ITEM 3. Amend rule 650—29.5(153), catchwords, as follows:

650—29.5(153) Application for permit. Permit holders.

ITEM 4. Amend subrules 29.5(4), 29.5(6), and 29.5(7) as follows:

29.5(4) A provisional permit may be granted the new applicant based solely on credentials until all processing and investigation have been completed. A provisional permit may be issued only if the If an applicant will be practicing at a facility that has been previously inspected and approved by the board, a provisional permit may be granted to the applicant upon the recommendation of the anesthesia credentials committee after review of the applicant's credentials.

29.5(6) Based Upon the recommendation of the anesthesia credentials committee that is based on the evaluation of credentials, facilities, equipment, personnel and procedures of a dentist, the board may determine that restrictions may be placed on a permit.

29.5(7) The actual costs associated with the on-site evaluation of the facility shall be the primary responsibility of the licensee. The cost to the licensee shall not exceed \$150 \$500 per facility.

ITEM 5. Adopt **new** subrule 29.5(8) as follows:

29.5(8) Permit holders shall follow the American Dental Association's guidelines for the use of conscious sedation, deep sedation and general anesthesia for dentists.

ITEM 6. Amend subrule **29.10(2)**, paragraph "c," as follows:

c. Perform professional evaluations under subrules 29.3(2) and 29.4(2) and report the results of those evaluations to the board.

[Filed 2/5/07, effective 4/4/07]

[Published 2/28/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/28/07.

ARC 5757B
EDUCATIONAL EXAMINERS
BOARD[282]

Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Iowa Administrative Code.

This amendment more easily facilitates a transition for teachers coming to Iowa through international programs by reducing barriers to licensure.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 6, 2006, as **ARC 5589B**. A public hearing on the amendment was held on December 27, 2006. No one attended the public hearing, and no written comments were received. This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective April 4, 2007.

The following amendment is adopted.

Adopt **new** subrule 14.120(4) as follows:

14.120(4) International teacher exchange license.

a. A nonrenewable international exchange license may be issued to an applicant under the following conditions:

(1) The applicant has completed a teacher education program in another country; and

(2) The applicant is not subject to any pending disciplinary proceedings in any state or country; and

(3) The applicant complies with all requirements with regard to application processes and payments of licensure fees; and

(4) The applicant is a participant in a teacher exchange program administered through the Iowa department of education.

b. Each exchange license shall be limited to the area(s) and level(s) of instruction as determined by an analysis of the application and the credential evaluation report.

c. This license shall not exceed three years.

d. After the term of the exchange license has expired, the applicant may apply to be fully licensed if the applicant has completed all requirements and is eligible for full licensure.

[Filed 2/9/07, effective 4/4/07]

[Published 2/28/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/28/07.

ARC 5763B
EDUCATIONAL EXAMINERS
BOARD[282]

Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," and Chapter 22, "Paraeducator Certificates," Iowa Administrative Code.

The amendments to rules 22.5(272) and 22.13(272) incorporate the fees established in subrule 14.121(1) and eliminate a superfluous date.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 6, 2006, as **ARC 5592B**. A public hearing on the amendments was held on December 27, 2006. No one attended the public hearing, and no written comments were received. These amendments are identical to those published under Notice.

These amendments are intended to implement Iowa Code chapter 272.

These amendments will become effective April 4, 2007.

The following amendments are adopted.

ITEM 1. Amend subrule **14.121(1)**, paragraphs "**a**" and "**b**," as follows:

a. Fees for the issuance of licenses:

(1) to (12) No change.

(13) *The fee for the issuance of a paraeducator certificate shall be \$40.*

b. Fees for the renewal of licenses:

(1) to (8) No change.

(9) *The fee for the renewal of a paraeducator certificate shall be \$40.*

ITEM 2. Amend rule 282—22.5(272) as follows:

282—22.5(272) Certificate application fee. All fees are nonrefundable.

22.5(1) Issuance of certificates. The fee for the issuance of the paraeducator certificate shall be \$40 *as established in 282—subrule 14.121(1)*.

22.5(2) Adding areas of concentration. The fee for the addition of each area of concentration to a paraeducator certificate, following the issuance of the initial paraeducator certificate and any area(s) of concentration, shall be \$25 *as established in 282—subrule 14.121(1)*.

ITEM 3. Amend rule 282—22.13(272) as follows:

282—22.13(272) Renewal requirements.

22.13(1) The paraeducator certificate may be renewed upon application, payment of a \$25 renewal fee *as established in 282—subrule 14.121(1)*, and verification of successful completion of coursework totaling three units in any combination listed below.

a. to d. No change.

22.13(2) *Effective September 1, 2002, all All applicants renewing a paraeducator certificate must submit documentation of completion of the child and dependent adult abuse training approved by the state abuse education review panel. A waiver of this requirement may apply under the following conditions with appropriate documentation of any of the following:*

a. to d. No change.

[Filed 2/9/07, effective 4/4/07]

[Published 2/28/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/28/07.

ARC 5760B**EDUCATIONAL EXAMINERS
BOARD[282]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," and Chapter 15, "Requirements for Special Education Endorsements," Iowa Administrative Code.

These amendments address the language of the exceptional learner provisions to reflect current terminology more accurately.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 6, 2006, as **ARC 5588B**. A public hearing on the amendments was held on December 27, 2006. No one attended the public hearing, and no written comments were received. These amendments are identical to those published under Notice.

These amendments are intended to implement Iowa Code chapter 272.

These amendments will become effective April 4, 2007. The following amendments are adopted.

ITEM 1. Amend subrule 14.123(3) as follows:

14.123(3) Completion of the exceptional learner program, which must include preparation that contributes to the education of ~~the handicapped individuals with disabilities~~ and the gifted and talented.

ITEM 2. Amend subrule **15.1(1)**, paragraph "**c**," as follows:

c. Completion of the exceptional learner program, which must include preparation that contributes to the education of ~~the handicapped individuals with disabilities~~ and the talented and gifted.

ITEM 3. Amend subrule **15.10(2)**, paragraph "**d**," as follows:

d. The program must include preparation that contributes to the education of ~~the handicapped individuals with disabilities~~ and the gifted and talented.

ITEM 4. Amend subrule **15.12(2)**, paragraph "**d**," as follows:

d. The program must include preparation that contributes to the education of ~~the handicapped individuals with disabilities~~ and the gifted and talented.

[Filed 2/9/07, effective 4/4/07]

[Published 2/28/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/28/07.

ARC 5761B**EDUCATIONAL EXAMINERS
BOARD[282]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," and

Chapter 15, "Requirements for Special Education Endorsements," Iowa Administrative Code.

These amendments give a more accurate description of the authority of a licensee to teach two grades above or two grades below the current range of grade levels in the licensee's endorsement area.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 6, 2006, as **ARC 5591B**. A public hearing on the amendments was held on December 27, 2006. No one attended the public hearing, and no written comments were received. These amendments are identical to those published under Notice.

These amendments are intended to implement Iowa Code chapter 272.

These amendments will become effective April 4, 2007.

The following amendments are adopted.

ITEM 1. Amend subrule 14.129(1) as follows:

14.129(1) Authorization. The teacher intern is authorized to teach in grades 7 to 12. ~~The following rule does not apply to the endorsements on a teacher intern license: 282—14.140(272), requirements for other teaching endorsements.~~

ITEM 2. Amend rules ~~282—15.1(272)~~ to **282—15.20(272)** by striking "K-6" wherever it appears and inserting in lieu thereof "K-8" and by striking "7-12" wherever it appears and inserting in lieu thereof "5-12."

[Filed 2/9/07, effective 4/4/07]

[Published 2/28/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/28/07.

ARC 5765B**EDUCATIONAL EXAMINERS
BOARD[282]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 17, "Renewal of Licenses," Iowa Administrative Code.

This amendment provides for the renewal of an initial administrator license if it is needed. The provisions are similar to those for renewal of initial teaching licenses.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 8, 2006, as **ARC 5518B**. A public hearing on the amendment was held on November 28, 2006. No one attended the public hearing, and no written comments were received. This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective April 4, 2007.

The following amendment is adopted.

Adopt the following **new** rule:

282—17.13(272) Renewal requirements for the initial administrator license.

17.13(1) If a person meets all requirements for the professional administrator license except for the requirements in 282—subrule 14.114(2), the initial administrator license may be renewed upon written request. A second renewal may be granted if the holder of the initial administrator li-

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cense has not met the requirements in 282—subrule 14.114(2) and if the license holder can provide evidence of employment as a PK-12 administrator, which meets the experience requirement.

17.13(2) An extension of the initial administrator license may be issued, instead of renewing the initial administrator license, if the applicant verifies one of the following:

a. The applicant is involved in a mentoring and induction program, but the license will expire before the first year of administrative experience is completed.

b. The applicant has one year of administrative experience in a nonpublic school setting or in an out-of-state setting and needs one additional year of administrative experience to convert the initial license to the professional license.

The fee for this extension is \$25.

17.13(3) Each applicant renewing an initial administrator license must submit documentation of completion of the child and dependent adult abuse training approved by the state abuse education review panel. A waiver of this requirement may apply under the following conditions with appropriate documentation of any of the following:

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

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

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

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

[Filed 2/9/07, effective 4/4/07]

[Published 2/28/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/28/07.

ARC 5762B**EDUCATIONAL EXAMINERS
BOARD[282]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 20, "Evaluator Endorsement and License," Iowa Administrative Code.

The amendment is adopted to comply with statutory requirements. It has become increasingly easier for people to enroll in the evaluator class; therefore, several of the criteria for waiving the requirement of the evaluator endorsement have become unnecessary.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 6, 2006, as **ARC 5590B**. A public hearing on the amendment was held on December 27, 2006. No one attended the public hearing, and no written comments were received. This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective April 4, 2007.

The following amendment is adopted.

Amend subrule **20.57(1)** by striking paragraphs "c" and "d" as follows:

~~e.—A person is practicing as a nonpublic school administrator in this state.~~

~~d.—A person is practicing in a nonadministrative, non-evaluative position in this state.~~

[Filed 2/9/07, effective 4/4/07]

[Published 2/28/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/28/07.

ARC 5755B**ENVIRONMENTAL PROTECTION
COMMISSION[567]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby amends Chapter 21, "Compliance," Chapter 22, "Controlling Pollution," Chapter 23, "Emission Standards for Contaminants," Chapter 25, "Measurement of Emissions," Chapter 33, "Special Regulations and Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD) of Air Quality," and Chapter 34, "Provisions for Air Quality Emissions Trading Programs," Iowa Administrative Code.

The purpose of the amendments is to adopt into the state air quality rules several federal regulations that the U.S. Environmental Protection Agency (EPA) recently finalized. The amendments also include clarifications and corrections to state air quality rules for variances and for the operating permit program requirements.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 6, 2006, as **ARC 5599B**. A public hearing was held on January 8, 2007. No comments were presented at the hearing. One set of written comments was received prior to the close of the public comment period. The public comment period closed on January 9, 2007.

The submitted comments and the Department's response to the comments are summarized in a responsiveness summary available from the Department. The adopted amendments contain minor modifications from the proposed amendments published under Notice of Intended Action, as detailed in the following descriptions of Items 1 and 16. These modifications were made in response to the public comments and to better clarify the intent of the amendments. Additionally, the amendment adopted in Item 23 was not included in the Notice. This amendment corrects a cross reference in subrule 33.3(1), and is described in more detail in the description for Item 23 below.

Item 1 rescinds paragraph 21.2(4)"c" and adopts a new paragraph to clarify the eligibility requirements for variances. Under federal regulations, the Department may not issue a variance for conditions or standards specified under such federal regulations as Prevention of Significant Deterioration (PSD), New Source Performance Standards (NSPS), or National Emission Standards for Hazardous Air Pollutants (NESHAP). The Department may grant a variance which does not alter the facility's obligation to comply with elements of these federal regulations. The amendment is the Department's effort to clarify the variance eligibility requirements.

In response to EPA comments, the Department added language to new paragraph 21.2(4)"c" to further clarify the PSD

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requirements for which the Department may not grant a variance. EPA had concerns that variances might be given from preconstruction review requirements at a facility that would be subject to PSD but for a minor source permit limiting the facility's potential to emit. It is not the Department's intent to grant variances from preconstruction review to a potentially PSD-subject facility until the facility obtains the appropriate permit to limit its potential emissions below major source thresholds. The Department will continue to review such variance requests on a case-by-case basis.

EPA also wanted to ensure that affected facilities are aware that variances the Department issues from requirements contained in the EPA-approved state implementation plan (SIP) do not change the requirements contained in the SIP unless the variance is approved by EPA. It is not the Department's intention to alter Iowa's SIP by issuing specific variances on a case-by-case basis to a limited number of facilities.

New paragraph 21.2(4)"c" now reads as follows:

"c. The director shall not grant a variance from any of the following requirements:

"(1) Case-by-case maximum achievable control technology (MACT), 567—paragraph 22.1(1)"b";

"(2) Prevention of significant deterioration (PSD), 567—Chapter 33, to the extent that variances may not be granted from the preconstruction review and permitting program specified under 567—Chapter 33 (formerly rule 567—22.4(455B)), or from any PSD requirement contained in a PSD permit issued under 567—Chapter 33, or from any PSD requirement contained in a PSD permit issued under 40 CFR Section 51.166 or 52.21.

"(3) New source performance standards, 567—subrule 23.1(2);

"(4) Emission standards for hazardous air pollutants, 567—subrule 23.1(3);

"(5) Emission standards for hazardous air pollutants for source categories, 567—subrule 23.1(4); or

"(6) Emission guidelines, 567—subrule 23.1(5)."

Item 2 amends rule 567—22.6(455B) to update the reference to federal regulations under 40 Code of Federal Regulations (CFR) 81.316 that designates Iowa's attainment status with the National Ambient Air Quality Standards (NAAQS). These federal regulations were last updated for Iowa on January 5, 2005. At that time, EPA designated all areas in Iowa as being in attainment ("better than national standards") or unclassifiable ("cannot be classified").

Item 3 amends subrule 22.7(1) to update the reference to federal regulations under 40 CFR 81.316. This reference is being updated for the same reasons as explained for Item 2 above.

Item 4 amends paragraph 22.7(2)"d" to update a reference to federal regulations for hazardous air pollutants under 40 CFR Part 61 that were adopted by reference into subrule 23.1(3) in a previous rule making.

Items 5, 6, 7 and 8 amend subrules 22.105(2), 22.106(6), 22.201(2) and 22.300(3), respectively, to correct cross references to rules for Title V permits, Acid Rain permits, and permits by rule for small sources for amendments that were adopted in a previous rule making. Since the Notice, the conjunction in the new language of paragraph 22.201(2)"b" was changed from "and" to "or" to be consistent with paragraphs 22.300(3)"b" and "c."

Item 9 amends the introductory paragraph of subrule 23.1(2) for new source performance standards (commonly known as NSPS) to reflect the recent federal amendments to 40 CFR Part 60.

EPA made a number of minor technical and administrative changes to the federal NSPS regulations. EPA made minor technical corrections to the continuous monitoring requirements in Performance Specification 1. EPA also made technical amendments to correct errors relating to the testing requirements and test methods in Subpart J (Petroleum Refineries), Subpart BB (Kraft Pulp Mills), Subpart WWW (Municipal Solid Waste Landfills), and Appendix B (Performance Specification 2). Additionally, EPA revised the standards for new, large municipal waste combustors (MWC) under Subpart Eb. The changes to the MWC standards, according to EPA, will reflect the performance level achievable by MWC units constructed in the future. The Department is not aware of any proposed MWC in the state.

EPA also amended Subpart B, which contains the requirements for adoption and submittal of state plans, to revise the definition of "electric generating unit (EGU)." The amendment codified what the Department had already presumed to be the definition of "EGU" for the purposes of the Clean Air Mercury Rule (CAMR).

Item 10 amends paragraph 23.1(2)"z" to reflect the date of recent federal changes to the standards for electric utility steam generating units (Subpart Da) to clarify the applicability requirements for CAMR. EPA made clarifications to the definition of "coal-fired electric utility steam generating unit" and clarified the emission standard for mercury. The federal amendments reflect the Department's previous understanding of these provisions, and do not alter CAMR's applicability to Iowa's facilities.

Item 11 adopts and subsequently reserves a new paragraph 23.1(2)"xxx" to coincide with a similarly reserved paragraph in the federal NSPS regulations.

Item 12 adds a new paragraph 23.1(2)"yyy" for a new NSPS. EPA issued final standards for diesel engines that are stationary compression ignition internal combustion engines for which construction, modification or reconstruction commenced after July 11, 2005. Although these standards are modeled after the EPA standards for mobile source diesel engines, these standards do not apply to motor vehicles. These standards will regulate emissions of particulate matter (PM), nitrogen oxides (NO_x), carbon monoxide (CO), and non-methane hydrocarbons (NMHC) over three phases. Sulfur dioxide (SO₂) will also be reduced through the use of lower sulfur fuel. In the first phase, owners and operators of pre-2007 engine models will be required to maintain the engine according to the manufacturer's instructions. The second phase begins with 2007 model-year engines, and requires that the engines meet the PM, NO_x, CO and NMHC standards specified under EPA's standards for nonroad and marine diesel engines. The third phase requires engine manufacturers for 2011 model years and later to install add-on controls to achieve additional emission reductions of these pollutants. These phases of the standards impact new stationary diesel engines. The Department expects a number of facilities to become subject to these standards as these facilities replace their stationary diesel engines with new engines.

Item 13 adopts and subsequently reserves a new paragraph 23.1(2)"zzz" to coincide with a similarly reserved paragraph in the federal NSPS regulations.

Item 14 adopts a new paragraph 23.1(2)"aaaa" for a new NSPS. EPA issued final standards for stationary combustion turbines with a heat input load equal to or greater than 10 MMBtu that commenced construction, modification or reconstruction after February 19, 2005. These standards will reduce the emissions of NO_x and SO₂ by 80 and 90 percent,

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respectively. EPA states that these standards will allow owners and operators the flexibility to meet their emission limit targets by increasing the efficiency of their turbines. Owners of turbines can choose to meet either a concentration-based or output-based limit for NO_x emissions. The NO_x limits differ based on the fuel input at peak load, fuel type, application and location of the turbine. The SO₂ limits depend on the location of the turbine but are not dependent on turbine size or the fuel type used. Compliance with the SO₂ limit can be met by using lower sulfur fuel. At this time, the Department is aware of one project to which these new standards will apply. However, since these rules will impact new engines, the Department expects more facilities to become subject to these standards as they install new combustion turbines.

Item 15 amends the introductory paragraph of subrule 23.1(4). This subrule adopts by reference the federal standards for emissions of hazardous air pollutants for source categories (commonly known as NESHAP). The amendments to subrule 23.1(4) reflect recent federal amendments to 40 CFR Part 63. From February through October 2006, EPA made numerous, minor changes to 40 CFR Part 63, which included both technical and administrative updates and corrections. The substantive changes to 40 CFR Part 63 include the following:

- EPA amended several NESHAPs to address residual risk, which is required of EPA under Section 122(f)(2) of the Clean Air Act. EPA took final action on five NESHAPs, determining that no further control of hazardous air pollutants (HAPs) was necessary, and making only minor administrative changes to the standards. These standards apply to the following source categories: hydrochloric acid production, magnetic tape manufacturing, ethylene oxide sterilizers, industrial process cooling towers, and gasoline distribution facilities.

- EPA amended the NESHAP General Conditions (Subpart A) to revise certain aspects of the startup, shutdown and malfunction (SSM) requirements. EPA removed the requirement that an SSM plan must be followed during periods of SSM, thereby allowing sources flexibility in addressing emissions during these periods. According to EPA, this in no way alleviates the source's responsibility to minimize emissions during SSM. EPA fully expects owners and operators to follow their SSM plans during periods of SSM. Owners and operators are still required to keep records and report the actions taken to minimize emissions whenever excess emissions occur during periods of SSM.

- EPA amended the NESHAP for Printing and Publishing (Subpart KK) to resolve inconsistencies, clarify language and add additional compliance flexibility. EPA simultaneously amended the NESHAP for Paper and Other Web Coating (Subpart JJJJ) and the NESHAP for Printing, Coating, and Dyeing of Fabric and Other Textiles (Subpart OOOO) to clarify the interaction between the three NESHAPs. According to EPA, these amendments will not have a discernable effect on the stringency of these NESHAPs.

- EPA amended the NESHAP for Organic Liquids Distribution (non-gasoline) under Subpart EEEE. These revisions provide an additional, equivalent control option for vapor balancing for transfer racks that allows routing of displaced HAP vapors to a storage tank with a common header. The amendments also add an option to allow vapor balancing back to the transport vehicle for storage tanks when they are being filled with organic liquids. As part of this action, EPA amended the NESHAP General Conditions (Subpart A) to incorporate by reference a new standard test method.

- EPA amended the NESHAP for Miscellaneous Organic Chemical (MON) Manufacturing (Subpart FFFF). These revisions clarify applicability, provide additional compliance options, modify initial and continuous compliance requirements, and simplify the record-keeping and reporting requirements. EPA claims that these amendments will reduce the burden associated with demonstrating compliance without affecting the emissions control or the ability of states to ensure compliance.

- EPA amended the NESHAP for Integrated Iron and Steel Manufacturing (Subpart FFFFF) to add a new compliance option, revise emission limitations and reduce the frequency of repeat performance tests for certain emission units, add corrective action requirements, and clarify monitoring, record-keeping, and reporting requirements. The amendments revise the applicability of emission limits for sinter cooler stacks at new and existing sinter plants. The standards also establish a 10 percent opacity standard, in lieu of a PM standard, for a sinter cooler at an existing sinter plant. Additionally, the emission limits apply to each sinter cooler instead of each sinter cooler stack. EPA states that these amendments do not affect the level of emission control required under the existing NESHAP but, rather, reduce the costs of implementation in future years.

- EPA amended the NESHAP for Miscellaneous Coating Manufacturing (Subpart HHHHH) to clarify the applicability of the federal regulations and to minimize the compliance burden on affected facilities. In summary, these amendments:

- Clarify that coating manufacturing means the production of coatings using operations such as mixing and blending, not the reaction or the separation of processes used in chemical manufacturing;

- Extend the compliance date for certain coating manufacturing equipment that is also part of a chemical manufacturing process unit; and

- Clarify that operations by end users that modify a purchased coating prior to application at the purchasing facility are exempt from these regulations.

Item 16 amends paragraph 23.1(4)“m” to adopt by reference the recent EPA changes to the federal NESHAP for Dry Cleaning facilities that use the HAP, perchloroethylene (Subpart M). As required under Section 112 of the Clean Air Act, EPA assessed the remaining residual risk to public health from the control standards imposed in 1993 under the original NESHAP. EPA is now revising the standards to take into account new developments in production practices, processes and control technologies. EPA also determined that more stringent control of perchloroethylene (commonly known as perc) was needed to protect public health with an ample margin of safety. EPA has identified perc as a “possible to probable” human carcinogen. As such, the NESHAP amendments provide a further reduction in perc emissions beyond those required in the original NESHAP. These perc emissions reductions are based on application of new equipment and work practice standards and, in certain situations, will disallow the use of perc at dry cleaning facilities.

Large industrial and commercial dry cleaners are classified as major sources, meaning that they emit more than 10 tons of perc per year. Major source dry cleaners must continue to implement the maximum achievable control technology (MACT) specified under the original regulations, and also must implement state-of-the-art equipment to detect and repair leaks. EPA is aware of only 12 major source dry cleaners nationally, none of which are located in Iowa.

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Small or "area source" dry cleaners are those that emit less than 10 tons of perc per year. Small, existing dry cleaners located in the same complex as residential apartments (sometimes termed "co-residential") will be required to phase out perc use by 2020. These "co-residential" dry cleaners may continue to operate after 2020, as long as they use alternative technologies that do not use perc. Until 2020, owners or operators of "co-residential" dry cleaners with existing perc machines must use enhanced technology beyond what was required under the original regulations to detect and repair leaks.

Any small, new "co-residential" dry cleaner that begins operation after July 13, 2006, may not use perc. Small, new "co-residential" dry cleaners that began operating a perc dry cleaning machine between December 21, 2005, and July 13, 2006, must install control equipment, such as refrigerated condensers, carbon adsorbers, and vapor barriers, to aggressively control perc emissions, conduct weekly inspection and repair of leaks, and eliminate all use of perc by July 27, 2009.

Small, "free standing" dry cleaners that are located in a shopping center or are a stand-alone building are required to use improved leak detection and repair. Small, existing "free standing" dry cleaners are also prohibited from using transfer machines after July 27, 2008. Small, new dry cleaners were prohibited from using transfer machines under the original regulations. Transfer machines move wet clothes from one machine to another for drying. Transfer machines are considered the highest-emitting type of dry cleaning equipment. The Department is aware of a small number of existing transfer machines that remain in operation in the state.

The original NESHAP for dry cleaners did not have distinct provisions for "co-residential" facilities. The Department's central and field office staff, along with small business assistance staff at the Iowa Department of Economic Development and the University of Northern Iowa (UNI), will be coordinating the efforts to identify these facilities. At this time, the Department and UNI are not aware of any existing "co-residential" dry cleaners operating in the state. The Department and its partners will work with dry cleaning facilities, including those facilities that still operate transfer machines, to ensure compliance with the new regulations by the prescribed deadlines. Compliance at existing sources is not required until July 2008, which would allow sufficient time for the Department and its partners to provide outreach and compliance assistance to dry cleaning facilities.

The final amendments to paragraph 23.1(4)"m" include minor changes from language proposed in the Notice. The adopted amendments more clearly iterate that the specific requirements for dry cleaning facilities are contained in 40 CFR Part 63, Subpart M. The adopted amendments contain a general summary of the standards for dry cleaning facilities while highlighting particular requirements. The Department made these changes, in part, in response to written comments from EPA.

Paragraph 23.1(4)"m" now reads as follows:

"m. Perchloroethylene air emission standards for dry cleaning facilities (40 CFR Part 63, Subpart M). These standards apply to the owner or operator of each dry cleaning facility that uses perchloroethylene (also known as perc). The specific standards applicable to dry cleaning facilities, including the compliance deadlines, are set out in the federal regulations contained in Subpart M. In general, dry cleaning facilities must meet the following requirements, which are set out in greater detail in Subpart M:

"(1) New and existing major source dry cleaning facilities are required to control emissions to the level of the maximum achievable control technology (MACT).

"(2) New and existing area source dry cleaning facilities are required to control emissions to the level achieved by generally available control technologies (GACT) or management practices.

"(3) New area sources that are located in residential buildings and that commence operation after July 13, 2006, are prohibited from using perc.

"(4) New area sources located in residential buildings that commenced operation between December 21, 2005, and July 13, 2006, must eliminate all use of perc by July 27, 2009.

"(5) Existing area sources located in residential buildings must eliminate all use of perc by December 21, 2020.

"(6) New area sources that are not located in residential buildings are prohibited from operating transfer machines.

"(7) Existing area sources that are not located in residential buildings are prohibited from operating transfer machines after July 27, 2008.

"(8) All sources must comply with the requirements in Subpart M for emissions control, equipment specifications, leak detection and repair, work practice standards, record keeping and reporting."

Item 17 amends paragraph 23.1(4)"be" to reflect the most recent amendments to the standards for hazardous waste combustors. EPA agreed to reconsider the particulate matter (PM) standard for new cement kilns that burn hazardous waste, and proposed to change the standard on March 23, 2006. On October 25, 2006, EPA suspended the obligation of new cement kilns to comply with the particulate matter standard until EPA takes final action on its proposed changes. This amendment does not affect other standards applicable to new or existing hazardous waste burning cement kilns. The Department is not aware of any facilities in the state that are subject to these standards.

Item 18 amends subrule 23.1(5) to reflect the most recent federal amendments to the emission guidelines. EPA made clarifications and technical corrections to the standards for CAMR-affected units. The specific changes are summarized below in Items 24 and 25. These changes did not affect the Iowa facilities that are subject to CAMR.

Item 19 amends subparagraph 23.1(5)"a"(2) to correct a cross reference to Title V program rules for amendments that were adopted in a previous rule making.

Item 20 amends subparagraph 23.1(5)"b"(2) to similarly correct a cross reference to Title V program rules for amendments that were adopted in a previous rule making.

Item 21 amends subrule 25.1(9) to update references to test methods in 40 CFR Part 60, Appendix B, that are being adopted by reference as indicated in Item 9.

Item 22 amends paragraph 25.1(10)"a" to update a reference to federal regulations in 40 CFR Part 60 that are being adopted by reference as indicated in Item 9.

Item 23 amends subrule 33.1(1), the PSD program definition for "volatile organic compounds" or "VOC," to correct a typographical error to refer to "40 CFR" instead of "50 CFR." This amendment was not included in the Notice.

Item 24 amends rule 567—34.300(455B) to reflect EPA's recent amendments to CAMR. The specific changes are outlined below in Items 25 and 26.

Item 25 amends rule 567—34.301(455B) to adopt by reference EPA's minor amendments to the federal CAMR regulations under 40 CFR 60.4104. EPA amended the CAMR applicability provisions for existing coal-fired electric generating units (EGUs). The amendments codified what had al-

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ready been the Department's presumption of CAMR's applicability to Iowa facilities.

Item 26 amends rule 567—34.304(455B) to adopt by reference the recent, minor changes to the CAMR provisions under 40 CFR 60.4141. EPA amended the timing requirements for Hg allowance allocations. The amendments codified what had already been the Department's presumption of the timing requirements for CAMR.

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

These amendments will become effective on April 4, 2007.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 21 to 23, 25, 33, 34] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 5599B**, IAB 12/6/06.

[Filed 2/8/07, effective 4/4/07]

[Published 2/28/07]

[For replacement pages for IAC, see IAC Supplement 2/28/07.]

ARC 5747B

MEDICAL EXAMINERS BOARD[653]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3, the Board of Medical Examiners hereby amends Chapter 22, "Mandatory Reporting," Iowa Administrative Code.

The amendments update the definition of "reportable conduct" to mean wrongful acts or omissions that are grounds for license revocation or suspension under these rules or that otherwise constitute negligence, careless acts or omissions demonstrating a licensee's inability to practice medicine competently, safely, or within the bounds of medical ethics, in keeping with Iowa Code sections 272C.3(2) and 272C.4(6) and 653—Chapter 23. The amendments also stipulate that a licensee shall not be civilly liable for filing a report with the Board so long as such report is not made with malice. In addition, the amendments change the rule that establishes a failure to report child abuse or dependent adult abuse as grounds for discipline, so that knowingly and willfully failing to report child abuse or dependent adult abuse may be grounds for discipline.

The Board adopted the amendments during a telephone conference call held on February 8, 2007.

Notice of Intended Action for these amendments was published in the Iowa Administrative Bulletin on January 3, 2007, as **ARC 5628B**. The Board received no public comment. These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapter 272C.

These amendments shall become effective on April 4, 2007.

The following amendments are adopted.

ITEM 1. Amend rule 653—22.2(272C) as follows:

653—22.2(272C) Mandatory reporting—wrongful acts or omissions.

22.2(1) Definitions. For the purposes of this rule, the following definitions apply:

"Knowledge" means any information or evidence of reportable conduct acquired by personal observation, from a reliable or authoritative source, or under circumstances causing the licensee to believe that wrongful acts or omissions may have occurred.

"Reportable conduct" means a wrongful act ~~acts or omission omissions~~ that ~~may constitute a basis for disciplinary action under this chapter or any state law or administrative rule that gives the board jurisdiction over the conduct of a licensee~~ are grounds for license revocation or suspension under these rules or that otherwise constitute negligence, careless acts or omissions that demonstrate a licensee's inability to practice medicine competently, safely, or within the bounds of medical ethics, pursuant to Iowa Code sections 272C.3(2) and 272C.4(6) and 653—Chapter 23.

22.2(2) Reporting requirement. A report shall be filed with the board when a licensee has knowledge as defined in this rule that another person licensed by the board may have engaged in reportable conduct.

a. The report shall be filed with the board no later than 30 days from the date the licensee acquires knowledge of the reportable conduct.

b. The report shall contain the name and address of the licensee who may have engaged in the reportable conduct; the date, time, place and circumstances in which the conduct occurred; and a statement explaining how knowledge of the reportable conduct was acquired.

c. The final determination of whether or not wrongful acts or omissions have occurred is the responsibility of the board.

d. A physician is not required to report confidential communication obtained from a physician in the course and as a result of a physician-patient relationship or when a state or federal statute prohibits such disclosure.

e. Failure to report a wrongful act or omission in accordance with this rule within the required 30-day period shall constitute a basis for disciplinary action against the licensee who failed to report.

f. ~~A licensee who makes a good-faith report pursuant to this chapter and Iowa Code section 272C.6(7) shall have immunity from any liability, civil or criminal, which might otherwise be incurred or imposed shall not be civilly liable as a result of filing a report with the board so long as such report is not made with malice.~~

ITEM 2. Amend rule 653—22.4(272C) as follows:

653—22.4(272C) Mandatory reporting—child abuse and dependent adult abuse.

Each licensee shall report child abuse and dependent adult abuse as required by state and federal law. ~~Failure~~ *Knowingly and willfully failing* to report child abuse and dependent adult abuse as required by state and federal law in accordance with this rule ~~shall constitute a basis~~ *may be grounds* for disciplinary action against the licensee.

[Filed 2/8/07, effective 4/4/07]

[Published 2/28/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/28/07.

ARC 5746B**MEDICAL EXAMINERS
BOARD[653]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3, the Board of Medical Examiners hereby amends Chapter 23, "Grounds for Discipline," Iowa Administrative Code.

The amendment establishes that the Board may take disciplinary action against a physician who has entered into a voluntary agreement in another jurisdiction. The amendment identifies the criteria the Board will use to determine whether a physician has entered into a voluntary agreement. In addition, the amendment states that a certified copy of the voluntary agreement shall be considered prima facie evidence.

The Board adopted the amendment during a telephone conference call held on February 8, 2007.

Notice of Intended Action for this amendment was published in the Iowa Administrative Bulletin on January 3, 2007, as **ARC 5629B**. The Board received no public comment. This amendment is identical to that published under Notice of Intended Action.

This amendment is intended to implement Iowa Code section 272C.2.

This amendment shall become effective on April 4, 2007. The following amendment is adopted.

Amend rule 653—23.1(272C) by adding the following **new** subrule:

23.1(38) Voluntary agreements. The board may take disciplinary action against a physician if that physician has entered into a voluntary agreement to restrict the practice of medicine in another state, district, territory, or country.

a. The board will use the following criteria to determine if a physician has entered into a voluntary agreement within the meaning of Iowa Code section 148.12 and this rule.

(1) The voluntary agreement was signed during or at the conclusion of a disciplinary investigation, or to prevent a matter from proceeding to a disciplinary investigation.

(2) The agreement includes any or all of the following:

1. Education or testing that is beyond the jurisdiction's usual requirement for a license or license renewal.

2. An assignment beyond what is required for license renewal or regular practice, e.g., adoption of a protocol, use of a chaperone, completion of specified continuing education, or completion of a writing assignment.

3. A prohibition or limitation on practice privileges, e.g., a restriction on prescribing or administering controlled substances.

4. Compliance with an educational plan.

5. A requirement that surveys or reviews of patients or patient records be conducted.

6. A practice monitoring requirement.

7. A special notification requirement for a change of address.

8. Payment that is not routinely required of all physicians in that jurisdiction, such as a civil penalty, fine, or reimbursement of any expenses.

9. Any other activity or requirements imposed by the board that are beyond the usual licensure requirements for obtaining, renewing, or reinstating a license in that jurisdiction.

b. A certified copy of the voluntary agreement shall be considered prima facie evidence.

[Filed 2/8/07, effective 4/4/07]

[Published 2/28/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/28/07.

ARC 5751B**NATURAL RESOURCE
COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby rescinds Chapter 16, "Public, Commercial, Private Docks and Dock Management Areas," and adopts new Chapter 16, "Docks and Other Structures on Public Waters," Iowa Administrative Code.

This new chapter updates and revises regulation of docks and boat hoists.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 8, 2006, as **ARC 5532B**. Public hearings were held on November 28, 29 and 30, 2006. Following is a summary of changes made to the Notice of Intended Action.

Significant changes include substitution of Class I permits for the proposed reauthorization of general permits for certain docks, and elaboration of criteria for granting certain exceptions.

Public comment on the Notice of Intended Action included a challenge to the Department's authority to reauthorize general permits for docks. In response, new rule 571—16.2(461A,462A) establishes classes of permits, including Class I permits in lieu of the proposed reauthorization of general permits for certain private docks qualifying as standard docks and docks permitted by the U.S. Army Corps of Engineers. Under subrule 16.4(3), owners of standard docks eligible for a Class I permit have until July 1, 2008, to obtain a permit, which will be issued for a maximum period of five years without administrative fee. Under rule 571—16.5(461A,462A), a dock permit issued by the U.S. Army Corps of Engineers pursuant to an agreement with the Department for a joint application review process shall serve in place of a Class I permit issued by the Department.

The proposed general permit for docks managed by cities and counties from frontage owned by them has been replaced by authorization in rule 571—16.6(461A,462A) for issuance of Class II permits to cities and counties without administrative fee for a term up to five years.

Criteria for permitting nonstandard private docks (Class III) and commercial docks (Class IV) are changed from the Notice of Intended Action by allowing greater density of boat hoists (one hoist per 10 feet of shoreline rather than one hoist per 12.5 feet of shoreline). (See subrules 16.7(3) and 16.8(3).) Also, a minor clarification concerning conformity with local zoning requirements is included in subrule 16.8(4).

Grandfather exceptions authorizing renewal of permits for lawfully existing docks and hoists that do not conform to off-set requirements are changed to address the circumstance where two adjoining owners desire to place their boat hoists

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next to one another without leaving a gap at the property line. (See subrule 16.9(2).)

Exceptions to certain limits or requirements for proposed new docks, hoists or slips have been changed in response to public requests for clarification of factors to be considered in determining whether to grant an exception. (See subrule 16.10(2).)

In response to public comments critical of two proposed docks advisory committees, the authorizing provisions in rule 571—16.11(461A,462A) in the Notice of Intended Action have been deleted and have not been adopted.

In response to public comments requesting more local officer involvement in the proposed decision-making process, minor changes were made in rule 571—16.12(461A,462A).

Subrule 16.25(1), relating to dock management areas, was changed to clarify that use of the docks by members of the public is at their own risk. Subrule 16.27(6) has complementary changes providing for new signs and identifying numbers at dock management area dock sites. Insurance requirements in 16.28(6) were changed to delete the requirement that DNR be named as an additional insured. Shorewood Hills at Clear Lake was added to the list of dock management areas.

In addition, the adopted chapter includes numerous minor changes to clarify the meaning of the rules and fine-tune certain limits and exceptions in response to public comments.

These rules are intended to implement Iowa Code sections 461A.4, 461A.11, 461A.18, 462A.27 and 462A.32.

These rules shall become effective April 4, 2007.

The following amendment is adopted.

Rescind 571—Chapter 16 and adopt the following **new** chapter in lieu thereof:

CHAPTER 16
DOCKS AND OTHER STRUCTURES
ON PUBLIC WATERS

571—16.1(461A,462A) Definitions.

“Artificial lake” means all river impoundments and all other impoundments of water to which the public has a right of access from land or from a navigable stream inlet. Examples are Lake Panorama, Lake Delhi, Lake Nashua, and Lake Macbride.

“Boat” means “watercraft” as defined in Iowa Code section 462A.2(41).

“Boat hoist” or “lift” means a structure placed in the water or below the ordinary high-water mark for boat storage, including platforms for storage of personal watercraft. For the purposes of this chapter, a boat hoist that is designed to store multiple small vessels such as personal watercraft or one-person sailboats shall be treated as a single hoist.

“Catwalk” means a platform no more than four feet wide installed to provide access from a dock to a moored boat or boat hoist.

“Commercial dock” means a dock used as part of a business, including a dock extending from residential property if one or more mooring spaces at the dock are rented for a fee. A dock maintenance fee charged by a property owners’ association to its members is not a basis to classify a dock as commercial. This definition is not applicable to docks in dock management areas or concession operations administered by the department.

“Commission” means the natural resource commission.

“Common dock” means a dock serving two or more adjoining shoreline properties.

“Department” means the department of natural resources.

“Director” means the director of the department of natural resources or the director’s designee.

“Dock” means a platform-type structure extending from shoreline property over a public water body, including but not limited to platforms that provide access to boats moored on the water body.

“Dock management area” or “DMA” means an area designated by the department in the bed of a water body adjoining a state park, wildlife management area, or recreation area or adjoining a strip of land that was dedicated to the public and is subject to the jurisdiction of the department pursuant to Iowa Code section 461A.11, second unnumbered paragraph. A dock management area as designated by the department includes an area adjoining public land from which docks extend.

“Impoundment” means a body of water formed by constructing a dam across a waterway.

“Public dock” means a dock constructed and maintained to provide public access from public land to a water body.

“Public land” means land that is owned by the state, a city, or a county or land that has been dedicated for public access to a public water body.

“Public water body” is a water body to which the public has a right of access.

“Shoreline property” means a parcel of property adjoining (littoral to) a lake or adjoining (riparian to) a river or other navigable stream.

“Slip” means a mooring space, usually adjacent to a dock, sometimes accessed by a catwalk.

“Water body” means a river or other stream, a natural lake, an artificial lake or other impoundment, or an excavated pit.

DIVISION I

PRIVATE, COMMERCIAL AND PUBLIC DOCKS

571—16.2(461A,462A) Scope of division and classes of permits. Permits are required for docks on all water bodies open to the public for boating or other recreational uses. This division governs permits for all types of docks except docks in dock management areas designated by the DNR. Classes of permits are designated as follows: Class I permits authorize standard private docks, other private docks in specified areas, and docks permitted by the U.S. Army Corps of Engineers; Class II permits authorize docks that are managed by a city or county and extend from shoreline property owned by the city or county; Class III permits authorize nonstandard private docks; Class IV permits authorize commercial docks. A dock that involves placement of fill or construction of a permanent structure in a state-owned public water body also requires a construction permit issued under 571—Chapter 13.

571—16.3(461A,462A) Standard requirements for all docks. All docks are subject to the following requirements:

16.3(1) Adverse impacts on aquatic ecosystem. All docks, hoists, slips and related structures shall be located, sized, configured, constructed and installed to limit their adverse impacts on the aquatic ecosystem. In areas of sensitive aquatic habitat, docks and hoists shall be located, configured, constructed and installed to minimize harm to aquatic habitat. Other restrictions may be placed on docks that are in a state protected waters area as necessary to protect the natural features of the designated area.

16.3(2) Adverse impacts on public access for recreational use. A dock shall not be configured to enclose an area of a public water body and create a private water area or otherwise adversely affect public recreational use of the water body. Where walking or wading parallel to the shore below the ordinary high-water mark would be physically practical

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except for the obstruction created by a dock, the dock owner shall not prevent a person from stepping on or over the dock to bypass the obstruction.

16.3(3) Location and offsets. To the extent practical, a dock and boat hoists shall be placed near the center of the shoreline property frontage and installed perpendicular to the shoreline to maximize offsets from neighboring properties. Each dock, hoist, moored vessel and other permitted structure shall be offset a minimum of 5 feet from an adjoining property line and 5 feet from the projection of a line perpendicular from the shoreline at the common boundary with adjoining shoreline property. A minimum gap of 10 feet shall be maintained between adjoining docks (including "L" or "T" or catwalk segments), hoists or moored boats. Where projection of a line perpendicular from the shoreline is impractical, it is the intent of this rule that a 10-foot gap be maintained in a manner that is equitable to each adjoining shoreline property owner.

16.3(4) Length. A dock shall not extend farther from the water's edge than the distance necessary for reasonable access to the water body in relation to characteristics of the water body in the vicinity of the dock site and the impacts on the water body and other users. Access to maintain one or more boats in water with a minimum depth of 3 feet shall be considered sufficient access.

16.3(5) Display of 911 address. Each dock owner shall display the 911 address, including the street and city, assigned to the property served by the dock. The owner of a dock authorized by an individual permit shall also display the dock permit number. The information shall be displayed in block letters and numbers at least 1 inch high in a color contrasting with the background, on the water end of the dock, facing away from shore, and shall be plainly visible.

16.3(6) Winter removal. Each dock must be removed from public waters before December 15 of each year and shall not be reinstalled until the following spring unless the removal requirement is waived by a condition of a dock permit or by 16.18(461A,462A).

16.3(7) No enclosure of private docks. Private docks and docks in dock management areas shall not be enclosed by roofs or sides. Hoists may be enclosed by roofs and sides constructed of soft-sided natural fiber or synthetic fiber materials for the purpose of protecting watercraft.

16.3(8) Materials and flotation specifications. Every new floating structure authorized by this chapter shall use flotation methods and devices of a type constructed of low-density, closed-cell rigid plastic foam; high-impact polyethylene fiberglass material; wood products pressure-treated with a product approved by the United States Environmental Protection Agency for aquatic use; or other inert materials to provide flotation. Synthetic (such as plastic or fiberglass) or metal containers not originally manufactured as flotation devices may be used as dock flotation devices if they have been cleaned of any product residue, sealed and watertight, and filled with a closed-cell rigid plastic foam.

16.3(9) Flow of water. All docks shall be constructed and placed in a manner that allows the free flow of water beneath them.

16.3(10) Excavation, fill and aquatic vegetation removal prohibited. No bed material may be excavated or fill placed, and no aquatic vegetation may be removed below the ordinary high-water mark of a water body in association with construction of a dock unless excavation, placement of fill, or aquatic vegetation removal is specifically authorized by a construction permit issued under 571—Chapter 13.

16.3(11) Storage, use, and dispensing of fuel. The storage, use, and dispensing of any fuel on a dock on or over a public water body or adjacent public land shall be in compliance with Iowa Code chapter 101 and administrative rules that implement chapter 101.

16.3(12) Electrical service. Any electrical service on or leading to any dock used for storage or dispensing of fuel must comply with the National Electrical Code, latest revision. All electrical service leading to docks shall include ground fault circuit interrupter protection.

16.3(13) Anchoring of river docks. All river docks must be securely anchored to prevent them from becoming floating hazards during times of high river flows. The riparian owner is responsible for dock retrieval and removal when necessary to prevent or remove a navigation hazard.

16.3(14) Access for inspection. A dock, boat hoist, raft, platform, mooring buoy or any other structure on a public water body may be physically inspected at any time by a representative of the department as needed to determine whether it was placed and is maintained in a manner consistent with the requirements in these rules or with a permit issued under these rules.

571—16.4(461A,462A) Class I permits for standard private docks. This rule establishes criteria and procedures for Class I permits for private docks qualifying as standard docks under criteria in this rule and for certain other docks in areas listed in this rule.

16.4(1) Criteria for standard docks. A Class I permit for a standard dock may authorize a total of one dock and up to two hoists serving one residence. It may authorize a common dock serving two or more residences located on adjoining shoreline properties. A common dock may include up to three hoists per shoreline property and be eligible for a Class I dock permit. The dock must extend from shoreline property on which one or more of the residences are located and must meet all of the following criteria:

a. Dock length limits. A dock on a natural lake may extend the greater of 100 feet from the water's edge or far enough so that the outer 50 feet of the dock is in 3 feet of water up to a maximum of 300 feet from the water's edge. These lengths shall be measured from the water's edge when the dock is installed. A dock on an artificial lake or river may extend the lesser of 50 feet from the water's edge or one-fourth of the width of the waterway measured from the water's edge when the dock is installed. However, the department may give notice to a property owner that a shorter dock length is necessary to avoid interference with navigation or an adjoining property owner's access. The width of an "L" or "T" segment at the outer end of a dock shall be included in measuring the length of the dock.

b. Width and configuration of docks on natural lakes. A dock on a natural lake shall have no more than one "L" or "T" segment. The total length of the "L" or "T" segment facing opposite from shore shall not be greater than 20 feet including the width of the dock. The total area of the "L" or "T" segment shall not exceed 200 square feet. That part of the main dock forming the center of a "T" segment or an extension of an "L" segment shall be included in measuring the area of the "T" or "L" segment. No other part of the dock may be more than 6 feet wide. Catwalks shall be at least 2 feet wide and considered as part of the dock. Catwalks shall be limited in length as in an "L" or "T" segment of the dock construction and shall not extend beyond the width of the hoist, except that a catwalk may be extended around the hoist for access to the hoist.

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c. Compliance with standard requirements. The dock and associated hoists must comply with the standard requirements in 16.3(461A,462A) for all docks.

d. Other structures not authorized. A Class I permit does not authorize placement of any other anchored or floating structure, such as a swim raft.

16.4(2) Class I permits for private docks in other specified areas. This subrule authorizes issuance of Class I permits for private docks in certain areas where circumstances, including narrowness of the water areas specified below, require different dock and hoist configurations. In the following areas, docks that fail to comply with the offset or 10-foot gap requirement in 16.3(3) but that meet other standard dock requirements in 16.3(461A,462A) are eligible for a Class I permit, unless they obstruct navigation or an adjoining property owner's access: canals off West Okoboji Lake; Okoboji Harbor; inside harbor of Harbourage at Clear Lake; Venetian Village Canal at Clear Lake; Cottage Reserve on Lake Macbride; Lake Panorama; canals at Lake Manawa; and Lake Delhi.

16.4(3) Procedures for issuance of Class I dock permits. The owner of a standard dock eligible for a Class I permit under the criteria in 16.4(1) or a dock in an area specified in 16.4(2) shall have until July 1, 2008, to apply for a Class I dock permit on an application form supplied by the department. The applicant shall certify that the dock meets the criteria for a Class I permit. The department shall approve the application based on the applicant's certification and shall assign a permit number which may be a series of numbers or letters, or a combination of numbers and letters. The applicant shall be responsible for obtaining stickers with the permit numbers and letters, for attaching them to the end of the dock facing opposite from the shoreline, and for displaying the 911 address as provided in 16.3(5). Class I dock permits authorized by this rule may be issued for terms up to five years and shall be issued without administrative fee. A Class I dock permit shall be valid only while dock and hoists comply with the criteria for a Class I permit.

571—16.5(461A,462A) Class I permits for docks permitted by Corps of Engineers. This rule authorizes issuance of Class I permits for docks authorized by permits issued by the U.S. Army Corps of Engineers on waters under joint jurisdiction of the department and the U.S. Army Corps of Engineers. By agreement between the Corps of Engineers and the department, a dock permit issued by the Corps of Engineers pursuant to a joint boat dock application review process shall serve in place of a Class I permit issued by the department.

571—16.6(461A,462A) Class II permits for docks authorized by cities and counties that own or otherwise control shoreline property. This rule authorizes issuance of a Class II dock permit to a city or county for docks authorized by a city or county to extend from public land owned or controlled by the city or county. A Class II permit may include all docks and hoists authorized by the city or county on one water body. The Class II dock permit shall require that all docks comply with the standard requirements in 16.3(461A,462A). Class II permits shall include exceptions as needed to provide continuing authorization for docks and hoists that were lawfully installed and maintained before the effective date of certain requirements as set forth in this rule. A dock on a natural lake may extend the greater of 100 feet from the water's edge or far enough so that the outer 80 feet of the dock is in 3 feet of water up to a maximum of 300 feet from the water's edge. These lengths shall be measured from the water's edge when the dock is installed. The city or county authorizing maintenance

of a dock and boat hoists shall be responsible for enforcing the standard requirements and length limit. The department reserves authority to determine whether the requirements of 16.3(461A,462A) and the length limit are met upon complaint of a person who claims that a public or private right is adversely affected by a permitted dock. If the department determines that a dock or hoist must be moved or removed from the water body because of an adverse effect, the department shall issue an administrative order to the city or county that is authorizing maintenance or use of the dock and to the person who is maintaining or using the dock. Issuance of the administrative order shall trigger a right of the city or county and the affected person to a contested case. If shoreline property is public land but there is uncertainty concerning the relationship between the authority of the city or county and the authority of the department, the Class II permit shall include a recital concerning the relative authorities of the department and the permittee. Class II permits shall be issued without fee and may be issued for a term up to five years.

571—16.7(461A,462A) Class III permits for nonstandard private docks. All private docks that are not authorized by Class I or Class II permits shall require a Class III dock permit. In determining whether to issue a Class III permit for a private dock or to condition the permit by denying an application in part, the department shall apply the following criteria:

16.7(1) A Class III private dock permit shall require docks or hoists to be in compliance with requirements in 16.3(461A,462A), except as provided in 16.9(461A,462A) and 16.10(461A,462A).

16.7(2) An individual private dock on a natural lake may be permitted by a Class III permit to extend 100 feet from the water's edge or far enough so that the outer 80 feet of the dock is in 3 feet of water when the dock is installed. These lengths shall be measured from the water's edge when the dock is installed. If the water level declines after installation, additional segments may be installed during the season as needed to maintain 80 feet of dock in 3 feet of water, up to a maximum length of 300 feet from the water's edge. The maximum permitted length of an individual private dock on an artificial lake or river is the lesser of 50 feet from the water's edge or one-fourth of the width of the waterway measured from the water's edge at normal water levels. The width of an "L" or "T" segment at the outer end of a dock shall be included in measuring the length of the dock.

16.7(3) The maximum number of hoists authorized by a Class III permit for an individual private dock is one hoist for every 10 feet of shoreline.

16.7(4) A Class III permit for an individual private dock on a natural lake shall not authorize "L" or "T" segments containing more than a total of 240 square feet including the area of the adjoining parts of the main dock.

16.7(5) An individual private dock may be exempted by permit condition from the winter removal requirement in appropriate circumstances under criteria in 16.18(461A,462A).

571—16.8(461A,462A) Class IV permits for commercial docks. In determining whether to issue a Class IV permit for a commercial dock or to condition the permit by denying an application in part, the department shall apply the following criteria:

16.8(1) A Class IV permit shall require docks or hoists to be in compliance with requirements in 16.3(461A,462A), except as provided in 16.9(461A,462A) and 16.10(461A,462A). Greater offsets may be required for new commercial docks or hoists if needed to minimize boat traffic and conges-

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tion that spills over in front of other shoreline property not owned or controlled by the applicant.

16.8(2) A commercial dock on a natural lake may be permitted to extend a maximum of 300 feet from the water's edge. However, the applicant must provide justification for a length greater than 150 feet and demonstrate that there are no appropriate alternatives available.

16.8(3) The maximum number of hoists or slips authorized by a permit for a commercial dock is one hoist or slip for every 10 feet of shoreline. This limit shall not apply where a business operated on the shoreline property primarily involves boat sales, rentals, storage, or other boat services. In calculating the hoist limit, courtesy hoists shall not be counted if they are provided without charge to boaters to temporarily moor their boats while they go ashore to access services at a business on the shoreline property.

16.8(4) A permit for a commercial dock shall not be issued or the permit will include restrictions as needed to prevent uses of the dock that would be incompatible with zoning of the shoreline property from which the dock extends (including special use exceptions or variances recognized by the local governing body). However, a change in local zoning ordinance or termination of a local variance or special use exception shall not automatically be a ground for the department to revoke or refuse to renew a dock permit.

16.8(5) Authorization for roofs or sides on commercial docks or slips may be restricted as needed to minimize adverse visual impact on owners of other property and the public.

16.8(6) Each mooring site (slip) shall be marked by an identifying number or letter, in block style at least 3 inches high, of contrasting color, and located uniformly near the vessel's bow.

571—16.9(461A,462A) Exceptions for renewal of Class III and Class IV permits for existing docks. This rule provides certain exceptions to length limits, hoist limits and platform size limits for docks and hoists that lawfully existed before the effective date of the limits. Criteria for exceptions to offset requirements are separately listed in subrule 16.9(2).

16.9(1) Class III and Class IV permits shall include exceptions as needed to provide continuing authorization for docks and hoists that were lawfully installed and maintained before the effective date of certain requirements as set forth in this rule. Permits shall include exceptions to the length limits in 16.7(2) and 16.8(2) for docks up to 300 feet long that were lawfully installed and maintained before the effective date of the length limits. Permits shall include exceptions to the hoist limit in 16.7(3) and 16.8(3), and to the platform size limit in 16.7(4) for docks and hoists that were lawfully installed and maintained before the effective date of the limits.

16.9(2) An exception to the offset requirements in 16.3(3) shall be granted if the applicant can satisfy all three of the following criteria:

a. The lack of offset on one side of the property is compensated for by a larger offset on the other side of the property;

b. The applicant provides the department with a copy of the written consent of each affected adjoining property owner or an affidavit attesting that the affected adjacent property owner named in the affidavit has verbally given the applicant consent for the requested exception, or provides adequate documentation that the adjoining shoreline parcel is burdened by restrictive covenants, easements, or other valid use restrictions which impose on the owner of the parcel an ob-

ligation to tolerate docks and hoists that would otherwise violate the offset or gap requirements in 16.3(3); and

c. The applicant demonstrates that no other dock or hoist configuration is physically practical.

571—16.10(461A,462A) Exceptions to Class III and Class IV permits for new structures. An application for a permit for a new dock, hoist or slip may include a request for an exception under this rule from certain limits or requirements imposed by these rules.

16.10(1) Exceptions to length limits, hoist limits or platform size limits. For proposed new docks, slips or hoists, Class III and Class IV permits may include exceptions to the length limit in 16.7(2), the hoist limit in 16.7(3) and 16.8(3), and the platform size limit in 16.7(4) if the applicant justifies the need for an exception and proposes a configuration of dock(s) and hoists that minimizes adverse impacts on the water body and other users.

16.10(2) Factors for considering requests for exceptions. In determining whether to allow a requested exception to a length limit, hoist limit or platform size limit, in whole or in part, the department shall consider each of the following factors:

a. The extent to which the request exceeds the applicable limit;

b. The extent to which the requested exception or a lesser exception would cause adverse impacts on the aquatic ecosystem or use of adjoining public or private property;

c. The extent to which the requested use would provide some type of access by members of the public;

d. Whether living units to be benefited by an exception were constructed before July 1, 2006;

e. Whether denial of an exception would result in loss of property value that was based on a reasonable expectation of water access including storage of boats on the water body;

f. Whether the exception was authorized by a previous permit;

g. Whether the exception includes space for vessels without motors including paddle-only vessels and single-hulled sailboats less than 12 feet long.

16.10(3) Exceptions from offset requirements. An exception to the offset requirements in 16.3(3) may be granted under the circumstances listed in 16.9(461A,462A).

571—16.11 Reserved.

571—16.12(461A,462A) Initial decision and right of appeal. The decision on an application for a Class II, Class III or Class IV permit shall be made by the department's district law enforcement supervisor or designee except that the district law enforcement supervisor shall issue an initial decision in the form of a permit or a permit denial on a request for an exception under 16.10(461A,462A). If the district law enforcement supervisor decides to deny the permit or to issue a permit with specific conditions that deny the application in part, the written decision shall include notice of the applicant's right to request a contested case under 571—Chapter 7. If a request for an exception under 16.10(461A,462A) is disapproved by the district law enforcement supervisor, the applicant's request for a contested case may include a request for a variance or waiver under the provisions of Iowa Code section 17A.9A and 571—Chapter 11.

571—16.13(461A,462A) Application forms and administrative fees.

16.13(1) The applicant for a Class II, Class III or Class IV permit shall submit to the department a completed application on the applicable DNR dock permit application form. If

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the applicant for a Class III or Class IV permit is not the owner of the shoreline property from which the dock extends, the applicant shall identify the contractual relationship between the applicant and each property owner and shall submit as part of the application the written consent from each owner. The application form shall be accompanied by accurate plans and drawings as specified on the form. The drawings shall accurately show the size and location of each boat hoist, slip, platform, catwalk, buoy, or other structure to be maintained in front of the shoreline property. Docks in front of nonadjoining shoreline properties on the same water body owned by the same person or legal entity may be included in one application. An application for renewal of a permit for an existing dock and hoists must specifically describe each requested modification. The applicant shall submit an administrative fee with the application. The completed application form and payment shall be submitted to the department's district law enforcement office in the district where the proposed dock is located. The application will be assigned to a conservation officer to investigate.

16.13(2) The Class III permit application fee shall be \$125 for one or more individual private docks. The Class IV permit application fee shall be \$250 for one or more commercial docks. A Class III permittee shall pay an annual administrative fee of \$50 for each hoist or slip in excess of a total of four hoists or slips. A Class IV permittee shall pay an annual administrative fee of \$50 for each hoist or slip in excess of a total of six hoists or slips, except for each hoist or slip designated in the permit as courtesy mooring for customers and affixed with a sign identifying it as a courtesy hoist or slip. The hoist/slip fee shall be due on March 1 of each year or whenever a permit is modified by adding a hoist or slip. Any fees owed to the department shall be paid in full prior to the installation of any portion of an individual private dock or commercial dock and before a boat is placed in a hoist or slip. The department may waive the permit application fee if the application is for a minor modification of an existing permit without an extension of the term of the permit.

571—16.14 to 16.16 Reserved.

571—16.17(461A,462A) Duration and transferability of permits; refund of application fees; suspension, modification, or revocation of permits; complaint investigation; property line location.

16.17(1) Duration and transferability of dock permits; administrative fee refunds. Each dock permit shall be issued for a term of five years unless a shorter term is needed due to specified circumstances. The administrative fee paid with an application is nonrefundable unless the application is withdrawn before the department incurs administrative expense in investigating the application. A dock permit is automatically transferable to a new owner of the shoreline property upon request of the new owner.

16.17(2) Suspension, modification, or revocation of permits. A dock permit may be modified, suspended, or revoked, in whole or in part, by written notice served in compliance with Iowa Code section 17A.18, if the director determines that the dock is a hazard to other users of the water body, that a violation of any terms or conditions of the permit has occurred, or that continuation of the permit is contrary to the public interest. Such modification, suspension, or revocation shall become effective upon a date specified in the notice. The notice shall state the extent of the modification, suspension, or revocation, the reasons for the action, and any corrective or preventative measures to be taken by the permittee to bring the dock, structure, or activity into com-

pliance. Within 30 days following receipt of the notice of a revocation or modification, or during the course of a suspension, the permittee may request a hearing in order to present information demonstrating that the alleged violation did not occur or that required corrective and preventative measures have been taken, or to present any other information relevant to a decision as to whether the permit should be reinstated, modified, or revoked. The hearing shall be conducted as prescribed by 571—Chapter 7. After completion of the hearing, a final decision will be made concerning the status of the permit. In the event that no hearing is requested, notices of modification and revocation shall remain in effect, and suspended permits shall be reinstated, modified, or revoked. These procedures are not intended to limit the authority of a department law enforcement officer to issue a citation for a violation of a provision of Iowa Code chapter 461A or 462A, or a provision in this chapter.

16.17(3) Investigation of complaints. Any person adversely affected by a permitted dock or associated boat hoist may request, in writing, an investigation and a hearing to reconsider the permit. Requests for hearings shall specify adverse effects on the complainant and shall be made in accordance with procedures described in 571—Chapter 7.

16.17(4) Determining property boundaries. An applicant for a permit, a permittee, and an owner of shoreline property adjoining property of an applicant or permittee are responsible for determining the accurate location of common boundaries of their respective properties.

571—16.18(461A,462A) Exemptions from winter removal requirement. This rule provides for exemptions from the general requirement in Iowa Code section 462A.27 that non-permanent structures be removed on or before December 15 of each year. Docks and other structures subject to destruction or damage by ice movement must be removed. Where a dock may be left in ice without damage to the dock, it must have reflective material visible from all directions to operators of snowmobiles, other motorized machines, or wind-propelled vessels lawfully operated on the frozen surface of the water body. Generally, ice damage is greatest on Iowa's rivers and natural lakes. Docks must be removed by December 15 of each year unless they have the required reflective materials and are specifically exempted by a condition of a dock permit or are located in one of the areas listed as follows: artificial lakes; Upper Gar Lake; canals off West Okoboji Lake; Okoboji Harbor; Lazy Lagoon portion of Triboji dock management area; Smith's Bay on West Okoboji Lake; area between the trestle and U.S. Highway 71 bridges on Okoboji lakes; Templar Park on Big Spirit Lake; Venetian Village Canal and Harbourage Inlet on Clear Lake; Casino Bay of Storm Lake; Black Hawk Marina at Black Hawk Lake; and canals off Lake Manawa and Carter Lake. A permit shall not authorize an exception from the winter removal requirement unless the applicant provides adequate documentation that the dock will not be damaged by normal ice movement.

571—16.19(461A,462A) General conditions of all dock permits. All dock permits, unless specifically excepted by another provision of this chapter, shall include the following conditions of approval:

16.19(1) The permit creates no interests, personal or real, in the real estate below the ordinary high water line nor does it relieve the requirement to obtain federal or local authorization when required by law for such activity. The permit does not authorize the permittee to prevent the public from using areas of the water body adjacent to the permitted structure. However, a lawfully permitted private dock or commercial

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dock is property of the permittee. Use of the dock is reserved to the permittee and the permittee's invitees, subject to the public right of passage stated in 16.3(2).

16.19(2) A permit is valid only while the permittee has the necessary permissions to use the adjoining shoreline property from which the dock projects.

16.19(3) The permittee shall not charge a fee for use of the dock or associated structure unless: the permit is for a commercial dock; the fee is expressly authorized by the permit; or the permittee is a homeowners association and the fee is for recovery of expenses incurred in providing access to association members.

571—16.20(461A,462A) Permit criteria for rafts, platforms, or other structures. A raft, platform, or other structure maintained on a public water body requires authorization in a permit. The raft, platform, or other structure may not be placed more than 250 feet from the shoreline, shall be equipped with reflectors that are visible from approaching boats, and shall be subject to the winter removal requirement unless specifically exempted by the permit.

571—16.21 to 16.24 Reserved.

DIVISION II

DOCK MANAGEMENT AREAS

571—16.25(461A) Designation or modification of dock management areas.

16.25(1) Purposes and status of dock management areas. The director may designate an area of public land under the commission's jurisdiction and adjoining water as a dock management area. The primary purpose of dock management areas is to accommodate requests for boating access from owners of properties that are close to a water body but do not include riparian or littoral property rights. Dock permittees have priority use of the docks for mooring of vessels. However, the docks may be used by members of the public at their own risk for fishing and emergency mooring when public use does not interfere with the permittee's use. Other uses allowed by the permittee shall be the responsibility of the permittee. The department intends to authorize continuation of all dock management areas existing on June 1, 2006, unless changed circumstances require changes in the size of an existing dock management area.

16.25(2) Criteria for designation or enlargement. In designating a dock management area or authorizing enlargement of an existing dock management area, the director shall apply the following criteria:

a. The shoreline property in question shall be public land and shall have been developed and managed for recreational access to water or determined by the department to be suitable for such access.

b. The establishment or enlargement of a dock management area shall not adversely affect other public recreational use of the water body.

c. A dock management area shall not be established or enlarged where depth or bottom configuration is incompatible with the placement of docks.

d. A dock management area shall not be established or enlarged where fish and wildlife habitat, other natural resources or scenic features would be disturbed by the presence of docks.

e. Documentation of need for a new or larger dock management area and the lack of adverse impacts of the proposal must be sufficient to clearly outweigh and overcome a pre-

sumption against increasing the number or size of dock management areas.

571—16.26(461A) Procedures and policies for dock site permits and hoist or slip assignments in dock management areas. A dock site permit authorizes a person to install and maintain a dock in a designated dock management area. Each permit shall identify the number of hoists or slips to be included for storage of boats at the dock. A separate hoist or slip assignment will be issued for each hoist or slip space at the dock. For purposes of these dock management area rules, "permittee" means the person(s) to whom a dock site permit is issued and the person(s) to whom each hoist or slip assignment is issued. Application forms for dock site permits and hoist or slip assignments in a dock management area shall be made available at a nearby DNR office. Dock site permits and hoist or slip assignments shall be available to all members of the public through a selection process. Selection shall be based on the following order of priorities, and a waiting list shall be established that follows the same order of priorities. First priority is for owners of residences adjoining or immediately across a street from the public land; second priority is for owners of other residences within the housing association or subdivision adjoining or immediately across a street from the public land; third priority is for all other Iowa residents; fourth priority is for nonresidents. The order of priorities, changes in the number of residential units per dock site, and changes in the number of vessels per residential unit will be made effective as existing permits expire. For purposes of these dock management area rules, "residence" means a single residential living unit, which may be a rental unit. Notwithstanding these priorities, if property in the first or second priority category is redeveloped with higher density residential living units, there is no assurance that dock, hoist or slip space will be available to accommodate such increased density before other property included in the first or second priority categories.

571—16.27(461A) Standard requirements for dock management area docks. Docks in dock management areas shall conform to the following requirements:

16.27(1) Occupancy of docks. At least two residences shall share a dock. The department may require that more residences share a dock if there is a waiting list including people in the first or second priority categories established in 16.26(461A). A maximum of six residences shall share a dock.

16.27(2) Spacing and alignment. Dock sites where feasible shall be at least 50 feet apart.

16.27(3) Dimensions.

a. Length. A dock may extend the greater of 100 feet from the water's edge or far enough so that the outer 80 feet of the dock is in 3 feet of water up to a maximum of 300 feet, but the dock shall be no longer than the length for which the applicant provides justification, and the length shall be stated in the permit.

b. Width. Docks shall be at least 4 feet wide and no more than 6 feet wide.

16.27(4) Configuration.

a. "L" or "T" segments. A dock shall have no more than one "L" or "T" segment. The total length of the "L" or "T" segment facing opposite from shore shall not be greater than 20 feet including the width of the dock. The total area of the "L" or "T" segment shall not exceed 200 square feet. That part of the main dock forming the center of a "T" segment or an extension of an "L" segment shall be included in measuring the area of the "T" or "L" segment. A smaller platform

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size limit may be required at locations specified by the department as having limited available space.

b. Catwalks. Catwalks shall be at least 2 feet wide and considered as part of the dock. The length limit for an "L" or "T" segment stated in paragraph "a" shall be applicable to each catwalk. A catwalk shall not extend beyond the width of the hoist.

c. Hoists. A hoist or other boat storage structure shall not be placed adjacent to any "L" or "T" segment of a dock or adjacent to any other part of a dock that is more than 6 feet wide. The hoist shall not exceed 10 feet in width at locations specified by the department as having limited available space.

16.27(5) Exceptions for certain dock management areas. Notwithstanding other provisions in this rule, in artificially constructed lagoon or harbor areas, the configuration and dimensions of the docks, catwalks and hoists shall be determined by the department on an individual basis, taking into consideration the physical characteristics of the area, the mooring pattern of boats and public safety. Except at Lake Macbride, the Clear Lake Harbourage and Shorewood Hills, and Lake Odessa, a maximum of two residences, each in accordance with 16.26(461A), shall share a single dock site.

16.27(6) Display of dock management area sign, DMA name and dock site number. The end of the dock facing the water shall be marked with the DMA name and dock number as assigned by the department. Each hoist shall also be marked with the hoist assignee's last name and dock site number in two-inch block letters on one of the upright poles. The dock site permittee shall be responsible for installing and maintaining a sign provided by DNR at the landward entrance to the dock. The sign shall state that the dock is privately constructed; it shall include a caution to members of the public with the statement "use at your own risk"; and it shall include the statement "no diving" with a drawing of a diver over which is superimposed the universal no symbol (a circle with a diagonal slash through it).

16.27(7) Other requirements. Standard requirements found in 16.3(461A,462A) shall apply to all docks in a dock management area except requirements relating to property line offsets and display of information.

571—16.28(461A) Dock management area permit restrictions and conditions. The following conditions and restrictions shall apply to docks in a dock management area.

16.28(1) Use of dock for mooring. Only the persons named as permittees shall have use of the dock for mooring. All vessels must be registered to the permittees and listed on the dock management area permit. A dock site permit or hoist/slip assignment may authorize an exception to allow a vessel of a tenant of the permittee's residential rental unit.

16.28(2) Equitable sharing of dock costs. Permittees shall agree on the equitable sharing of the cost of construction, installation, maintenance and removal of the dock and any other component of the dock.

16.28(3) Number of assignments allowed. Only one dock assignment may be allocated to a residence.

16.28(4) Number of hoists allowed. Each permittee may be limited to one hoist for one vessel. The number of hoists and vessels for each permittee should be limited, especially when there is a waiting list that includes people in the first or second priority category established in 16.26(461A).

16.28(5) Nontransferability of dock permits and privileges. Dock permits and hoist or slip assignments shall not be transferred, assigned or conveyed by the permittee to any other person.

16.28(6) Liability insurance. Prior to constructing a dock or installing hoists, the dock site permittee shall provide proof of a current liability insurance policy in the amount of \$1 million.

16.28(7) Winter storage of docks, catwalks and hoists on public property. Winter storage of docks, catwalks and hoists on public property shall not be allowed unless specifically authorized by a dock site permit or hoist assignment. Docks, hoists and catwalks shall be stored at locations determined by the state parks bureau district supervisor as appropriate for an individual dock management area. A dock, catwalk or hoist stored on public land without authorization from the department may be removed by the department at the owner's expense.

16.28(8) Land use restrictions. Nothing shall be constructed or placed on public land adjacent to any dock in a dock management area under this rule unless the construction or placement is a necessary appurtenance to the dock as determined by the director.

16.28(9) Expiration of permits. The term of a dock site permit and a hoist or slip assignment shall not exceed five years. Renewals shall be requested on a current application form.

16.28(10) Cancellation for nonuse. A dock site permit or hoist/slip assignment may be canceled for nonuse in order to provide space for applicants on a waiting list.

16.28(11) Other permit restrictions and conditions. All restrictions and conditions in 16.19(461A,462A), except subrule 16.19(2), shall apply to all docks in a dock management area.

571—16.29(461A) Fees for docks in dock management areas. Payment of the annual dock site permit fee shall be made upon application. Payment of the annual hoist or slip fee shall be made upon application for the hoist or slip assignment. These fees may be paid in a lump sum in advance for the term of the permit or assignment. Failure to pay the annual fee by April 1 of any year may result in revocation or cancellation of the permit or assignment. Payment of any dock management area fee under this rule shall be made to the department of natural resources as specified in the permit. Annual fees are as follows:

	Dock Fee	Hoist Fee
Beed's Lake	\$100	\$50
Black Hawk Lake Marina	\$200	\$50
Black Hawk Lake/Denison	\$200	\$50
Black Hawk North Shore	\$200	\$50
Blue Lake	\$100	\$50
Clear Lake Ventura Heights	\$250	\$50
Clear Lake Harbourage	\$600	\$100 – hoist or slip fee
Clear Lake Shorewood Hills	\$600	\$100 – hoist or slip fee
Clear Lake North Shore	\$250	\$50
East Okoboji Beach	\$250	\$50
Triboji Lakeshore	\$250	\$50
Triboji Lazy Lagoon	\$250	\$50 – hoist or slip fee
Pillsbury Point	\$250	\$50
Lower Pine Lake	\$100	\$50
Lake Macbride The Pines	\$600	\$100 – slip fee
Lake Macbride Lakecrest	\$600	\$100 – slip fee
Rice Lake	\$100	\$50
Union Grove	\$100	\$50
Lake Odessa	\$100	\$25

571—16.30(461A) Suspension, modification or revocation of dock management area permits. A dock management area permit may be modified, suspended, or revoked, in whole or in part, by written notice, if the director determines

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that the dock is not safe, that a violation of any terms or conditions of the permit or these rules has occurred, or that continuation of the permit is not in the public interest. Such modification, suspension, or revocation shall become effective upon a date specified in the notice. The notice shall state the extent of the modification, suspension, or revocation, the reasons for the action, and any corrective or preventative measures to be taken by the permittee to bring the dock, structure, or activity into compliance. Within 30 days following receipt of the notice of a revocation or modification, or during the course of a suspension, the permittee may file a notice of appeal, requesting a contested case pursuant to 571—Chapter 7. The notice of appeal shall specify the basis for requesting that the permit be reinstated.

571—16.31(461A) Persons affected by DMA permit—hearing request. Any person who claims that riparian or littoral property rights are adversely affected by a DMA dock site permit may request, in writing, a hearing to reconsider the permit. Requests for hearings shall show cause and shall be made in accordance with procedures described in 571—Chapter 7.

These rules are intended to implement Iowa Code sections 461A.4, 461A.11, 461A.18, 462A.27 and 462A.32.

[Filed 2/8/07, effective 4/4/07]

[Published 2/28/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/28/07.

ARC 5752B

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 51, "Game Management Areas," Iowa Administrative Code.

These amendments are intended to clarify the use of horses on game management areas, prohibit the use of paintball guns on all game management areas, and clarify that handicapped persons may be permitted to use ATVs and snowmobiles on game management areas. Horses are prohibited on game management areas except (1) when used for training raccoon hunting dogs from October 1 to February 1 and for raccoon hunting during open hunting seasons, (2) for participating in authorized field trials, and (3) for pleasure riding from May 25 to September 30 on specific game management areas. These rules allow for limited horse use on certain game management areas during times that are compatible with the primary management purposes of these lands and without jeopardizing federal funding.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 30, 2006, as **ARC 5353B**. A public hearing was held on September 27, 2006. As a result of comments received and additional staff review, two changes have been made to the Notice of Intended Action. New rule 51.4(481A) was changed to provide additional information pertaining to the use of horses on game management areas. Appropriate Iowa Code sections were added to renumbered subrule 51.8(2) which authorize permitted

handicapped persons to use ATVs and snowmobiles for hunting on game management areas.

These amendments are intended to implement Iowa Code section 481A.6.

These amendments shall become effective April 4, 2007.

The following amendments are adopted.

ITEM 1. Amend rule **571—51.1(481A)** by adopting the following **new** definition in alphabetical order:

"Horse" means any equine animal, including horses, mules, burros, donkeys, and all llamas or alpacalike animals.

ITEM 2. Amend rule 571—51.3(481A) by adopting the following **new** subrule:

51.3(2) Use of paintball guns. The use of any item generally referred to as a paintball gun is prohibited on all game management areas.

ITEM 3. Renumber rules **571—51.4(481A)** to **571—51.11(481A)** as **571—51.5(481A)** to **571—51.12(481A)** and adopt the following **new** rule:

571—51.4(481A) Use of horses on game management areas.

51.4(1) Prohibition. Horses are prohibited on all game management areas unless allowed by exception. This rule does not apply to state forests or state recreation areas.

51.4(2) Exception for hunting and field trials. Horses may be used on all game management areas for training raccoon hunting dogs from October 1 to February 1 and for hunting raccoons during open hunting seasons. Horses may be used for participating in authorized field trials, unless this activity is posted as prohibited.

51.4(3) Exception for horseback riding. Horseback riding is allowed on the following game management areas from May 25 to September 30 and is confined to existing roads or trails as posted:

- a. Elk Grove Wildlife Area – Guthrie County.
- b. Lennon Mills Wildlife Area – Guthrie County.
- c. Marlow Ray Wildlife Area – Guthrie County.
- d. Middle Raccoon River Wildlife Area – Guthrie County.
- e. Sand Creek Wildlife Area – Decatur and Ringgold Counties.
- f. Cardinal Marsh – Winneshiek County.
- g. Hawkeye Wildlife Area – Johnson County.
- h. Black Hawk Wildlife Area – Sac County.
- i. Turkey River Wildlife Area – Howard County.

ITEM 4. Amend renumbered subrule **51.8(2)**, paragraph "a," as follows:

a. Definitions. For purposes of this subrule, 51.8(2), the following definition shall apply: "Motor vehicle" means any self-propelled vehicle having at least three wheels and registered as a motor vehicle under Iowa Code chapter 321, 321G, or 321I.

[Filed 2/8/07, effective 4/4/07]

[Published 2/28/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/28/07.

ARC 5754B

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 87, "Mussel Regulations," Iowa Administrative Code.

The amendment closes the commercial harvest of mussels in the waters of the state and updates sport harvest regulations.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 6, 2006, as **ARC 5603B**. A public hearing was held on January 4, 2007. There are no changes from the Notice.

This amendment is intended to implement Iowa Code sections 456A.24, 481A.38, 481A.39, and 482.1.

This amendment will become effective April 4, 2007.

The following amendment is adopted.

Rescind rules **571—87.1(481A)** and **571—87.2(481A)** and adopt the following **new** rule in lieu thereof:

571—87.1(481A) Seasons, areas, methods, species, limits. The taking and possession of mussels from the public waters of the state shall be limited to the following regulations.

87.1(1) Seasons. There shall be an open season for taking mussels throughout the year. The taking of mussels is restricted to the hours between sunrise and sunset.

87.1(2) Species. Species other than those listed as threatened or endangered may be lawfully taken and possessed. Zebra mussels shall not be taken and possessed.

87.1(3) Areas. Live mussels may be harvested only from the Mississippi River and connected backwaters. Dead mussels may be harvested from all waters of the state.

87.1(4) Limits. The possession limit is 24 whole mussels or 48 shell halves. The sale of mussels or shells is not permitted. Licensed commercial fishers, licensed sport anglers, and children younger than 16 years of age may take and possess mussels.

87.1(5) Methods. Mussels may be taken by hand, pole and line, diving, and crowfoot bar not to exceed 20 feet in length.

This rule is intended to implement Iowa Code sections 481A.38, 481A.39, 482.1, 482.3 and 482.12.

[Filed 2/8/07, effective 4/4/07]

[Published 2/28/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/28/07.

ARC 5750B

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 94, "Nonresident Deer Hunting," Iowa Administrative Code.

Chapter 94 gives the regulations for hunting deer and includes season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and methods of taking, and transportation tag requirements. These amendments set quotas for nonresident antlerless licenses and require successful hunters to report their kill.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 6, 2006, as **ARC 5604B**. A public hearing was held on January 11, 2007, and no one attended. One comment was received that requested a clarification of method of take for the holiday season. As a result of the comment, an amendment to subrule 94.7(3) has been added since the Notice of Intended Action to indicate method of take during the holiday season. In addition, an amendment to subrule 94.10(2) has also been added to make the season dates for nonresident disabled hunters consistent with the resident youth season.

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48, 483A.1 and 483A.8.

These amendments shall become effective April 6, 2007.

The following amendments are adopted.

ITEM 1. Amend rule 571—94.1(483A), introductory paragraph, as follows:

571—94.1(483A) Licenses. Every hunter must have in possession a valid nonresident deer license, a valid nonresident hunting license, and proof that the hunter has paid the current year's wildlife habitat fee when hunting, possessing, or transporting deer. No person, while hunting deer, shall carry or have in possession any license or transportation tag issued to another person. *No one who is issued a deer hunting license and transportation tag shall allow another person to use or possess that license or transportation tag while deer hunting or tagging a deer.*

ITEM 2. Amend paragraph **94.1(1)"c"** as follows:

c. Optional antlerless-only licenses. A hunter who is not successful in drawing an any-deer license may purchase an antlerless-only license as described in rule 571—94.8(483A). This antlerless-only license shall be valid in the ~~zone~~ county and season designated by the hunter at the time it is purchased.

ITEM 3. Amend subrules 94.6(1) and 94.6(2) as follows:
94.6(1) Zone license quotas. Nonresident license quotas are as follows:

	Any-deer licenses		Mandatory Antlerless-only	Optional Antlerless-only
	All Methods	Bow		
Zone 1.	180	63	180	
Zone 2.	180	63	180	
Zone 3.	560	196	560	
Zone 4.	1280	448	1280	
Zone 5.	1600	560	1600	
Zone 6.	800	280	800	
Zone 7.	360	126	360	
Zone 8.	240	84	240	
Zone 9.	600	210	600	
Zone 10.	200	70	200	
Total	6000	2100	6000	3500 statewide

94.6(2) Quota applicability. The license quota issued for each zone will be the quota for all bow, regular gun and muzzleloader season licenses combined. No more than 6,000 any-deer licenses and 6,000 mandatory antlerless-only licenses will be issued for all methods of take combined, for

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the entire state. Of the 6,000 any-deer and 6,000 mandatory antlerless-only licenses, no more than 35 percent in any zone can be bow licenses. A maximum of 3,500 optional antlerless-only licenses, ~~regardless of season or zone,~~ will be issued ~~for the entire state on a county-by-county basis.~~ *The licenses will be divided between the counties in the same proportion as resident antlerless-only licenses.* Hunters must designate a zone *or county* and season when purchasing the license and hunt only in that zone *or county* and season.

ITEM 4. Amend subrule 94.7(3) as follows:

94.7(3) Muzzleloader ~~and holiday seasons~~ *and holiday seasons*. During the muzzleloader ~~and holiday season~~ *seasons*, deer may be taken with a muzzleloader, handgun, or bow as described in 94.7(1). Muzzleloading rifles are defined as flintlock or percussion cap lock muzzleloaded rifles and muskets of not less than .44 and not larger than .775 caliber, shooting single projectiles only. Centerfire handguns must be .357 caliber or larger shooting straight-walled cartridges propelling an expanding-type bullet (no full-metal jacket) and complying with all other requirements provided in Iowa Code section 481A.48. Legal handgun calibers are listed on the department of natural resources list of "Acceptable Handgun Calibers for Hunting Deer in Iowa." Revolvers, pistols and black powder handguns must have a 4-inch minimum barrel length. There can be no shoulder stock or long-barrel modifications to handguns. Muzzleloading handguns must be .44 caliber or larger, shooting single projectiles only.

ITEM 5. Amend subrule 94.8(2) as follows:

94.8(2) Optional antlerless-only licenses. Optional antlerless-only licenses must be purchased through the ELSI telephone ordering system or the ELSI Internet license sales Web site. Licenses for taking only antlerless deer will be available on the same date as excess any-deer licenses are sold as explained in 94.8(1). Optional antlerless-only licenses will be sold first-come, first-served until the ~~statewide~~ *county* quota is filled, or until the last day of the season for which a license is valid. If optional antlerless-only licenses are still available on December 15, they may be purchased by nonresidents to hunt during the period from December 24 through January 2. These licenses will be available to nonresidents who have not purchased a nonresident deer license during one of the current deer seasons. The hunter must have in possession a valid nonresident small game hunting license and proof of having paid the current year's wildlife habitat fee. Optional antlerless-only licenses will be issued by season and ~~zone~~ *county* and will be valid only in the season and ~~zone~~ *county* designated by the hunter at the time the license is purchased.

a. to c. No change.

ITEM 6. Amend subrule 94.10(2) as follows:

94.10(2) Season dates. Any deer or antlerless deer may be taken in the hunting zone indicated on the deer license ~~from the third Saturday in September through the first Sunday in October during 16 consecutive days beginning the third Saturday in September.~~

ITEM 7. Adopt **new** rule 571—94.11(481A) as follows:

571—94.11(481A) Harvest reporting. Each hunter who bags a deer must report that kill according to procedures described in 571—95.1(481A).

[Filed 2/8/07, effective 4/6/07]

[Published 2/28/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/28/07.

ARC 5749B

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]

Adopted and Filed

Pursuant to the authority of Iowa Code chapter 17A and section 424.1, the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board hereby amends Chapter 6, "Administration of the Environmental Protection Charge Imposed Upon Petroleum Diminution," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXIX; No. 11, p. 672, on November 22, 2006, as **ARC 5549B**.

Rule 591—6.17(424) changes the statute of limitations for claiming a refund of the environmental protection charge from five years to three years and changes the time period for protesting a refund denial from 30 to 60 days.

In accordance with Iowa Code section 424.1(4), this amendment is being filed by the Department of Revenue on behalf of the Board. This rule change is technical in nature, and the Board granted approval to the Department of Revenue to file this amendment on behalf of the Board.

This amendment is identical to that published under Notice of Intended Action.

This amendment will become effective April 4, 2007, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

This amendment is intended to implement Iowa Code section 424.15.

The following amendment is adopted.

Amend rule 591—6.17(424) as follows:

591—6.17(424) Claim for refund of charge. The charge shall be refunded only to whoever has actually paid the charge. A receiver who has actually paid the charge may designate a depositor who collects the charge as an agent for purposes of receiving a refund of the charge. Any person or persons who claim a refund of the charge shall prepare that claim on a prescribed form furnished by the department. A claim for refund shall be filed with the department within ~~five~~ *three* years after the charge payment upon which the refund is claimed became due or one year after the charge payment was made, whichever time is the later. The claim shall state in detail the reasons why a refund is requested and facts supporting the claim, and, if necessary, include attached documents which support the claim for refund. If the claim for refund is denied and the claimant wishes to protest the denial, that protest is timely if filed no later than ~~30~~ *60* days following the date of the denial.

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591](cont'd)

This rule is intended to implement Iowa Code section 424.15.

[Filed 2/8/07, effective 4/4/07]

[Published 2/28/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/28/07.

ARC 5731B

PHARMACY EXAMINERS BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 147.36 and 147.76, the Board of Pharmacy Examiners hereby amends Chapter 2, "Pharmacist Licenses," Iowa Administrative Code.

The amendment requires an applicant for a license to practice pharmacy to submit evidence of satisfactory completion of required internship experience before the Board will certify the applicant as eligible to take any of the licensure examination components.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the October 25, 2006, Iowa Administrative Bulletin as **ARC 5473B**. The Board received no comments regarding the amendment. The adopted amendment is identical to that published under Notice.

The amendment was approved during the January 16-17, 2007, meeting of the Board of Pharmacy Examiners.

This amendment will become effective on April 4, 2007.

This amendment is intended to implement Iowa Code sections 147.29, 147.36, and 155A.8.

The following amendment is adopted.

Amend rule 657—2.4(155A) as follows:

657—2.4(155A) Internship requirements. Each applicant shall furnish to the board evidence certifying completion of satisfactory internship experience. *The board will not certify an applicant eligible to take any of the examination components prior to receipt of evidence of satisfactory completion of internship experience.* Internship experience shall comply with the requirements in 657—Chapter 4. Internship experience completed in compliance with the requirements in 657—Chapter 4 shall be valid for application for licensure in Iowa by examination or score transfer for a period of three years following graduation from an approved college of pharmacy or as otherwise approved by the board on a case-by-case basis.

[Filed 2/7/07, effective 4/4/07]

[Published 2/28/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/28/07.

ARC 5733B

PHARMACY EXAMINERS BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy Examiners hereby amends Chapter 3, "Pharmacy Technicians," and Chapter 7, "Hospital Pharmacy Practice," Iowa Administrative Code.

The amendments authorize the pharmacist in charge to designate pharmacy technicians who may be present in the pharmacy to perform authorized activities in the absence of a pharmacist. The amendments specifically identify activities that may not be performed when the pharmacy is closed and require the technician to maintain a log identifying each period of time that the technician worked in the pharmacy when the pharmacist was not on site. Rule 657—3.21(155A) is amended to reference the procedures relating to pharmacy technicians authorized in 657—Chapter 7.

Rule 657—7.3(155A) is amended by deleting the listed examples or suggestions of pharmacy references within each category of required references for a hospital pharmacy, and subrule 7.8(3) is amended to establish requirements for pharmacist review of medication orders when the hospital and pharmacy utilize an integrated electronic record system or a paperless electronic medical record system.

The amendment to subrule 7.12(2) provides for the administration of a controlled substance to a patient in the hospital emergency department following examination by the nurse and consultation with the on-call prescriber pending arrival of the on-call prescriber and provided the prescriber examines the patient in the emergency room to determine further treatment needs.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the October 25, 2006, Iowa Administrative Bulletin as **ARC 5466B**. The Board received no comments regarding the amendments. The adopted amendments differ from those published under Notice. In Item 6, the first and final sentences of the subrule are stricken. The requirements of these sentences are incorporated in the new language of the subrule and should have been stricken in the published Notice. In Item 7, paragraph 7.12(2)"d," language has been added to clarify the situational exception authorized by the paragraph.

The amendments were approved during the January 16-17, 2007, meeting of the Board of Pharmacy Examiners.

These amendments will become effective on April 4, 2007.

These amendments are intended to implement Iowa Code sections 124.301, 155A.6, 155A.13, 155A.27, 155A.31, and 155A.33.

The following amendments are adopted.

ITEM 1. Amend rule 657—3.21(155A) as follows:

657—3.21(155A) Delegation of technical functions. A pharmacist may delegate technical dispensing functions to a pharmacy technician, but only if the pharmacist is on site when delegated functions are performed, except as provided in 657—subrule 6.7(2) or 657—subrule 7.6(2), as appropriate. The pharmacist shall provide and document the final verification for the accuracy, validity, completeness, and appropriateness of the patient's prescription or medication

PHARMACY EXAMINERS BOARD[657](cont'd)

order prior to the delivery of the medication to the patient or the patient's representative.

ITEM 2. Amend rule 657—7.2(155A) as follows:

657—7.2(155A) Pharmacist in charge. One professionally competent, legally qualified pharmacist in charge in each pharmacy shall be responsible for, at a minimum, the items identified in this rule. A part-time pharmacist in charge has the same obligations and responsibilities as a full-time pharmacist in charge. Where 24-hour operation of the pharmacy is not feasible, a pharmacist shall be available on an "on call" basis. *The pharmacist in charge, at a minimum, shall be responsible for:*

1. Ensuring that the pharmacy utilizes an ongoing, systematic program for achieving performance improvement and ensuring the quality of pharmaceutical services;

2. Ensuring that the pharmacy employs an adequate number of qualified personnel commensurate with the size and scope of services provided by the pharmacy *and sufficient to ensure adequate levels of quality patient care services.* Drug dispensing by nonpharmacists shall be minimized and eliminated wherever possible;

3. Ensuring the availability of any equipment and references necessary for the particular practice of pharmacy;

4. Ensuring that a pharmacist performs therapeutic drug monitoring and drug use evaluation;

5. Ensuring that a pharmacist provides drug information to other health professionals and to patients;

6. Dispensing drugs to patients, including the packaging, preparation, compounding, and labeling functions performed by pharmacy personnel;

7. Delivering drugs to the patient or the patient's agent;

8. Ensuring that patient medication records are maintained as specified in rule 7.10(124,155A);

9. Training pharmacy technicians and supportive personnel;

10. *Ensuring adequate and appropriate pharmacist oversight and supervision of pharmacy technicians and supportive personnel.*

11. ~~11~~ ~~12~~ Procuring and storing prescription drugs and devices and other products dispensed from the pharmacy;

12. ~~12~~ ~~13~~ ~~Disposing of Distributing and distributing disposing of drugs from the pharmacy;~~

13. ~~13~~ ~~14~~ Maintaining records of all transactions of the pharmacy necessary to maintain accurate control over and accountability for all drugs as required by applicable state and federal laws, rules, and regulations;

14. ~~14~~ ~~15~~ Establishing and maintaining effective controls against the theft or diversion of prescription drugs, controlled substances, and records for such drugs;

15. ~~15~~ ~~16~~ Preparing a written operations manual governing pharmacy functions; periodically reviewing and revising those policies and procedures to reflect changes in processes, organization, and other pharmacy functions; and ensuring that all pharmacy personnel are familiar with the contents of the manual;

16. ~~16~~ ~~17~~ Ensuring the legal operation of the pharmacy, including meeting all inspection and other requirements of state and federal laws, rules, and regulations governing the practice of pharmacy.

ITEM 3. Amend rule 657—7.3(155A) as follows:

657—7.3(155A) Reference library. References may be printed or computer-accessed. A reference library shall be maintained which includes, as a minimum, one current

reference from each of the following categories, including access to current periodic updates.

1. The Iowa Pharmacy Law and ~~Informational Information Manual.~~

2. A patient information reference such as:

• ~~USP Dispensing Information, Volume II (Advice for the Patient);~~

• ~~Professional's Guide to Patient Drug Facts by Facts and Comparisons; or~~

• ~~Leaflets which provide that includes or provides patient information in compliance with rule 657—6.14(155A).~~

3. A reference on drug interactions such as:

• ~~First DataBank's Evaluations of Drug Interactions;~~

• ~~Hansten & Horn's Drug Interactions, Analysis & Management; or~~

• ~~Drug Interaction Facts by Facts and Comparisons.~~

4. A general information reference such as:

• ~~Facts and Comparisons;~~

• ~~USP Dispensing Information, Volume I (Drug Information for the Health Care Professional); or~~

• ~~AHFS Drug Information.~~

5. A drug equivalency reference such as:

• ~~Approved Drug Products With Therapeutic Equivalence Evaluations (Orange Book);~~

• ~~ABC—Approved Bioequivalency Codes; or~~

• ~~USP Dispensing Information, Volume III (Approved Drug Products and Legal Requirements).~~

6. An injectable-drug compatibility reference such as:

• ~~Betty Gahart's Intravenous Medications; or~~

• ~~Trissel's Handbook on Injectable Drugs.~~

7. A drug identification reference such as:

• ~~Mosby's GenRx;~~

• ~~Identidex by Micromedix;~~

• ~~Ident-a-Drug; or~~

• ~~Other drug identification reference to enable identification of drugs brought into the facility by patients.~~

8. The readily accessible telephone number of a poison control center that serves the area.

9. Additional references as may be necessary for the pharmacist to adequately meet the needs of the patients served. For example, the treatment of pediatric patients and oncology patients would require additional references unique to these *those* specialties.

ITEM 4. Amend subrule 7.6(2) as follows:

7.6(2) Access when pharmacist absent. *When the pharmacist is absent from the facility, the pharmacy is closed.* Policies and procedures shall be established ~~which that~~ identify who will have access to the pharmacy when the ~~pharmacist is absent from the facility~~ *pharmacy is closed* and the procedures to be followed for obtaining drugs, devices, and chemicals to fill an emergent need during that ~~the pharmacist's absence.~~ *When the pharmacist is absent from the facility, the pharmacy is closed.*

a. *The pharmacist in charge may designate pharmacy technicians who may be present in the pharmacy to perform technical and nontechnical functions designated by the pharmacist in charge. Activities identified in paragraph "d" of this subrule may not be performed when the pharmacy is closed.*

b. *If the pharmacist in charge has authorized the presence in the pharmacy of a pharmacy technician to perform designated functions when the pharmacy is closed, the technician may assist another authorized, licensed health care professional to locate a drug or device pursuant to an emergent need. The pharmacy technician may not dispense or deliver the drug, chemical, or device to the licensed health care*

PHARMACY EXAMINERS BOARD[657](cont'd)

professional. The licensed health care professional shall comply with established policies and procedures for obtaining drugs, devices, and chemicals when the pharmacy is closed. The licensed health care professional shall not ask or expect the pharmacy technician to verify that the appropriate drug, chemical, or device has been obtained from the pharmacy.

c. A pharmacy technician who is present in the pharmacy when the pharmacy is closed shall prepare and maintain in the pharmacy a log identifying each period of time that the technician worked in the pharmacy while the pharmacy was closed and identifying each activity performed during that time period. Each entry shall be dated and each daily record shall be signed by the pharmacy technician who prepared the record. The log shall be periodically reviewed by the pharmacist in charge.

d. Activities which shall not be performed by a pharmacy technician when the pharmacist is absent from the facility include:

(1) Dispensing, delivering, or distributing any prescription drugs or devices to patients or others, including health care professionals, prior to pharmacist verification. Verification by a nurse or other licensed health care professional shall not supplant verification by a pharmacist.

(2) Providing the final verification for the accuracy, validity, completeness, or appropriateness of a filled prescription or medication order.

(3) Conducting prospective drug use review or evaluating a patient's medication record for purposes identified in rule 657—8.21(155A).

(4) Providing patient counseling, consultation, or drug information.

(5) Making decisions that require a pharmacist's professional judgment such as interpreting or applying information.

(6) Preparing compounded drug products for immediate administration by other hospital staff or health care professionals without verification by a pharmacist.

ITEM 5. Amend subrule 7.8(1), paragraph "b," as follows:

b. Pharmacy personnel shall, except as specified in policies and procedures, prepare all sterile products, including chemotherapy injections, continuous and intermittent intravenous preparations, and irrigation solutions, in conformance with rule 657—8.30(126,155A).

ITEM 6. Amend subrule 7.8(3) as follows:

~~7.8(3) Medication orders. There shall be no manual or electronic transcribing of medication orders by nursing or clerical staffs except for their own records. A pharmacist shall receive a copy of the original medication order for review except when the prescriber directly enters the medication order into an electronic medical record system or when the prescriber issues a verbal medication order directly to a registered nurse or pharmacist who then enters the order into an electronic medical record system. If an individual other than the prescriber enters a medication order into an electronic medical record system, the pharmacist shall review and verify the entry against the original order before the drug is dispensed except for emergency use, when the pharmacy is closed, or when the original order is a verbal order from the prescriber to the registered nurse or pharmacist, or as provided in rule 7.7(155A). When the pharmacy is closed, a registered nurse or pharmacist may enter a medication order into an electronic medical record system for the purpose of creating an electronic medication administration record and~~

~~a pharmacist shall verify the entry against the original medication order as soon as practicable. Hospitalwide and pharmacy stand-alone computer systems shall be secure against unauthorized entry. The use of abbreviations and chemical symbols on medication orders shall be discouraged but, if used, shall be limited to abbreviations and chemical symbols approved by the appropriate patient care committee. All systems shall provide for review and verification by the pharmacist of the prescriber's original order before the drug is dispensed except for emergency use or when the pharmacy is closed, or as provided in rule 7.7(155A).~~

ITEM 7. Amend subrule 7.12(2) as follows:

7.12(2) Accountability. Drugs may be dispensed only in accordance with the system of control and accountability for drugs administered or dispensed from the emergency room.

a. The system shall be developed and supervised by the pharmacist in charge and the facility's emergency department committee, or a similar group or person responsible for policy in that department.

b. The system shall identify drugs of the nature and type to meet the immediate needs of emergency room patients.

c. Controlled substances maintained in the emergency room are kept for use by, or at the direction of, prescribers in the emergency room. In order to receive a controlled substance, a patient must be examined in the emergency room by a prescriber who shall determine the need for the drug. It is not permissible under state and federal requirements for a prescriber to see a patient outside the emergency room setting, or talk to the patient on the telephone, and then proceed to call the emergency room and order the administration of a stocked controlled substance upon the patient's arrival at the emergency room.

d. In an emergency situation when a health care practitioner authorized to prescribe controlled substances is not available on site and regardless of the provisions of paragraph "c," the emergency room nurse may examine the patient in the emergency room and contact the on-call prescriber. The on-call prescriber may then authorize the nurse to administer a controlled substance to the patient pending the arrival of the prescriber. As soon as possible, the prescriber shall examine the patient in the emergency room and determine the patient's further treatment needs.

e. The pharmacist in charge is responsible for maintaining accurate records of dispensing of drugs from the emergency room.

[Filed 2/7/07, effective 4/4/07]

[Published 2/28/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/28/07.

ARC 5732B

**PHARMACY EXAMINERS
BOARD[657]**

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy Examiners hereby amends Chapter 6, "General Pharmacy Practice," Iowa Administrative Code.

The amendment deletes the listed examples or suggestions of pharmacy references within each category of required references for a general pharmacy.

PHARMACY EXAMINERS BOARD[657](cont'd)

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the October 25, 2006, Iowa Administrative Bulletin as **ARC 5470B**. The Board received no comments regarding the amendment. The adopted amendment is identical to that published under Notice.

The amendment was approved during the January 16-17, 2007, meeting of the Board of Pharmacy Examiners.

This amendment will become effective on April 4, 2007.

This amendment is intended to implement Iowa Code section 155A.31.

The following amendment is adopted.

Amend rule 657—6.3(155A) as follows:

657—6.3(155A) Reference library. References may be printed or computer-accessed. A reference library shall be maintained which includes, as a minimum, one current reference from each of the following categories, including access to current periodic updates.

1. The Iowa Pharmacy Law and Information Manual.
2. A patient information reference such as:
 - ~~USP Dispensing Information, Volume II (Advice for the Patient);~~
 - ~~Professional's Guide to Patient Drug Facts by Facts and Comparisons; or~~
 - ~~Leaflets which provide that includes or provides patient information in compliance with rule 6.14(155A).~~
3. A reference on drug interactions such as:
 - ~~First DataBank's Evaluations of Drug Interactions;~~
 - ~~Hansten & Horn's Drug Interactions Analysis & Management; or~~
 - ~~Drug Interaction Facts by Facts and Comparisons.~~
4. A general information reference such as:
 - ~~Facts and Comparisons;~~
 - ~~USP Dispensing Information, Volume I (Drug Information for the Health Care Professional); or~~
 - ~~AHFS Drug Information.~~
5. A drug equivalency reference such as:
 - ~~Approved Drug Products With Therapeutic Equivalence Evaluations (Orange Book);~~
 - ~~ABC—Approved Bioequivalency Codes; or~~
 - ~~USP Dispensing Information, Volume III (Approved Drug Products and Legal Requirements).~~
6. A reference on natural or herbal medicines such as:
 - ~~Natural Medicines—Comprehensive Database; or~~
 - ~~The Review of Natural Products.~~
7. The readily accessible telephone number of a poison control center that serves the area.
8. Additional references as may be necessary for the pharmacist to adequately meet the needs of the patients served.

[Filed 2/7/07, effective 4/4/07]

[Published 2/28/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/28/07.

ARC 5734B

**PHARMACY EXAMINERS
BOARD[657]**

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy Examiners hereby amends Chapter 8, "Universal Practice Standards," Iowa Administrative Code.

The amendment requires that the walls enclosing a pharmacy department consist of a substantial physical barrier capable of being securely locked to prevent entry when the department is closed.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the October 25, 2006, Iowa Administrative Bulletin as **ARC 5467B**. The Board received no comments regarding the amendment. The adopted amendment is identical to that published under Notice.

The amendment was approved during the January 16-17, 2007, meeting of the Board of Pharmacy Examiners.

This amendment will become effective on April 4, 2007.

This amendment is intended to implement Iowa Code sections 155A.13 and 155A.13A.

The following amendment is adopted.

Amend rule 657—8.5(155A) by adopting **new** subrule 8.5(3) as follows and renumbering current subrules **8.5(3)** through **8.5(6)** as **8.5(4)** through **8.5(7)**:

8.5(3) Secure barrier. The pharmacy department shall be surrounded by a physical barrier capable of being securely locked to prevent entry when the department is closed. A secure barrier may be constructed of other than a solid material with a continuous surface if the openings in the material are not large enough to permit removal of items from the pharmacy department by any means. Any material used in the construction of the barrier shall be of sufficient strength and thickness that it cannot be readily or easily removed, penetrated, or bent. The plans and specifications of the barrier shall be submitted to the board for approval prior to the start of construction. The board may also require on-site inspection of the facility or pharmacy department prior to the pharmacy's opening or relocation. The pharmacy department shall be closed and secured in the absence of the pharmacist except as provided in rule 657—6.7(124,155A) or 657—7.6(124,155A).

[Filed 2/7/07, effective 4/4/07]

[Published 2/28/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/28/07.

ARC 5735B
PHARMACY EXAMINERS
BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code section 124.301, the Board of Pharmacy Examiners hereby amends Chapter 10, "Controlled Substances," Iowa Administrative Code.

The amendment authorizes a pharmacy technician 18 years of age or older to witness the wastage of the unused portion of a controlled substance resulting from administration to a patient or from drug compounding operations.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the October 25, 2006, Iowa Administrative Bulletin as **ARC 5468B**. The Board received no comments regarding the amendment. The adopted amendment is identical to that published under Notice.

The amendment was approved during the January 16-17, 2007, meeting of the Board of Pharmacy Examiners.

This amendment will become effective on April 4, 2007.

This rule is intended to implement Iowa Code sections 124.301 and 155A.13.

The following amendment is adopted.

Amend subrule 10.18(2), introductory paragraph, as follows:

10.18(2) Waste. Except as otherwise specifically provided by federal or state law or rules of the board, the unused portion of a controlled substance resulting from administration to a patient from a registrant's stock or emergency supply or resulting from drug compounding operations may be destroyed or otherwise disposed of by the registrant or a pharmacist in witness of one other licensed health care provider or a registered pharmacy technician 18 years of age or older pursuant to this subrule. A written record of the wastage shall be made and maintained by the registrant for a minimum of two years following the destruction or other disposal. The record shall include the signatures of the individual destroying or otherwise disposing of the waste controlled substance and of the witnessing licensed health care provider or registered pharmacy technician and shall identify the following:

[Filed 2/7/07, effective 4/4/07]

[Published 2/28/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/28/07.

ARC 5736B
PHARMACY EXAMINERS
BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy Examiners hereby amends Chapter 15, "Correctional Facility Pharmacy Practice," Iowa Administrative Code.

The amendment deletes the listed examples or suggestions of pharmacy references within each category of required references for a correctional facility pharmacy.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the October 25, 2006, Iowa Administrative Bulletin as **ARC 5477B**. The Board received no comments regarding the amendment. The adopted amendment is identical to that published under Notice.

The amendment was approved during the January 16-17, 2007, meeting of the Board of Pharmacy Examiners.

This amendment will become effective on April 4, 2007.

This amendment is intended to implement Iowa Code section 155A.31.

The following amendment is adopted.

Amend rule 657—15.4(155A) as follows:

657—15.4(155A) Reference library. References may be printed or computer-accessed. Each correctional facility pharmacy shall have on site, as a minimum, one current reference from each of the following categories, including access to current periodic updates.

1. The Iowa Pharmacy Law and Information Manual.
2. A patient information reference such as:
 - ~~USP Dispensing Information, Volume II (Advice for the Patient);~~
 - ~~Professional's Guide to Patient Drug Facts by Facts and Comparisons; or~~
 - ~~Leaflets which provide that includes or provides patient information in compliance with rule 657—6.14(155A).~~
3. A reference on drug interactions such as:
 - ~~First DataBank's Evaluations of Drug Interactions;~~
 - ~~Hansten & Horn's Drug Interactions Analysis & Management; or~~
 - ~~Drug Interaction Facts by Facts and Comparisons.~~
4. A general information reference such as:
 - ~~Facts and Comparisons;~~
 - ~~USP Dispensing Information, Volume I (Drug Information for the Health Care Professional); or~~
 - ~~AHFS Drug Information.~~
5. A drug equivalency reference such as:
 - ~~Approved Drug Products With Therapeutic Equivalence Evaluations (Orange Book);~~
 - ~~ABC—Approved Bioequivalency Codes; or~~
 - ~~USP Dispensing Information, Volume III (Approved Drug Products and Legal Requirements).~~
6. A reference on natural or herbal medicines such as:
 - ~~Natural Medicines—Comprehensive Database; or~~
 - ~~The Review of Natural Products.~~
7. The readily accessible telephone number of a poison control center that serves the area.
8. Additional references as may be necessary for the pharmacist to adequately meet the needs of the patients served.

[Filed 2/7/07, effective 4/4/07]

[Published 2/28/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/28/07.

ARC 5737B**PHARMACY EXAMINERS
BOARD[657]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy Examiners hereby amends Chapter 20, "Pharmacy Compounding Practices," Iowa Administrative Code.

The amendment authorizes a pharmacy to sell to a hospital pharmacy a compounded drug product prepared pursuant to a prescriber's authorization for administration to a specific patient and includes specific requirements regarding labeling and record keeping.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the October 25, 2006, Iowa Administrative Bulletin as **ARC 5469B**. The Board received no comments regarding the amendment. The adopted amendment is identical to that published under Notice.

The amendment was approved during the January 16-17, 2007, meeting of the Board of Pharmacy Examiners.

This amendment will become effective on April 4, 2007.

This amendment is intended to implement Iowa Code section 155A.13.

The following amendment is adopted.

Amend subrule 20.3(4) as follows:

20.3(4) Advertising and resale of compounded drug products. The sale of compounded drug products to other pharmacies or to prescribers, *except as provided in this subrule*, is considered manufacturing. Pharmacists shall not offer compounded drug products to other licensed persons or commercial entities for subsequent resale except in the course of professional practice for a practitioner to administer to an individual patient. *A pharmacy may sell to a hospital pharmacy a compounded drug product prepared pursuant to a prescriber's authorization for administration to a specific patient. The label affixed to the compounded drug product shall identify the pharmacy that compounded the product as the dispensing pharmacy. The original prescription drug order shall be maintained by the dispensing pharmacy. These rules shall not prohibit the hospital pharmacy from billing the patient or the patient's fiscal agent for a compounded product prepared for the patient and purchased by the hospital pharmacy pursuant to this subrule.* Compounding pharmacies or pharmacists may advertise or otherwise promote the fact that they provide prescription drug compounding services. Compounding pharmacies or pharmacists shall not make a claim, assertion, or inference of professional superiority in the compounding of drug products that cannot be substantiated. All advertisements shall meet the requirements contained in 657—8.12(126,155A.147). Nothing in these rules shall prohibit the centralized filling or processing of a prescription drug order for a compounded drug product by a central fill or processing pharmacy on behalf of an originating pharmacy as provided in 657—Chapter 18.

[Filed 2/7/07, effective 4/4/07]

[Published 2/28/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/28/07.

ARC 5738B**PHARMACY EXAMINERS
BOARD[657]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 124.301 and 147.76, the Board of Pharmacy Examiners hereby amends Chapter 21, "Electronic Data in Pharmacy Practice," Iowa Administrative Code.

The amendments clarify certain requirements for prescriptions authorized utilizing an electronic signature, whether or not the prescription itself is transmitted from the prescriber to the pharmacy via electronic means, and reiterate the pharmacist's responsibility for ensuring the validity of the prescription. The amendments also identify optional security features that may be used on prescription blanks when those blanks are used to print an electronically signed prescription for delivery to the patient.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the October 25, 2006, Iowa Administrative Bulletin as **ARC 5463B**. The Board received comments regarding the amendment to subrule 21.7(3), relating to the use of security paper for printed prescriptions that are authorized utilizing an electronic signature. The comments specifically questioned the differing requirements for electronically signed and printed prescriptions, handwritten prescriptions, and prescriptions for controlled substances. The Board considered the comments and determined that federal law does not recognize an electronic signature as valid authorization for a controlled substance, so the Board need not address electronic signatures for controlled substance prescriptions, and handwritten prescriptions include the handwritten signature of the prescriber which is readily recognizable as a signature and is not prone to electronic forgery or duplication to the extent of electronically generated and signed prescriptions. The adopted amendments are identical to those published under Notice.

The amendments were approved during the January 16-17, 2007, meeting of the Board of Pharmacy Examiners.

These amendments will become effective on April 4, 2007.

These amendments are intended to implement Iowa Code sections 124.301, 124.306, 124.308, 155A.27, and 155A.35.

The following amendments are adopted.

ITEM 1. Amend rule 657—21.3(124,155A), introductory paragraph, as follows:

657—21.3(124,155A) Verifying authenticity of an electronically transmitted prescription. The pharmacist shall ensure the validity of the prescription as to its source of origin. Measures to be considered in authenticating prescription drug orders received via electronic transmission *or signed utilizing an electronic signature* include:

ITEM 2. Amend rule 657—21.7(124,155A) as follows:

657—21.7(124,155A) Electronically prepared prescriptions. A prescriber may initiate and authorize a prescription drug order utilizing a computer or other electronic communication or recording device. The prescription drug order shall contain all information required by Iowa Code section 155A.27 ~~except the prescriber's original signature, and may include the prescriber's electronic signature.~~ *The receiving*

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pharmacist shall be responsible for verifying the authenticity of an electronically transmitted prescription or of an electronic signature as provided by rule 657—8.19(124,126,155A) or 21.3(124,155A).

21.7(1) Controlled substances. A prescription for a controlled substance prepared pursuant to this rule may be transmitted to a pharmacy via facsimile transmission as provided by rule 21.9(124,155A) or rules 21.12(124,155A) through 21.16(124,155A). The transmitted prescription shall include the prescriber's original signature or electronic signature.

21.7(2) Noncontrolled prescription drugs. A prescription for a noncontrolled prescription drug prepared pursuant to this rule may be transmitted to a pharmacy via computer-to-computer transmission as provided in rule 21.8(124,155A) or via facsimile transmission as provided in rule 21.9(124,155A). The transmitted prescription shall include the prescriber's original signature or electronic signature.

21.7(3) Printed (hard-copy) prescriptions. A prescription prepared pursuant to this rule may be printed by the prescriber or prescriber's agent for delivery to a pharmacy.

a. A prescription for a controlled substance shall include the prescriber's original signature.

b. If the prescriber authenticates a prescription for a non-controlled prescription drug utilizing an electronic signature, the printed prescription shall be printed on security paper that is designed to prevent photocopying, scanning, or other duplication of the printed prescription by prominently disclosing the word "void" or "copy" on the duplication and may include other security features such as watermarks or erasure-resistant inks or by including a watermark or background that will not appear on duplication. If a watermark or background is used, the prescription shall include a statement that unless the watermark or background appears, the prescription is not valid.

c. When a prescription prepared pursuant to this subrule is transmitted to a pharmacy via facsimile, or when a prescription prepared pursuant to this subrule is scanned into an electronic record system, the watermark or background will not appear or the word "void" or "copy" will appear. It is the responsibility of the pharmacist to verify the validity of the prescription as provided by rule 657—8.19(124,126,155A) or 21.3(124,155A).

ITEM 3. Amend rule 657—21.8(124,155A), introductory paragraph, as follows:

657—21.8(124,155A) Computer-to-computer transmission of a prescription. Prescription drug orders, excluding orders for controlled substances, may be communicated directly from a prescriber's computer to a pharmacy's computer prescription processing system by electronic transmission. *The receiving pharmacist shall be responsible for verifying the authenticity of an electronically transmitted prescription or of an electronic signature as provided by rule 657—8.19(124,126,155A) or 21.3(124,155A).*

ITEM 4. Amend rule 657—21.9(124,155A) as follows:

657—21.9(124,155A) Facsimile transmission (fax) of a prescription. A pharmacist may dispense noncontrolled and controlled drugs, excluding Schedule II controlled substances, pursuant to a prescription faxed to the pharmacy by the prescribing practitioner or the practitioner's agent. The faxed prescription drug order shall serve as the original prescription, shall be maintained for a minimum of two years from the date of last fill or refill, and shall contain all information required by Iowa Code section 155A.27, including the prescriber's signature or electronic signature. *The receiving pharmacist shall be responsible for verifying*

the authenticity of an electronically transmitted prescription or of an electronic signature as provided by rule 657—8.19(124,126,155A) or 21.3(124,155A).

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/28/07.

ARC 5725B**PROFESSIONAL LICENSURE
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Physician Assistant Examiners adopts amendments to Chapter 326, "Licensure of Physician Assistants," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the Iowa Administrative Bulletin on November 8, 2006, as **ARC 5522B**. These amendments have been revised since publication of the Notice of Intended Action following a public hearing held on November 28, 2006.

Public comments received supported the noticed amendments and also recommended changes to the language. The Board then invited stakeholders to discuss the amendments at two additional meetings held on January 8, 2007, and on January 16, 2007. Proposed Items 1 and 2 pertained to educational course documentation, and the Board adopted the amendments in Items 1 and 2 at its regularly scheduled quarterly meeting held on January 17, 2007. The amendments in Items 1 and 2 were Adopted and Filed, with no changes from the Notice of Intended Action, and published in the February 14, 2007, Iowa Administrative Bulletin as **ARC 5706B**.

Proposed Items 3 through 6 of the noticed amendments clarify that a physician assistant may be taught new procedures under either direct or remote supervision, clarify the dual responsibility of both physician and physician assistant to be aware of who is designated as the supervising physician, and change the time frames for notifying the Board when supervisory changes occur. Because several stakeholders were unable to attend the second meeting held on January 16, 2007, the Board deferred adoption of proposed Items 3 to 6.

Representatives from the Board and stakeholders met again on January 25, 2007, to further discuss the remaining items. The Board recommended alternative language to the amendments in proposed Items 3 to 6 [renumbered herein as Items 1 to 4] in order to address stakeholder comments. The Board of Medical Examiners, the Iowa Osteopathic Medical Association, and the Iowa Physician Assistant Society also offered suggestions for alternative or additional language. Other stakeholder groups continued to express concerns and suggested compromise language, particularly in regard to Item 1 which amends paragraph 326.8(1)"b." The Board met on January 31, 2007, to discuss additional changes to the language of the amendments as a result of earlier stakeholder discussions. The Board also provided an opportunity at the January 31 meeting for additional discussion with stakeholder groups in attendance. After further discussion, the Board adopted the amendments in Items 1 to 4 with modifications from the Notice of Intended Action that address many of the

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issues identified in the public hearing, board meetings, and stakeholder meetings.

The amendments were adopted by the Board of Physician Assistant Examiners on January 31, 2007.

These amendments will become effective April 4, 2007.

These amendments are intended to implement Iowa Code chapters 21, 147, 148C and 272C.

The following amendments are adopted.

ITEM 1. Amend subrule **326.8(1)**, paragraph “**b**,” as follows:

~~b. Within 90 days of any change in supervisory relationship or change in supervisory physicians. At the time of license renewal. The physician assistant shall notify the board of the identity of each of the physician assistant’s supervising physicians and of any change in the status of the supervisory relationships during the physician assistant’s current biennium. In addition, the physician assistant shall maintain a list of supervising physicians to provide to the board upon request.~~

ITEM 2. Rescind subrule **326.8(1)**, paragraph “**c**,” and reletter paragraph “**d**” as “**c**.”

ITEM 3. Amend subrule 326.8(4), introductory paragraph, as follows:

326.8(4) It shall be the responsibility of the physician assistant ~~with~~ and a supervising physician to ensure that the physician assistant is adequately supervised. ~~The physician assistant shall notify the supervising physician(s) that the physician is listed with the board as a supervising physician. The physician assistant and supervising physician shall~~

~~mutually coordinate their schedule. Upon agreeing to supervise a physician assistant, a supervising physician will be advised that the physician’s name will be listed with the board as a supervising physician. In regard to scheduling, the physician assistant may not practice if supervision is unavailable, except as otherwise provided in Iowa Code chapter 148C or these rules, and must be in compliance with the requirement that no more than two physician assistants shall be supervised by a physician at one time, pursuant to 645—subrule 326.8(3). The physician assistant and the supervising physician are each responsible for knowing and complying with the supervision provisions of these rules.~~

ITEM 4. Amend subrule **326.8(4)**, paragraph “**d**,” as follows:

~~d. If~~ When the physician assistant is being trained to perform new medical procedures, the training ~~may~~ shall be carried out ~~only~~ under the ~~direct, personal~~ supervision of a ~~supervising~~ physician or another qualified individual. ~~Upon completing the supervised training, a physician assistant may perform the new medical procedures if delegated by a supervising physician, except as otherwise provided in Iowa Code chapter 148C or these rules. New medical procedures may be delegated to a physician assistant after a supervising physician determines that the physician assistant is competent to perform the task.~~

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