



IOWA ADMINISTRATIVE BULLETIN

Published Biweekly

VOLUME XL
September 27, 2017

NUMBER 7
Pages 639 to 764

CONTENTS IN THIS ISSUE

Pages 650 to 762 include **ARC 3319C** to **ARC 3326C** and **ARC 3329C** to **ARC 3347C**

ADMINISTRATIVE SERVICES

DEPARTMENT[11]

Delay, Terrace Hill endowment for the
musical arts, amendments to ch 116 763

AGENDA

Administrative rules review committee 643

AGING, DEPARTMENT ON[17]

Notice, Staffing ratio for substitute
decision maker, 22.5 **ARC 3324C** 650

ALL AGENCIES

Agency identification numbers 647

Citation of administrative rules 641

Schedule for rule making 642

ARCHITECTURAL EXAMINING BOARD[193B]

Professional Licensing and Regulation Bureau[193]
COMMERCE DEPARTMENT[181]"umbrella"

Filed, Description of
organization—update of terminology,
1.1, 1.4 **ARC 3331C** 682

Filed, Licensure—update of terminology,
amendments to ch 2 **ARC 3332C** 682

Filed, Continuing education—update
of terminology, amendments to ch 3
ARC 3333C 689

Filed, Rules of conduct—update of
terminology, 4.1 **ARC 3334C** 690

Filed, Exceptions—update of
terminology, 5.2 **ARC 3335C** 693

Filed, Disciplinary action against
licensees—update of terminology,
amendments to ch 6 **ARC 3336C** 694

Filed, Disciplinary action for unlicensed
practice—update of terminology, 7.3
ARC 3337C 696

DELAY

Administrative Services Department[11]
Terrace Hill endowment for the musical
arts, amendments to ch 116 763

HUMAN SERVICES DEPARTMENT[441]

Notice, Health insurance premium
payment (HIPP) program, 75.21 **ARC 3323C** 650

Notice, Medicaid—qualified Medicare
beneficiary (QMB) providers, health
insurance premium payment (HIPP)
providers, 77.53, 77.54, 78.58, 78.59,
79.1, 79.14(1), 80.2(2) **ARC 3321C** 656

Notice, Child abuse prevention program,
amendments to ch 155 **ARC 3322C** 659

IOWA FINANCE AUTHORITY[265]

Filed, Low-income housing tax credits,
12.1(2), 12.2(2) **ARC 3338C** 697

LABOR SERVICES DIVISION[875]

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

Filed, Child labor permit—proof of age,
32.2(2)"a" **ARC 3339C** 698

PHARMACY BOARD[657]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Notice, General pharmacy practice,
amendments to ch 6 **ARC 3330C** 661

PHARMACY BOARD[657] (Cont'd)

Notice, Automated medication distribution systems and telepharmacy services; electronic data and automated systems in pharmacy practice, rescind chs 9, 21; adopt ch 21 ARC 3329C	665
Filed, Controlled substances, amend chs 7, 8, 21, 23, 100; adopt ch 10 ARC 3345C	699
Filed, Updates—name and contact information for board, citations; pharmacy internet sites, rescind ch 24; amend chs 25 to 27, 29, 31 ARC 3346C	722
Filed, Rules for waivers and variances, amendments to ch 34 ARC 3347C	726
Filed, Contested cases; discipline, chs 35, 36 ARC 3344C	728
PUBLIC FUNDS—AVAILABILITY	
Homeland Security and Emergency Management Department FEMA DR-4334-IA	649
PUBLIC HEARINGS	
Summarized list	646
SECRETARY OF STATE[721]	
Notice, Fee increases to fund technology modernization fund, amendments to chs 2, 30, 40 ARC 3320C	671
Notice, Polling place technology revolving loan fund; electronic poll books, amendments to ch 22 ARC 3319C	673
TREASURER OF STATE	
Notice—Public funds interest rates	676

USURY

Notice	677
--------------	-----

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]“umbrella”

Notice, Rule making, amendments to ch 3 ARC 3326C	677
Filed, Organization and operation, 1.3 to 1.5, 1.8, 1.9 ARC 3340C	753

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]

Filed, Update of department contact information, amendments to chs 2 to 4, 6, 11, 14 to 16 ARC 3341C	757
---	-----

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Notice, Employer records, reports, contribution and charges—fees, collection of covered unemployment compensation, 22.9(3), 23.68, 23.82(1) ARC 3325C	680
Filed, Procedures for department interaction with employers and claimants; updates related to technology, amendments to ch 23 ARC 3342C	759
Filed, Unemployment appeal process, amendments to ch 26 ARC 3343C	761

PREFACE

The Iowa Administrative Bulletin is published biweekly 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"]; and agricultural credit corporation maximum loan rates [535.12].

PLEASE NOTE: Underscore indicates new material added to existing rules; ~~strike through~~ indicates deleted material.

STEPHANIE A. HOFF, Administrative Code Editor

Telephone: (515)281-3355

Fax: (515)281-5534

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	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

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

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

NOTE: In accordance with Iowa Code section 2B.5A, a rule number within the Iowa Administrative Code includes a reference to the statute which the rule is intended to implement: 441—79.1(249A).

Schedule for Rule Making 2017

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

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
9	Friday, October 6, 2017	October 25, 2017
10	Wednesday, October 18, 2017	November 8, 2017
11	Wednesday, November 1, 2017	November 22, 2017

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the filing deadline 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*****

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, October 10, 2017, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

AGING, DEPARTMENT ON[17]

Staffing ratio for substitute decision maker, 22.5 Notice **ARC 3324C**..... 9/27/17

ARCHITECTURAL EXAMINING BOARD[193B]

Professional Licensing and Regulation Bureau[193]
COMMERCE DEPARTMENT[181]"umbrella"

Description of organization—update of terminology, 1.1, 1.4 Filed **ARC 3331C**..... 9/27/17

Licensure—update of terminology, amendments to ch 2 Filed **ARC 3332C** 9/27/17

Continuing education—update of terminology, amendments to ch 3 Filed **ARC 3333C**..... 9/27/17

Rules of conduct—update of terminology, 4.1 Filed **ARC 3334C** 9/27/17

Exceptions—update of terminology, 5.2 Filed **ARC 3335C** 9/27/17

Disciplinary action against licensees—update of terminology, amendments to ch 6 Filed **ARC 3336C** 9/27/17

Disciplinary action for unlicensed practice—update of terminology, 7.3 Filed **ARC 3337C**..... 9/27/17

ATTORNEY GENERAL[61]

Late charge for creditors and debt collectors—increase in fee, 22.6(1) Notice **ARC 3308C** 9/13/17

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Reissuance of NPDES General Permit Nos. 1, 2, and 3 for discharge from storm water, 64.15

Notice **ARC 3309C** 9/13/17

Reissuance of NPDES General Permit No. 4 for discharge from private sewage disposal

systems, 64.15(4) Notice **ARC 3310C** 9/13/17

HUMAN SERVICES DEPARTMENT[441]

Health insurance premium payment (HIPP) program, 75.21 Notice **ARC 3323C** 9/27/17

Medicaid—qualified Medicare beneficiary (QMB) providers, health insurance premium

payment (HIPP) providers, 77.53, 77.54, 78.58, 78.59, 79.1, 79.14(1), 80.2(2) Notice **ARC 3321C**..... 9/27/17

Child abuse prevention program, amendments to ch 155 Notice **ARC 3322C** 9/27/17

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]"umbrella"

Health insurance sales—reciprocal protections for seniors moving between a Medicare

supplement policy and a Medicare Part C policy, 15.5 Notice **ARC 3318C** 9/13/17

IOWA FINANCE AUTHORITY[265]

Low-income housing tax credits, 12.1(2), 12.2(2) Filed **ARC 3338C**..... 9/27/17

LABOR SERVICES DIVISION[875]

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

Child labor permit—proof of age, 32.2(2)"a" Filed **ARC 3339C**..... 9/27/17

NURSING BOARD[655]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Continuing education, ch 5 Filed **ARC 3311C** 9/13/17

PHARMACY BOARD[657]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

General pharmacy practice, amendments to ch 6 Notice **ARC 3330C** 9/27/17

Controlled substances, amend chs 7, 8, 21, 23, 100; adopt ch 10 Filed **ARC 3345C**..... 9/27/17

Automated medication distribution systems and telepharmacy services; electronic data and

automated systems in pharmacy practice, rescind chs 9, 21; adopt ch 21 Notice **ARC 3329C**..... 9/27/17

Updates—name and contact information for board, citations; pharmacy internet sites, rescind

ch 24; amend chs 25 to 27, 29, 31 Filed **ARC 3346C** 9/27/17

Rules for waivers and variances, amendments to ch 34 Filed **ARC 3347C** 9/27/17

Contested cases; discipline, chs 35, 36 Filed **ARC 3344C**..... 9/27/17

REVENUE DEPARTMENT[701]

Board of review—occupation of members, 71.20(1)"a" Filed **ARC 3312C** 9/13/17

Assessor or deputy assessor examination—removal of right to review, 72.2(6) Filed **ARC 3313C** 9/13/17

Wind energy conversion property—sunset date, 80.13 Filed **ARC 3314C**..... 9/13/17

Commercial and industrial property tax replacement—county replacement claims report,
80.49(2)“b” Filed **ARC 3315C** 9/13/17

SECRETARY OF STATE[721]

Fee increases to fund technology modernization fund, amendments to chs 2, 30, 40
Notice **ARC 3320C** 9/27/17
Polling place technology revolving loan fund; electronic poll books, amendments to ch 22
Notice **ARC 3319C** 9/27/17

TRANSPORTATION DEPARTMENT[761]

Electronic application for vehicle title and registration, 400.1, 400.3, 400.4(10) Notice **ARC 3306C** 9/13/17
Persons with disabilities special registration plates and parking permits, amend 401.20; adopt
ch 411 Notice **ARC 3304C** 9/13/17
Application for driver’s license or permit or nonoperator’s identification card, amendments
to chs 601, 605, 630 Notice **ARC 3307C** 9/13/17
Motorcycle rider education—update of Iowa Code references, amendments to ch 635
Notice **ARC 3305C** 9/13/17

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]“umbrella”
Organization and operation, 1.3 to 1.5, 1.8, 1.9 Filed **ARC 3340C** 9/27/17
Rule making, amendments to ch 3 Notice **ARC 3326C** 9/27/17
Accounting, 16.6, 16.7 Filed **ARC 3316C** 9/13/17
Public utilities—reorganization, amendments to ch 32 Filed **ARC 3317C** 9/13/17

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]

Update of department contact information, amendments to chs 2 to 4, 6, 11, 14 to 16 Filed **ARC 3341C** 9/27/17

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Employer records, reports, contribution and charges—fees, collection of covered
unemployment compensation, 22.9(3), 23.68, 23.82(1) Notice **ARC 3325C** 9/27/17
Procedures for department interaction with employers and claimants; updates related to
technology, amendments to ch 23 Filed **ARC 3342C** 9/27/17
Unemployment appeal process, amendments to ch 26 Filed **ARC 3343C** 9/27/17

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.

Senator Mark Chelgren
819 Hutchinson
Ottumwa, Iowa 52501

Senator Mark Costello
37265 Rains Avenue
Imogene, Iowa 51645

Senator Wally Horn
101 Stoney Point Road, SW
Cedar Rapids, Iowa 52404

Senator Pam Jochum
2368 Jackson Street
Dubuque, Iowa 52001

Senator Jack Whitver
4019 NE Bellagio Circle
Ankeny, Iowa 50021

Jack Ewing
Legal Counsel
Capitol
Des Moines, Iowa 50319
Telephone (515)281-6048
Fax (515)281-8451

Representative Megan Jones
4470 Highway 71
Sioux Rapids, Iowa 50585

Representative Amy Nielsen
168 Lockmoor Circle
North Liberty, Iowa 52317

Representative Rick Olson
3012 East 31st Court
Des Moines, Iowa 50317

Representative Dawn Pettengill
P.O. Box A
Mt. Auburn, Iowa 52313

Representative Guy Vander Linden
1610 Carbonado Road
Oskaloosa, Iowa 52577

Colin Smith
Administrative Rules Coordinator
Governor's Ex Officio Representative
Capitol, Room 18
Des Moines, Iowa 50319
Telephone (515)281-5211

ENVIRONMENTAL PROTECTION COMMISSION[567]

Reissuance of NPDES General Permit Nos. 1, 2, and 3 for discharge from storm water, 64.15
IAB 9/13/17 **ARC 3309C**

Conference Rooms 5 East and West
Wallace State Office Bldg.
Des Moines, Iowa

October 10, 2017
2 to 3 p.m.

Reissuance of NPDES General Permit No. 4 for discharge from private sewage disposal systems, 64.15(4)
IAB 9/13/17 **ARC 3310C**

Conference Room 5 East
Wallace State Office Bldg.
Des Moines, Iowa

October 3, 2017
2:30 to 4:30 p.m.

INSURANCE DIVISION[191]

Health insurance sales—reciprocal protections for seniors moving between Medicare supplement policy and Part C policy, 15.5
IAB 9/13/17 **ARC 3318C**

Division Office, Fourth Floor
601 Locust St.
Des Moines, Iowa

October 4, 2017
10:30 a.m.

SECRETARY OF STATE[721]

Election administration; voting; voter identification and registration, amendments to chs 21, 22, 26, 28
IAB 8/30/17 **ARC 3282C**

Secretary of State Office
Lucas State Office Bldg.
Des Moines, Iowa

October 16, 2017
3 p.m.

TRANSPORTATION DEPARTMENT[761]

Electronic application for vehicle title and registration, 400.1, 400.3, 400.4(10)
IAB 9/13/17 **ARC 3306C**

Motor Vehicle Division Offices
6310 SE Convenience Blvd.
Ankeny, Iowa

October 5, 2017
1 p.m.
(If requested)

Persons with disabilities special registration plates and parking permits, amend 401.20; adopt ch 411
IAB 9/13/17 **ARC 3304C**

Motor Vehicle Division Offices
6310 SE Convenience Blvd.
Ankeny, Iowa

October 5, 2017
9 a.m.
(If requested)

Application for driver's license or permit or nonoperator's identification card, amendments to chs 601, 605, 630
IAB 9/13/17 **ARC 3307C**

Motor Vehicle Division Offices
6310 SE Convenience Blvd.
Ankeny, Iowa

October 5, 2017
2:30 p.m.
(If requested)

Motorcycle rider education—update of Iowa Code references, amendments to ch 635
IAB 9/13/17 **ARC 3305C**

Motor Vehicle Division Offices
6310 SE Convenience Blvd.
Ankeny, Iowa

October 5, 2017
10 a.m.
(If requested)

VOTER REGISTRATION COMMISSION[821]

Voter registration; status; lists of registered voters; election registers, 2.8(3), 2.10, 2.14, 2.15, 3.10, 5.1(1), 7.2
IAB 8/30/17 **ARC 3283C**

Secretary of State Office
Lucas State Office Bldg.
Des Moines, Iowa

October 16, 2017
3 p.m.

The following list will be updated as changes occur.

“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 are included alphabetically in SMALL CAPITALS at the left-hand margin.

ADMINISTRATIVE SERVICES DEPARTMENT[11]
AGING, DEPARTMENT ON[17]
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
 Soil Conservation and Water Quality Division[27]
ATTORNEY GENERAL[61]
AUDITOR OF STATE[81]
BEEF CATTLE PRODUCERS ASSOCIATION, IOWA[101]
BLIND, DEPARTMENT FOR THE[111]
CAPITAL INVESTMENT BOARD, IOWA[123]
CHIEF INFORMATION OFFICER, OFFICE OF THE[129]
OMBUDSMAN[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]
 Utilities Division[199]
CORRECTIONS DEPARTMENT[201]
 Parole Board[205]
CULTURAL AFFAIRS DEPARTMENT[221]
 Arts Division[222]
 Historical Division[223]
EARLY CHILDHOOD IOWA STATE BOARD[249]
ECONOMIC DEVELOPMENT AUTHORITY[261]
 City Development Board[263]
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]
ENERGY INDEPENDENCE, OFFICE OF[350]
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]
Status of Iowans of Asian and Pacific Islander Heritage[436]
HUMAN SERVICES DEPARTMENT[441]
INSPECTIONS AND APPEALS DEPARTMENT[481]
Employment Appeal Board[486]
Child Advocacy Board[489]
Racing and Gaming Commission[491]
State Public Defender[493]
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]
IOWA PUBLIC INFORMATION BOARD[497]
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]
PROPANE EDUCATION AND RESEARCH COUNCIL, IOWA[599]
PUBLIC DEFENSE DEPARTMENT[601]
Military Division[611]
HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605]
PUBLIC EMPLOYMENT RELATIONS BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
Professional Licensure Division[645]
Dental Board[650]
Medicine Board[653]
Nursing Board[655]
Pharmacy 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]
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]

FEMA DR-4334-IA

AGENCY	PROGRAM	ELIGIBLE APPLICANTS	TYPES OF PROJECT
<p>Iowa Homeland Security and Emergency Management Department (HSEMD)</p>	<p>Hazard Mitigation Grant Program (HMGP)</p> <p>Authorized by §203 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act (Stafford Act), 42 U.S.C. 5133, as amended by §102 of the Disaster Mitigation Act of 2000 (DMA)</p>	<ul style="list-style-type: none"> • State Agencies and Local Governments. • Federally recognized Indian Tribal governments, to include state recognized Indian Tribes, and Authorized Tribal Organizations. • Private Non Profit (PNP) Organizations or institutions which operate a PNP facility as defined in the 44 Code of Federal Regulations (CFR), Section 206.221(e). • All applicants must be participating in the NFIP if they have been identified as having a Special Flood Hazard Area. The Community must not be on probation, suspended or withdrawn from the NFIP. • All applicants for a project grant MUST have a FEMA-approved local hazard mitigation plan. <p>Application Process:</p> <ul style="list-style-type: none"> - Potential project & planning applicants must complete a Notice of Interest (NOI) Form located on the HSEMD website at: http://www.iowahomelandsecurity.org/grants/HMA.html - NOI Form must be emailed to hsemd.mitigation@iowa.gov. - NOI's will be selected for full application development based on funding availability, the State's priority, and an initial eligibility review. - NOI's will be accepted on a continuous basis or until otherwise notified. <p>For additional information, please contact:</p> <p>Dan Schmitz 515-725-9369 Aimee Bartlett 515-725-9364</p> <p>Iowa Homeland Security and Emergency Management Department 7900 Hickman Road Windsor Heights, Iowa 50324</p>	<p>Eligible Project Types</p> <p>Projects may be of any nature that will result in protection to public or private property, including but not limited to:</p> <ul style="list-style-type: none"> • Acquisition or relocation of hazard-prone property for conversion to open space in perpetuity • Construction of safe rooms (tornado and severe wind shelters) • Structural and non-structural retrofitting of existing buildings and facilities (including designs and feasibility studies when included as part of the construction project) for wildfire, seismic, wind or flood hazards (e.g., elevation, flood-proofing, storm shutters, hurricane clips) • Minor structural hazard control or protection projects that may include vegetation management, storm water management (e.g., culverts, floodgates, retention basins), or shoreline/landslide stabilization • Localized flood control projects, such as certain ring levees and floodwall systems, that are designed specifically to protect critical facilities and do not constitute a section of a larger flood control system • Development of multi-jurisdictional hazard mitigation plans and plan updates <p>Planning Application</p> <p>The outcome of a mitigation planning grant award must be a FEMA-approved hazard mitigation plan that complies with the requirements of 44 CFR Part 201. The planning grant deliverable can be a new hazard mitigation plan or an update of an already FEMA-approved hazard mitigation plan.</p>

ARC 3324C

AGING, DEPARTMENT ON[17]

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 231E.4(6) and 17A.3, the Department on Aging hereby gives Notice of Intended Action to amend Chapter 22, “Office of Substitute Decision Maker,” Iowa Administrative Code.

This proposed amendment changes the staffing level for substitute decision makers by increasing the number of consumers per full-time equivalent position from 10 to 40. The change will create staffing levels consistent with those in neighboring states and allow for a more efficient substitute decision-maker program.

Any interested person may make written suggestions or comments on the proposed amendment on or before October 17, 2017. Such written comments or suggestions should be directed to Brian Majeski, Iowa Department on Aging, Jessie M. Parker Building, 510 E. 12th Street, Des Moines, Iowa 50319. E-mail may be sent to brian.majeski@iowa.gov.

After analysis and review of this rule making, no adverse impact on jobs has been found.

This amendment is intended to implement Iowa Code section 231E.4(6)“c.”

The following amendment is proposed.

Amend rule 17—22.5(231E,633), introductory paragraph, as follows:

17—22.5(231E,633) Staffing ratio. SDMs shall be responsible for no more than ~~ten~~ 40 consumers per full-time equivalent position at any one time. The state office shall notify the state court administrator when the maximum number of appointments is reached.

ARC 3323C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby gives Notice of Intended Action to amend Chapter 75, “Conditions of Eligibility,” Iowa Administrative Code.

This amendment regarding the Health Insurance Premium Payment (HIPP) Program rule is being implemented to compare cost to managed care organizations (MCO) capitation fees. This amendment, which replaces existing rule 441—75.21(249A) with a new rule, also provides for some technical cleanup, definition enhancements, and revisions due to changes in the health insurance environment.

Any interested person may make written comments on the proposed amendment on or before October 17, 2017. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut Street,

HUMAN SERVICES DEPARTMENT[441](cont'd)

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

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code section 249A.3.

The following amendment is proposed.

Rescind rule 441—75.21(249A) and adopt the following new rule in lieu thereof:

441—75.21(249A) Health insurance premium payment (HIPP) program. Under the HIPP program, the department shall pay for the cost of premiums, coinsurance, copayments, and deductibles for Medicaid-eligible individuals when the department determines that those costs will be less than the cost of paying for the individual's care through Medicaid including managed care capitation fees. Payment shall include only the cost to the Medicaid-eligible individual or household.

75.21(1) Definitions.

"Absent parent" means a noncustodial parent, or a parent who is not living with the member.

"Authorized representative" means an individual or organization authorized by a competent applicant or member, authorized by a responsible person acting for an incompetent applicant or member pursuant to 441—subrule 76.9(2), or with other legal authority to represent the applicant or member in the application process, renewal of eligibility and other ongoing communications with the department.

"Capitation payment" means a monthly payment to the managed care contractor on behalf of each member for the provision of health services under the managed care entity contract. Payment is made by the department regardless of whether the member receives services during the month. The managed care capitation payment varies based on the eligible member's sex, age, and eligibility aid type.

"Cost-effective" means a determination has been made that a savings will accrue to the department by paying the insurance premium, cost sharing, wrap benefits, and administrative cost.

"Cost sharing" means the member's portions of in-network health care costs not covered by an insurance plan. "Cost sharing" includes copayments, coinsurance and deductibles, which vary among health care plans.

"Custodian" means the person recognized as representing the interests of the member for Medicaid assistance. When the member reaches the age of 18 and the custodian is not used in determining Medicaid eligibility, there shall be legal documentation in place that the custodian is now the responsible person or authorized representative.

"Department" means the Iowa department of human services.

"Employer-sponsored insurance" or *"ESI"* means any health insurance plan paid for by a business on behalf of its employees.

"High-deductible health plan" or *"HDHP"* means a health insurance plan that meets the definition found in Section 223(c)(2) of the Internal Revenue Code.

"HIPP-eligible member" means a person whose Medicaid eligibility is calculated in the cost-effective determination for HIPP. "HIPP-eligible member" is also referred to as HIPP enrollee.

"Household" means the group of people who are used in the budgeting and size when determining Medicaid eligibility.

"Individual plan" means an insurance plan purchased through a government-run health insurance marketplace or through a local broker or agent.

"Insurance plan" means major medical comprehensive health coverage provided through an employer, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), a government-run health insurance marketplace, or a local broker or agent. Dental and vision plans are not considered to be insurance plans for purposes of this definition.

"Member" means an individual who has been determined eligible for Medicaid assistance and is enrolled to receive assistance.

"Policyholder" means the person in whose name an insurance policy is registered.

HUMAN SERVICES DEPARTMENT[441](cont'd)

“*Responsible person*” means an individual recognized by the department pursuant to 441—subrule 76.9(1) as acting for an applicant or member who is unable to act on the applicant’s or member’s own behalf because the applicant or member is a minor or is incompetent, incapacitated, or deceased.

“*Wrap benefits*” means the services covered under the Medicaid state plans that are not paid for by insurance plans (i.e., waiver services, transportation).

75.21(2) Insurance plans. Participation in an insurance plan is not a condition of Medicaid eligibility. The department shall pay for the cost of the insurance plan premiums, coinsurance, copayment, and deductibles of an insurance plan for a member if:

- a. A member is enrolled in or can be added to the insurance plan; and
- b. The insurance plan is cost-effective as defined in subrule 75.21(3).

75.21(3) Cost-effectiveness. An insurance plan shall be considered cost-effective when the amount the department would pay for the member’s insurance premiums, cost sharing, wrap benefits, and administrative costs is likely to be less than the amount the department would pay through Medicaid including managed care capitation fees. When determining the cost-effectiveness of an insurance plan, the following data shall be considered:

a. The cost to the member or household for the insurance premium, coinsurance, copayments and deductibles. No costs paid by an employer or other plan sponsor shall be considered in the cost-effectiveness determination.

b. The cost of care through Medicaid including managed care capitation fees the department would pay for the member.

c. The estimated cost of wrap benefits per member based on the member’s sex, age, and eligibility aid type.

d. The specific health-related circumstances of the members covered under the health plan. Form 470-2868, HIPP Medical History Questionnaire, shall be used to obtain this information. When the information indicates any health conditions that could be expected to result prospectively in higher-than-average bills for any Medicaid member:

(1) If the member is currently covered by the insurance plan, the department shall request from the policyholder, or the responsible person for the member, an insurance summary of the member’s paid claims for the previous 12 months. If there is sufficient evidence to indicate that such claims can be expected to continue in the next 12 months, the claims will be considered in determining the cost-effectiveness of the insurance plan. The cost of the insurance plan premium, member’s cost sharing, and administrative cost are compared to the actual claims to determine the cost-effectiveness of providing the coverage.

(2) If the member was not covered by the health plan in the previous 12 months, fee-for-service paid Medicaid claims may be used to project the cost-effectiveness of the plan.

e. Annual administrative expenditures of \$150 per HIPP member covered under the health plan.

f. Whether the estimated savings to the department for members covered under the health insurance plan is at least \$5 per month per household.

75.21(4) Coverage of non-Medicaid-eligible family members. When an insurance plan is determined to be cost-effective, the department shall pay for insurance premiums for non-Medicaid-eligible family members if a non-Medicaid-eligible family member must be enrolled in the insurance plan in order to obtain coverage for the Medicaid-eligible family members. However:

a. The needs of the non-Medicaid-eligible family members shall not be taken into consideration when determining cost-effectiveness; and

b. Payments for deductibles, coinsurances or other cost-sharing obligations shall not be made on behalf of family members who are not Medicaid-eligible.

75.21(5) Insurance plans ineligible for reimbursement. Premiums shall not be paid for insurance plans under any of the following circumstances:

a. The insurance plan is that of an absent parent.

b. The insurance plan is an indemnity policy which supplements the policyholder’s income or pays only a predetermined amount for services covered under the policy (e.g., \$50 per day for hospital services instead of 80 percent of the charge).

HUMAN SERVICES DEPARTMENT[441](cont'd)

c. The insurance plan is a school plan offered on the basis of attendance or enrollment at the school.

d. The insurance premium is used to meet a spenddown obligation under the medically needy program, as provided in subrule 75.1(35), when all persons in the household are eligible or potentially eligible only under the medically needy program. When some of the household members are eligible for full Medicaid benefits under coverage groups other than medically needy, the premium shall be paid if it is determined to be cost-effective when considering only the persons receiving full Medicaid coverage. In those cases, the insurance premium shall not be allowed as a deduction to meet the spenddown obligation for those persons in the household participating in the medically needy program.

e. The insurance plan is designed to provide coverage only for a temporary period of time (e.g., 30 to 180 days).

f. The persons covered under the insurance plan are not Medicaid-eligible on the date the decision regarding eligibility for the HIPP program is made. No retroactive payments shall be made if the case is not Medicaid-eligible on the date of decision.

g. The person is eligible only for a coverage group that does not provide full Medicaid services.

h. Insurance coverage is provided through the health insurance plan of Iowa (HIPIOWA), in accordance with Iowa Code chapter 514E.

i. Insurance on the member(s) is maintained by someone who does not live with the member(s), is not the legal guardian of the member(s), is not a responsible person, or does not have legal permission to access the Medicaid information of the member(s) (e.g., self-supporting adult children).

j. The member has Medicare. If other members in the household are covered by the insurance plan, cost-effectiveness is determined without including the Medicare-covered member.

k. The insurance plan does not provide major medical coverage but pays only for specific situations (i.e., accident plans) or illnesses (i.e., cancer policy).

l. The health plan pays secondary to another plan.

m. The only Medicaid member is in foster care.

n. The member is active for Medicaid under Medicaid for children with disabilities (i.e., Medicaid for kids with special needs (MKSN)), pursuant to subrule 75.1(43). Any other Medicaid members in the household who are covered by the health plan shall be determined for cost-effectiveness.

o. The insurance plan is limited due to preexisting conditions.

p. The insurance plan is a subsidized insurance plan purchased through a government-run health insurance exchange.

q. On the date the decision regarding eligibility for the HIPP program is made, the insurance is no longer available.

r. The insurance plan is an HDHP.

75.21(6) Department evaluation of ESI plans. When evaluating ESI plans available through an employer, if there is more than one cost-effective insurance plan available, the department shall pay the premium for only one plan. The member may choose the cost-effective plan in which to enroll.

75.21(7) Effective date of premium payment. The effective date of premium payments for a cost-effective health plan shall be determined as follows:

a. Premium payments shall begin the later of:

(1) The first day of the month in which Form 470-2844, Employer's Statement of Earnings; Form 470-2875, Health Insurance Premium Payment (HIPP) Program Application; or Form H301-1, the automated HIPP referral; is received by the HIPP unit; or

(2) The first day of the first month in which the health plan is determined to be cost-effective.

b. If the person is not enrolled in the insurance plan when eligibility for participation in the HIPP program is established, premium payments shall begin in the month in which the first premium payment is due after enrollment occurs.

c. If there was a lapse in coverage during the application process (e.g., the health plan is dropped and reenrollment occurs at a later date), premium payments shall not be made for any period of time before the current effective date of coverage.

HUMAN SERVICES DEPARTMENT[441](cont'd)

d. In no case shall payments be made for premiums that were used as a deduction to income for determining client participation or the amount of the spenddown obligation.

e. Form 470-3036, Employer Verification of Insurance Coverage, shall be used to verify the effective date of coverage and costs for persons enrolled in group health plans through an employer.

f. The effective date of coverage of an insurance plan not obtained through an employer shall be verified by a copy of the certificate of coverage for the plan or by some other verification from the insurer.

75.21(8) Method of premium payment. Payments of premiums will be made directly to the insurance carrier except as follows:

a. The department may arrange for payment to an employer in order to circumvent a payroll deduction.

b. When an employer will not agree to accept premium payments from the department in lieu of a payroll deduction to the employee's wages, the department shall reimburse the employee directly for payroll deductions or for payments made directly to the employer for the payment of premiums. The department shall issue reimbursement to the employee five working days before the employee's pay date.

c. When premium payments are occurring through an automatic withdrawal from a bank account by the insurance carrier, the department may reimburse the policyholder for those withdrawals.

d. Payments for COBRA coverage shall be made directly to the insurance carrier, the COBRA administrator, or the former employer. Payments may be made directly to the former employee only in those cases where:

- (1) Information cannot be obtained for direct payment; or
- (2) The department pays for only part of the total premium.

75.21(9) Payment of claims. Claims from medical providers for persons participating in this program shall be paid in the same manner as claims are paid for other persons with a third-party resource in accordance with the provisions of 441—Chapters 79 and 80.

75.21(10) Reviews of cost-effectiveness and eligibility. Reviews of cost-effectiveness and eligibility shall be completed annually and may be conducted more frequently at the discretion of the department.

a. Annual review of ESI cost-effectiveness and eligibility shall be completed using Form 470-3016, Health Insurance Premium Payment (HIPP) Program Review.

b. Annual review of individual health plan cost-effectiveness and eligibility shall be completed using Form 470-3017, HIPP Private Policy Review.

c. Failure of the household to cooperate in the annual review process shall result in cancellation of premium payment.

d. Redeterminations shall be completed whenever:

- (1) A premium rate, copayment, deductible, or coinsurance changes;
- (2) A person covered under the policy loses full Medicaid eligibility;
- (3) Changes in employment or hours of employment affect the availability of an insurance plan;
- (4) The insurance carrier changes;
- (5) The policyholder leaves the Medicaid home;
- (6) There is a decrease in the services covered under the policy; or
- (7) The Medicaid category of coverage changes.

e. The policyholder shall report changes that may affect the availability of the insurance plan reimbursed by the HIPP program, or changes that affect the cost-effectiveness of the policy, within ten calendar days from the date of the change.

f. If a change in the number of members in the Medicaid household causes the health plan not to be cost-effective, lesser health plan options, as defined in paragraph 75.21(15) "a," shall be considered if available and cost-effective.

g. When employment ends, hours of employment are reduced, or some other qualifying event affecting the availability of the group health plan occurs, the department shall verify whether coverage may be continued under the provisions of COBRA.

(1) Form 470-3037, Employer Verification of COBRA Eligibility, shall be used for this purpose.

(2) If cost-effective to do so, the department shall pay premiums to maintain insurance coverage for members after the occurrence of the event which would otherwise result in termination of coverage.

HUMAN SERVICES DEPARTMENT[441](cont'd)

75.21(11) *Time frames for determining cost-effectiveness.* The department shall determine cost-effectiveness of the insurance plan and notify the applicant of the decision regarding payment of the premiums within 65 calendar days from the date an application or referral (as defined in subrule 75.21(7)) is received. Additional time may be taken when, for reasons beyond the control of the department or the applicant, information needed to establish cost-effectiveness cannot be obtained within the 65-day period.

75.21(12) *Notices.*

a. Adequate notice shall be provided to the household under the following circumstances:

- (1) To inform the household of the initial decision on cost-effectiveness and premium payment.
- (2) To inform the household that premium payments are being discontinued because Medicaid eligibility has been lost by all persons covered under the health plan.
- (3) The insurance plan is no longer available to the family (e.g., the employer no longer provides health insurance coverage or the policy is terminated by the insurance company).

b. The department shall provide timely and adequate notice as defined in 441—subrule 7.7(1) to inform the household of a decision to discontinue payment of the health insurance premium because:

- (1) The department has determined the insurance plan is no longer cost-effective; or
- (2) The member has failed to cooperate in providing information necessary to establish continued eligibility for the HIPP program.

75.21(13) *Rate refund.* The department shall be entitled to any rate refund made when the insurance carrier determines a return of premiums to the policyholder is due for any time period for which the department paid the premium.

75.21(14) *Reinstatement of HIPP eligibility.*

a. When eligibility for the HIPP program is canceled because the persons covered under the insurance plan lose Medicaid eligibility, HIPP eligibility shall be reinstated when Medicaid eligibility is reestablished if all other eligibility factors are met.

b. When HIPP eligibility is canceled because of the policyholder's failure to cooperate in providing information necessary to establish continued eligibility for the HIPP program, benefits shall be reinstated the first day of the first month in which cooperation occurs, if all other eligibility factors are met.

75.21(15) *Amount of insurance premium paid.*

a. For ESI plans, the policyholder shall provide verification of the cost of all possible insurance plan options (i.e., single, employee/children, family).

(1) The HIPP program shall pay only for the option that provides coverage to the cost-effective members of the household.

(2) The HIPP program shall not pay the portion of the premium cost which is the responsibility of the employer or other plan sponsor.

b. For individual health plans, the HIPP program shall pay the cost of covering the cost-effective members covered by the plan.

c. For insurance plans, if another household member must be covered to obtain coverage for the members, the HIPP program shall pay the cost of covering that household member if the coverage is cost-effective as determined pursuant to subrules 75.21(3) and 75.21(4).

75.21(16) *Reporting changes.* Failure to report and verify changes may result in cancellation of HIPP benefits.

a. The policyholder shall verify changes by providing a pay stub, a summary of benefits and coverage, a rate sheet, or a letter from the insurance carrier reflecting the change.

b. Changes in employment or the employment-related insurance carrier shall be verified by the employer.

c. Any benefits paid during a period in which there was ineligibility for HIPP due to unreported changes shall be subject to recovery in accordance with the provisions of 441—Chapter 11.

d. Any underpayment that results from an unreported change shall be paid effective the first day of the month in which the change is reported.

75.21(17) *Discontinuation of premium payments.*

HUMAN SERVICES DEPARTMENT[441](cont'd)

a. When the household loses Medicaid eligibility, premium payments shall be discontinued as of the month of Medicaid ineligibility.

b. When only part of the household loses Medicaid eligibility, the department shall complete a review in order to ascertain whether payment of the health insurance premium continues to be cost-effective. If the department determines that the insurance plan is no longer cost-effective, premium payment shall be discontinued pending timely and adequate notice.

c. If the household fails to cooperate in providing information necessary to establish ongoing eligibility for the HIPP program, the department shall discontinue premium payment after timely and adequate notice. The department shall request all information in writing and allow the household ten calendar days in which to provide it.

d. If the policyholder leaves the Medicaid household, premium payments shall be discontinued pending timely and adequate notice.

e. If the insurance plan is no longer available or the policy has lapsed, premium payments shall be discontinued as of the effective date of the termination of the coverage.

This rule is intended to implement Iowa Code section 249A.3.

ARC 3321C**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby gives Notice of Intended Action to amend Chapter 77, “Conditions of Participation for Providers of Medical and Remedial Care,” Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” and Chapter 80, “Procedure and Method of Payment,” Iowa Administrative Code.

These proposed amendments add two new Medicaid provider types for the purpose of member’s cost-sharing protections related to qualified Medicare beneficiary (QMB) members and health insurance premium payment (HIPP) members.

These amendments ensure that anytime a QMB or HIPP member is seen by an out-of-network Iowa Medicaid provider, the provider may enroll for the limited purpose of billing the Department for coinsurance, copayments, and deductibles.

Any interested person may make written comments on the proposed amendments on or before October 17, 2017. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Fifth Floor, 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 do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 249A.4.

The following amendments are proposed.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 1. Adopt the following **new** rule 441—77.53(249A):

441—77.53(249A) Qualified Medicare beneficiary (QMB) providers. Any Medicare provider not enrolled as an Iowa Medicaid provider for the general Medicaid population may enroll to be a QMB provider.

77.53(1) Reimbursement. A QMB provider may only bill the department for the QMB-eligible member's Medicare cost-sharing obligations. Reimbursement is limited to coinsurance, copayments, and deductibles for Medicare-covered services.

77.53(2) Definitions.

“Coinsurance” means a percentage of costs of a covered health care service that has to be paid.

“Copayment” means a fixed amount a member pays for a covered health care service.

“Deductible” means the amount paid for covered health care services before the insurance plan will effect payment.

“Medicare cost sharing” means the Medicare member's responsibility for a Medicare-covered service. “Medicare cost sharing” includes coinsurance, copayments, and deductibles.

“Qualified Medicare beneficiary” or *“QMB”* means an individual who has been determined eligible for the QMB program pursuant to 441—subrule 75.1(29). Under the QMB program, Medicaid pays the individual's Medicare Part A and B premiums; coinsurance; copayment; and deductible (except for Part D).

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

ITEM 2. Adopt the following **new** rule 441—77.54(249A):

441—77.54(249A) Health insurance premium payment (HIPP) providers. Any provider not enrolled as an Iowa Medicaid provider for the general Medicaid population may enroll to be a HIPP provider. A HIPP provider may bill the department for the HIPP-eligible member's out-of-pocket cost-sharing obligations. Reimbursement is limited to in-network coinsurance, copayments, and deductibles of the HIPP-eligible member's health insurance paid for through the HIPP program.

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

ITEM 3. Adopt the following **new** rule 441—78.58(249A):

441—78.58(249A) Qualified Medicare beneficiary (QMB) provider services.

78.58(1) Payment. Payment will be made to QMB providers for a QMB-eligible member's coinsurance, copayment, and deductible for Medicare-covered services. The eligible member may be responsible for copayments pursuant to 441—subrule 79.1(13).

78.58(2) Definitions.

“Coinsurance” means a percentage of costs of a covered health care service that has to be paid.

“Copayment” means a fixed amount a member pays for a covered health care service.

“Deductible” means the amount paid for covered health care services before the insurance plan will effect payment.

“Medicare cost sharing” means the Medicare member's responsibility for a Medicare-covered service. “Medicare cost sharing” includes coinsurance, copayments, and deductibles.

“Qualified Medicare beneficiary” or *“QMB”* means an individual who has been determined eligible for the QMB program pursuant to 441—subrule 75.1(29). Under the QMB program, Medicaid pays the individual's Medicare Part A and B premiums; coinsurance; copayment; and deductible (except for Part D).

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

ITEM 4. Adopt the following **new** rule 441—78.59(249A):

441—78.59(249A) Health insurance premium payment (HIPP) provider services.

78.59(1) Reimbursement. A HIPP provider may bill the department for the HIPP-eligible member's out-of-pocket cost-sharing obligations. Reimbursement of claims is limited to in-network coinsurance,

HUMAN SERVICES DEPARTMENT[441](cont'd)

copayments, and deductibles of the HIPP-eligible member's health insurance, paid for through the HIPP program. The HIPP-eligible member may be responsible for a copayment pursuant to 441—subrule 79.1(13).

78.59(2) Definitions.

“*Coinsurance*” means a percentage of costs of a covered health care service that has to be paid.

“*Copayment*” means a fixed amount a member pays for a covered health care service.

“*Cost sharing*” means the member's health insurance in-network responsibility for a covered service. “Cost sharing” includes coinsurance, copayments, and deductibles.

“*Deductible*” means the amount paid for covered health care services before the insurance plan will effect payment.

“*Eligible member*” means an individual eligible for Medicaid pursuant to rule 441—75.1(249A) et seq. and who qualifies for and is participating in the department's HIPP program prescribed under rule 441—75.21(249A).

“*Health insurance premium payment (HIPP) program*” or “*HIPP program*” has the same meaning as provided in rule 441—75.21(249A).

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

ITEM 5. Adopt the following **new** definitions of “Coinsurance,” “Copayment,” “Deductible,” “Medicare cost sharing” and “Qualified Medicare beneficiary” in paragraph **79.1(22)“a”**:

“*Coinsurance*” means a percentage of costs of a covered health care service that has to be paid.

“*Copayment*” means a fixed amount a member pays for a covered health care service.

“*Deductible*” means the amount paid for covered health care services before the insurance plan will effect payment.

“*Medicare cost sharing*” means the Medicare member's responsibility to pay for a Medicare-covered service. “Medicare cost sharing” includes coinsurance, copayments, and deductibles.

“*Qualified Medicare beneficiary*” or “*QMB*” means an individual who has been determined eligible for the QMB program pursuant to 441—subrule 75.1(29). Under the QMB program, Medicaid pays the individual's Medicare Part A and B premiums; coinsurance; copayment; and deductible (except for Part D).

ITEM 6. Adopt the following **new** subrule 79.1(29):

79.1(29) Reimbursement for health insurance premium payment (HIPP) program providers. Reimbursement for HIPP program providers shall be provided only when such provider is enrolled with Iowa Medicaid for the sole purpose of billing HIPP-eligible in-network coinsurance, copayments, and deductibles.

a. Definitions. For purposes of this subrule:

“*Coinsurance*” means a percentage of costs of a covered health care service that has to be paid.

“*Copayment*” means a fixed amount a member pays for a covered health care service.

“*Deductible*” means the amount paid for covered health care services before the insurance plan starts to pay.

“*Eligible member*” means an individual eligible for Medicaid pursuant to rule 441—75.1(249A) et seq. and who qualifies for and is participating in the department's HIPP program prescribed under rule 441—75.21(249A).

“*Health insurance premium payment (HIPP) program*” or “*HIPP program*” has the same meaning as provided in rule 441—75.21(249A).

b. Claim submission. To submit a claim for reimbursement, a HIPP provider shall use Form 470-5475, Health Insurance Premium Payment (HIPP) Provider Invoice.

(1) Payment shall be made to eligible providers for a HIPP-eligible member's coinsurance, copayment, and deductible, when the HIPP-eligible member is active on the date of service.

(2) Member responsibility. The eligible member may be responsible for a copayment pursuant to subrule 79.1(13).

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 7. Adopt the following **new** paragraph **79.14(1)“f”**:

f. Qualified Medicare beneficiary (QMB) providers shall enroll using Form 470-5262, Qualified Medicare Beneficiaries (QMB) or Health Insurance Premium Payment (HIPP) Program Provider Enrollment Application.

ITEM 8. Adopt the following **new** paragraph **79.14(1)“g”**:

g. Health insurance premium payment (HIPP) providers shall enroll using Form 470-5262, Qualified Medicare Beneficiaries (QMB) or Health Insurance Premium Payment (HIPP) Program Provider Enrollment Application.

ITEM 9. Adopt the following **new** subparagraph **80.2(2)“a”(10)**:

(10) Health insurance premium payment (HIPP) providers.

ITEM 10. Adopt the following **new** paragraph **80.2(2)“j”**:

j. Health insurance premium payment (HIPP) providers shall submit Form 470-5475, Health Insurance Premium Payment (HIPP) Provider Invoice, along with an explanation of benefits (EOB).

ARC 3322C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services hereby gives Notice of Intended Action to amend Chapter 155, “Child Abuse Prevention Program,” Iowa Administrative Code.

These proposed amendments allow the Department to partner with the Iowa Department of Public Health (IDPH) through utilization of the Family Support Statewide Database (FSSD) maintained by IDPH for the Department’s Iowa Child Abuse Prevention Program (ICAPP).

Program grantees will cease use of the contractor-created system and transition to the IDPH system. It is anticipated that this will occur during State Fiscal Year (SFY) 2018. The majority of the grantees who will be impacted by this (approximately two-thirds of them) are already utilizing the FSSD system due to other funding received under Early Childhood Iowa. The other one-third will have their programs entered into the system and will receive training and technical assistance on the switch before it goes “live.”

Any interested person may make written comments on the proposed amendments on or before October 17, 2017. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Fifth Floor, 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 do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 235A.

The following amendments are proposed.

ITEM 1. Amend **441—Chapter 155**, preamble, as follows:

These rules define and structure the child abuse prevention program. Services are provided through multiple local grant projects, as well as a single statewide performance-based contract for

HUMAN SERVICES DEPARTMENT[441](cont'd)

the administration of ~~funds to be used at the local level~~ for community-based child abuse prevention projects.

ITEM 2. Amend rule ~~441—155.1(235A)~~, definitions of “Contractor” and “Grant project,” as follows:

“*Contractor*” means the single agency or organization with which the department contracts for the administration of the child abuse prevention program funds.

“*Grant project*” means a project funded under the child abuse prevention program as awarded by the ~~contractor~~ department.

ITEM 3. Amend rule 441—155.2(235A) as follows:

441—155.2(235A) Contract for program administration. The department shall contract for the administration of the child abuse prevention program through formal competitive procurement conducted according to ~~the requirements of 11—Chapters 106 and 107~~ all applicable state and federal procurement laws.

155.2(1) No change.

155.2(2) Duties. The department shall contract with a single agency or organization to:

a. Administer the grant projects awarded through the appropriated funds and any grants, gifts or bequests to the department that are specifically designated by their source for use in the child abuse prevention program; and

b. Study and evaluate community-based prevention projects and educational programs for the problems of families and children in accordance with the provisions of Iowa Code section 235A.1 and this chapter.

ITEM 4. Amend rule 441—155.3(235A) as follows:

441—155.3(235A) Awarding of grants. In any year in which funding is appropriated or otherwise made available for the child abuse prevention program, the contractor shall solicit new grant project proposals or renew existing projects when eligible and in accordance with all applicable state and federal procurement laws. Funds for the grant projects shall be applied for and received by community-based volunteer coalitions or councils. Grant projects may be awarded to fund the establishment or expansion of community-based prevention projects or educational programs for the prevention of child abuse and neglect.

155.3(1) The advisory committee shall establish specific program goals for each fiscal year in which program funds are appropriated and new contracts are issued. These program goals shall address the current and emerging needs of children and families throughout the state.

155.3(2) The contractor shall assist the department in widely disseminate disseminating a request for grant project proposals consistent with all state and federal procurement requirements. The request for grant project proposals shall fully describe the child abuse prevention program goals and the procedures for applying for and receiving program funds, ~~as agreed upon in the administration contract~~.

155.3(3) All grant project proposals shall be reviewed by ~~the contractor, who~~ an independent review committee in accordance with all applicable state and federal procurement laws. The contractor shall assist the department in the review and shall consult with the advisory committee on grant project ~~selection~~ award recommendations. The department will consider the recommendations of the committee but will have final decision-making authority on the awarding of grantee contracts. The committee shall advise the department as to the contractor’s compliance with the established program goals.

ITEM 5. Adopt the following new rule 441—155.4(235A):

441—155.4(235A) Grantee requirements. In order to receive funding from the department, community councils must be legal entities or must designate a legal entity to receive the project funds directly (e.g., a local service provider).

155.4(1) Grantees, or the identified service providers, shall participate in program evaluation as required by the contractor and the department.

HUMAN SERVICES DEPARTMENT[441](cont'd)

155.4(2) Grantees, or the identified service providers, that provide family support services under the program shall enter participant data in the state-administered, Internet-based data collection system identified in Iowa Code section 256I.13(3) and maintained by the Iowa department of public health.

ARC 3330C

PHARMACY 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 hereby gives Notice of Intended Action to amend Chapter 6, “General Pharmacy Practice,” Iowa Administrative Code.

These amendments were approved at the August 30, 2017, regular meeting of the Board of Pharmacy.

Pursuant to Iowa Code section 17A.7(2), this proposed rule making is, in part, the result of an overall review of administrative rules. The proposed amendments clarify and rearrange content of rules in a more efficient manner, incorporate language from 2017 Iowa Acts, House File 305, signed into law during the 2017 Legislative Session of the 87th General Assembly, and provide for remote storage of records in certain circumstances.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on October 17, 2017. Such written materials may be sent to Terry Witkowski, Executive Officer, Iowa Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by e-mail to terry.witkowski@iowa.gov.

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

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 124.301, 124.303, 124.306, 126.10, 126.11, 155A.6, 155A.13, 155A.27, 155A.28, 155A.31, and 155A.33 through 155A.36 and 2017 Iowa Acts, House File 305.

The following amendments are proposed.

ITEM 1. Amend subrule 6.7(2) as follows:

6.7(2) *Temporary absence of pharmacist.* In the temporary absence of the pharmacist, only the pharmacist in charge may designate pharmacy technicians or pharmacy support persons who may be present in the prescription department to perform technical or nontechnical functions, respectively, designated by the pharmacist in charge. Activities identified in subrule 6.7(3) may not be performed during such temporary absence of the pharmacist. A temporary absence is an absence of short duration not to exceed two hours.

a. No change.

b. A pharmacy technician or a pharmacy support person 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 pharmacy technician or pharmacy support person 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 or pharmacy support person who prepared the record. The log shall be periodically reviewed by the pharmacist in charge, and documentation of such review shall be maintained for two years from the date of entry.

PHARMACY BOARD[657](cont'd)

ITEM 2. Amend rule 657—6.8(124,155A) as follows:

657—6.8(124,155A) Prescription processing documentation. All prescriptions shall be dated and assigned a unique identification number that shall be recorded on the original prescription, except as provided in 657—subrule 21.5(1). The original prescription, whether transmitted orally, electronically, or in writing, shall be retained by the pharmacy filling the prescription and shall be maintained in the original format as received by the pharmacy. Refill Dispensing documentation shall include date of fill or refill and the initials or other unique identification of the pharmacist, pharmacist-intern, or technician in an approved tech-check-tech program. The name, strength, and either the manufacturer's name or the National Drug Code (NDC) of the actual drug product dispensed shall be maintained and be readily retrievable.

ITEM 3. Amend rule 657—6.9(124,155A) as follows:

657—6.9(124,155A) Transfer of prescription. The transmission of a prescription drug order from a pharmacy to a pharmacy engaged in centralized prescription filling or processing on behalf of the originating pharmacy pursuant to the requirements of 657—Chapter 18 shall not constitute the transfer of a prescription. Upon the request of a patient or the patient's caregiver, a pharmacy shall transfer original prescription drug order information and prescription refill information to a pharmacy designated by the patient or the patient's caregiver, central fill or processing pharmacies excepted, subject to the following requirements:

6.9(1) Schedule III, IV, or V prescriptions. The transfer of original prescription drug order information for controlled substances listed in Schedule III, IV, or V is permissible between pharmacies on a one-time basis except as provided in subrule ~~6.9(9)~~ 6.9(8).

6.9(2) No change.

6.9(3) Communication. The transfer is communicated directly between pharmacists, directly between pharmacist-interns under the direct supervision of pharmacists at the respective pharmacies, directly between a pharmacist and a pharmacist-intern under the direct supervision of a pharmacist, or as authorized in subrule ~~6.9(9)~~ 6.9(8). Following direct communication between authorized individuals as provided herein, the transferring pharmacist or pharmacist-intern may transmit the prescription and transfer information required under subrule 6.9(5) from the transferring pharmacy via facsimile. The receiving pharmacist or pharmacist-intern shall ensure the prescription transfer record maintained in the receiving pharmacy contains all of the information required under subrule ~~6.9(8)~~ 6.9(7).

6.9(4) Prescriptions maintained. Both the original and the transferred prescription drug orders are maintained for a period of two years from the date of last ~~refill~~ activity.

6.9(5) and 6.9(6) No change.

~~**6.9(7) Controlled substance prescription status.** The data processing system shall have a mechanism to prohibit the transfer or refilling of controlled substance prescription drug orders that have been previously transferred.~~

~~**6.9(8)**~~ **6.9(7) Record of transfer received.** The pharmacist or pharmacist-intern receiving the transferred prescription drug order information shall:

a. No change.

b. Record on or with the transferred prescription drug order the following information:

(1) to (7) No change.

(8) If transferring a controlled substance prescription from a pharmacy utilizing a shared electronic database system as described in subrule ~~6.9(9)~~ 6.9(8) to a pharmacy outside that shared system, the pharmacy name, location, DEA registration number, and prescription number from which the prescription was originally filled.

~~**6.9(9)**~~ **6.9(8) Electronic transfer between pharmacies.** Pharmacies electronically accessing the same prescription drug order records via a real-time, on-line database may electronically transfer prescription information, including controlled substance prescription information, up to the maximum refills permitted by law and the prescriber's authorization, if the following requirements are met.

a. and *b.* No change.

PHARMACY BOARD[657](cont'd)

c. For transfers of controlled substance prescriptions, all information requirements included in subrules 6.9(1) and 6.9(3) through ~~6.9(8)~~ 6.9(7) shall be satisfied in the electronic system. Transfers of controlled substance prescriptions shall also identify the pharmacy name, address, DEA registration number, and prescription number from which the prescription was originally filled.

ITEM 4. Amend subrule 6.10(1) as follows:

6.10(1) Required information. The label affixed to or on the dispensing container of any prescription drug or device dispensed by a pharmacy pursuant to a prescription drug order shall bear the following:

a. and b. No change.

c. Except as provided in 657—subrule 8.19(7) for epinephrine auto-injectors or 657—subrule 8.19(8) for opioid antagonists, the name of the patient or, if such drug is prescribed for an animal, the species of the animal and the name of its owner;

d. to f. No change.

g. Unless otherwise directed by the prescriber, the label shall bear the name, strength, and quantity of the drug dispensed.

(1) If a pharmacist selects an equivalent drug product for a brand name drug product prescribed by a practitioner, the prescription container label shall identify the generic drug and may identify the brand name drug for which the selection is made, such as “(generic name) Generic for (brand name product)”;

(2) If a pharmacist selects a brand name drug product for a generic drug product prescribed by a practitioner, the prescription container label shall identify the brand name drug product dispensed and may identify the generic drug product ordered by the prescriber, such as “(brand name product) for (generic name)”;

(3) If a pharmacist selects an interchangeable biological product for the biological product prescribed by a practitioner, the prescription container label shall identify the interchangeable biological product dispensed and may identify the biological product prescribed by the practitioner, such as “(interchangeable biological product) for (biological product)”;

h. No change.

ITEM 5. Amend subrule 6.13(1) as follows:

6.13(1) Information required. A patient record system shall be maintained by all pharmacies for patients for whom prescription drug orders are dispensed. ~~The patient record system shall provide for the immediate retrieval of information necessary for the dispensing pharmacist to identify previously dispensed drugs at the time a prescription drug order is presented for dispensing.~~ The pharmacist patient record system shall be responsible for obtaining, recording, and maintaining contain, at a minimum, the following information:

a. Full name of the patient ~~for whom the drug is intended~~;

b. Address and telephone number of the patient;

c. Patient’s ~~age or~~ date of birth;

d. Patient’s gender;

e. Known allergies;

f. ~~Significant patient information including a~~ A list of all prescription drug orders dispensed by the pharmacy during the two years immediately preceding the most recent entry showing the name of the drug or device, prescription number, name and strength of the drug, the quantity and date ~~received~~ dispensed, and the name of the prescriber; and

g. Pharmacist comments relevant to the ~~individual’s drug therapy~~ patient’s health care, including:

(1) Known drug reactions,

(2) Identified idiosyncrasies,

(3) Known chronic conditions or disease states of the patient,

(4) The identity of any other drugs, over-the-counter drugs, herbals, supplements, other alternative medications, or devices currently being used by the patient that may relate to prospective drug review.

PHARMACY BOARD[657](cont'd)

ITEM 6. Amend rule 657—6.14(155A) as follows:

657—6.14(155A) Patient counseling and instruction. Every general pharmacy that is open to the public and located in Iowa shall post in every prescription pickup area, including in every drive-through prescription pickup lane, in a manner clearly visible to patients, a notice that Iowa law requires the pharmacist to discuss with the patient any new prescriptions dispensed to the patient that are new or a change in drug therapy. ~~The board shall provide a general pharmacy with the required signage. A pharmacy that provides no direct patient access to the pharmacy department, commonly referred to as a “closed-door pharmacy,” shall not be required to post the counseling notice.~~

6.14(1) Counseling required. Upon receipt of a new prescription drug order, or upon receipt of a change in drug therapy including but not limited to a change of dose, directions, or drug formulation, and following a prospective drug use review pursuant to rule 657—8.21(155A), a pharmacist or pharmacist-intern shall counsel each patient or patient’s caregiver. An offer to counsel shall not fulfill the requirements of this rule. Patient counseling shall be on matters which, in the pharmacist’s professional judgment, will enhance or optimize drug therapy. Appropriate elements of patient counseling may include:

a. to j. No change.

6.14(2) and 6.14(3) No change.

6.14(4) Oral counseling not practicable. If in the pharmacist’s professional judgment oral counseling is not practicable, the pharmacist may select and use alternative forms of patient information which shall include information for the patient or patient’s caregiver to contact the pharmacist for further consultation. The manner in which the patient or caregiver contacts the pharmacist shall not cause the patient to incur any expense. “Not practicable” refers to patient variables including, but not limited to, the absence of the patient or patient’s caregiver, the patient’s or caregiver’s hearing impairment, or a language barrier. “Not practicable” does not include pharmacy variables such as inadequate staffing, technology failure, or high prescription volume. ~~Alternative forms of patient information may include written information leaflets, pictogram labels, video programs, or information generated by electronic data processing equipment. When used in place of oral counseling, alternative forms of patient information shall advise the patient or caregiver that the pharmacist may be contacted for consultation in person at the pharmacy by toll-free telephone or collect telephone call.~~ A combination of oral counseling and alternative forms of counseling is encouraged.

6.14(5) No change.

6.14(6) Refusal of consultation. A pharmacist shall not be required to counsel a patient or caregiver when the patient or caregiver refuses such consultation. A patient’s or caregiver’s refusal of consultation shall be documented by the pharmacist. The absence of any record of a refusal of the pharmacist’s attempt to counsel shall be presumed to signify that ~~the offer was accepted and that~~ counseling was provided.

ITEM 7. Amend rule 657—6.15(124,126) as follows:

657—6.15(124,126) Return of drugs and other items devices. For the protection of the public health and safety, prescription drugs and devices, ~~controlled substances, and items of personal contact nature~~ may be returned to the pharmacy for reuse or resale only as herein provided:

6.15(1) Integrity maintained. Prescription drugs and devices may be returned, exchanged, or resold only if, in the professional judgment of the pharmacist, the integrity of the prescription drug or device has not in any way been compromised.

6.15(2) and 6.15(3) No change.

6.15(4) Personal contact items. ~~Pharmacy personnel shall not accept for reuse or resale any items of personal contact nature that have been removed from the original package or container after sale.~~

ITEM 8. Amend rule 657—6.16(124,155A) as follows:

657—6.16(124,155A) Records. Every ~~inventory or other~~ record required to be kept under Iowa Code chapters 124 and 155A or rules of the board shall be kept by the pharmacy and be available for inspection

PHARMACY BOARD[657](cont'd)

and copying by the board or its representative for at least two years from the date of the ~~inventory or record or last activity~~ except as specifically identified by law or rule. Controlled substances records shall be maintained in a readily retrievable manner in accordance with federal requirements and 657—Chapter 10. ~~Original hard-copy prescription and other pharmacy records more than 12 months old may be maintained in a secure storage area outside the licensed pharmacy department unless such remote storage is prohibited under federal law. A remote storage area shall be located within the same physical structure containing the licensed pharmacy department.~~

6.16(1) No change.

6.16(2) ~~*Prescriptions maintained* Storage of records.~~ The original prescription drug order shall be maintained for a period of two years following the date of last activity on the prescription. Original hard-copy prescriptions and other pharmacy records shall be maintained by the pharmacy for a minimum of two years from the date of the record in accordance with this subrule.

a. Records shall be maintained within the licensed pharmacy department for a minimum of 12 months, except as provided herein. Pharmacy records less than 12 months old may be stored in a secure storage area outside the licensed pharmacy department, including at a remote location, if the pharmacy has retained an electronic copy of the records in the pharmacy that is immediately available and if the original records are available within 48 hours of a request by the board or its authorized agent, unless such remote storage is prohibited under federal law.

b. Records more than 12 months old may be maintained in a secure storage area outside the licensed pharmacy department, including at a remote location, if the records are retrievable within 48 hours of a request by the board or its authorized agent, unless such remote storage is prohibited under federal law.

6.16(3) *Number imprinted.* The original hard-copy prescription shall be imprinted with the prescription or control number assigned to the prescription drug order, except as provided in 657—subrule 21.5(1).

6.16(4) *Alternative data retention system.* Records, except when specifically required to be maintained in original or hard-copy form, may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided:

a. and *b.* No change.

c. The information maintained in the alternative system is not obscured or rendered illegible due to security features of the original ~~hard-copy~~ record.

ARC 3329C

PHARMACY 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 hereby gives Notice of Intended Action to rescind Chapter 9, “Automated Medication Distribution Systems and Telepharmacy Services,” and Chapter 21, “Electronic Data in Pharmacy Practice,” and to adopt new Chapter 21, “Electronic Data and Automated Systems in Pharmacy Practice,” Iowa Administrative Code.

These amendments were approved at the August 30, 2017, regular meeting of the Board of Pharmacy.

Pursuant to Iowa Code section 17A.7(2), this proposed rule making is the result of an overall review of administrative rules relating to automated medication distribution systems and electronic data in pharmacy practice. Chapter 9 is proposed to be rescinded to remove any overlap or inconsistencies of rules for telepharmacy practice found in 657—Chapter 13, “Telepharmacy Practice,” recently adopted by the Board. Further, automated systems are increasingly commonplace in pharmacy practice, with

PHARMACY BOARD[657](cont'd)

safety and security measures well established, and the Board wishes to pare down the rules to identify the core minimum standards for pharmacies utilizing such systems. Minimum standards for automated systems are proposed to be added to Chapter 21. Several rules relating to notice and reports to the Board are not continued in the proposed rule making to lessen the burden on pharmacies using such automated systems.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on October 17, 2017. Such written materials may be sent to Terry Witkowski, Executive Officer, Iowa Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by e-mail at terry.witkowski@iowa.gov.

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

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 124.301, 124.306, 124.308, 147.107, 155A.27, 155A.33, and 155A.35.

The following amendments are proposed.

ITEM 1. Rescind and reserve **657—Chapter 9**.

ITEM 2. Rescind 657—Chapter 21 and adopt the following **new** chapter in lieu thereof:

CHAPTER 21

ELECTRONIC DATA AND AUTOMATED SYSTEMS IN PHARMACY PRACTICE

657—21.1(124,155A) Purpose and scope. The purpose of this chapter is to provide the minimum standards for the utilization of electronic data and automated systems in the practice of pharmacy and shall apply to all pharmacies located in Iowa.

657—21.2(124,155A) Definitions. For the purpose of this chapter, the following definitions shall apply:

“*Automated data processing system*” means an application that is used for prescription, patient, drug, and prescriber information; installed on a pharmacy’s computer or server; and controlled by the pharmacy.

“*Automated medication distribution system*” or “*AMDS*” includes, but is not limited to, an automated device or series of devices operated by an electronic interface with one or more computers that is used to prepare, package, or dispense specified dosage units of drugs for administration or dispensing. “*AMDS*” does not include electronic storage devices that do not have an electronic interface with one or more computers of the pharmacy.

“*DEA*” means the U.S. Department of Justice, Drug Enforcement Administration.

“*Electronically prepared prescription*” means a prescription that is generated utilizing an electronic prescription application.

“*Electronic device*” means an electronic, mechanical, or other device which is used to intercept communications and includes but is not limited to network, file and print servers; desktop workstations; laptop computers; tablets; mini-computers; smart phones; and similar devices.

“*Electronic prescription*” means an electronically prepared prescription that is authorized and transmitted from the prescriber to the pharmacy by means of electronic transmission.

“*Electronic prescription application*” means software that is used to create electronic prescriptions and that is intended to be installed on a prescriber’s computers and servers where access and records are controlled by the prescriber.

“*Electronic signature*” means a confidential personalized digital key, code, number, or other method used for secure electronic data transmissions which identifies a particular person as the source of the message, authenticates the signatory of the message, and indicates the person’s approval of the information contained in the transmission.

PHARMACY BOARD[657](cont'd)

“Electronic transmission” means the transmission of an electronic prescription, formatted as an electronic data file, from a prescriber’s electronic prescription application to a pharmacy’s computer, where the data file is imported into the pharmacy prescription application.

“Facsimile transmission” or *“fax transmission”* means the transmission of a digital image of a prescription from the prescriber or the prescriber’s agent to the pharmacy. “Facsimile transmission” includes but is not limited to transmission of a written prescription between the prescriber’s fax machine and the pharmacy’s fax machine; transmission of an electronically prepared prescription from the prescriber’s electronic prescription application to the pharmacy’s fax machine or printer; or transmission of an electronically prepared prescription from the prescriber’s fax machine to the pharmacy’s fax machine, computer, or printer.

“Intermediary” means any technology system that receives and transmits an electronic prescription between the prescriber and the pharmacy.

“Pharmacist verification” or *“verified by a pharmacist”* means the accuracy of a prescription drug is verified by a pharmacist, pharmacist-intern, or technician in an approved tech-check-tech program.

“Prescription drug order” or *“prescription”* means a lawful order of a practitioner for a drug or device for a specific patient that is communicated to a pharmacy, regardless of whether the communication is oral, electronic, via facsimile, or in printed form.

“Readily retrievable” means that hard copy or electronic records can be separated out from all other records within 48 hours of a request from the board or other authorized agent.

“Written prescription” means a prescription that is created on paper, a prescription that is electronically prepared and printed, or a prescription that is electronically prepared and transmitted from the prescriber’s electronic device to a pharmacy via facsimile. A written prescription for a controlled substance shall be manually signed by the prescriber in compliance with federal and state laws, rules, and regulations.

657—21.3(124,155A) System security and safeguards. To maintain the integrity and confidentiality of patient records and prescription drug orders, any system, computer, or electronic device utilized shall have adequate security including system safeguards designed to prevent and detect unauthorized access, modification, or manipulation of patient records and prescription drug orders. Authentication credentials shall be securely maintained by the individual to whom the credentials are issued and shall not be shared with or disclosed to any other individual. Once a drug or device has been dispensed, any alterations in either the prescription drug order data or the patient record shall be documented and shall include the identification of all pharmacy personnel who were involved in making the alteration as well as the responsible pharmacist. An automated data processing system used for the receipt and processing of electronic transmissions from a prescriber’s electronic prescription application shall comply with DEA requirements relating to electronic prescriptions and shall be certified compliant with DEA regulations.

657—21.4 Reserved.

657—21.5(124,155A) Automated data processing systems. An automated data processing system may be used, subject to the requirements contained in this rule, for the storage and retrieval of prescription, patient, prescriber and drug data as well as data relating to the pharmacy staff utilization of the system.

21.5(1) Electronic storage of hard-copy prescriptions. A pharmacy that maintains an electronic copy of an original hard-copy prescription for a noncontrolled substance shall retain, in a readily retrievable format, the original hard-copy prescription as required in rule 657—6.8(155A) but shall be exempt from the requirement to record on the original hard-copy prescription the date and unique identification number of the prescription.

21.5(2) Data retrievable and printable. Any automated data processing system shall be capable of immediate retrieval (via computer monitor or hard-copy printout) of, at a minimum, any prescription, patient, prescriber, and drug data as well as data relating to pharmacy staff utilization of the system.

PHARMACY BOARD[657](cont'd)

21.5(3) Auxiliary procedure for system downtime. A pharmacy utilizing an automated data processing system shall have a procedure that will maintain security and confidentiality of all data as well as ensure the legal dispensing of any prescription drug order in the event the system experiences downtime.

657—21.6(124,155A) Electronic prescription applications. A prescriber may initiate and authorize a prescription drug order utilizing an electronic prescription application that has been determined to maintain security and confidentiality of patient information and records and, if prescribing controlled substances via an electronic prescribing system, certified compliant with DEA regulations for electronic prescribing of controlled substances. The prescription drug order shall contain all information required by Iowa Code sections 155A.27 and 147.107(5). The receiving pharmacist shall be responsible for verifying the authenticity of an electronically prescribed prescription pursuant to rule 657—8.19(124,126,155A). A prescription that is electronically generated may be transmitted to a pharmacy via electronic or facsimile transmission or printed in hard-copy format for delivery to the pharmacy. A prescription that is transmitted by a prescriber's agent via electronic or facsimile transmission shall include the first and last names and title of the agent responsible for the transmission.

21.6(1) Electronic transmission. A prescription prepared pursuant to this rule may be transmitted to a pharmacy via electronic transmission. A pharmacy shall be certified compliant with DEA regulations relating to electronic prescriptions prior to electronically receiving prescriptions for controlled substances. The electronic record shall serve as the original record and shall be maintained for two years from the date of last activity on the prescription. Any annotations shall be made and retained on the electronic record.

a. An electronically prepared and transmitted prescription that is printed following transmission shall be clearly labeled as a copy, not valid for dispensing.

b. The authenticity of a prescription transmitted via electronic transmission between a DEA-certified electronic prescription application and a DEA-certified electronic automated data processing system shall be deemed verified by virtue of the security processes included in those applications.

c. A pharmacy shall ensure that no intermediary has the ability to change the content of the prescription drug order or compromise its confidentiality during the transmission process. The electronic format of the prescription drug order may be changed by the intermediary to facilitate the transmission between electronic applications as long as the content of the prescription drug order remains unchanged.

d. In addition to the information requirements for a prescription, an electronically transmitted prescription shall identify the transmitter's telephone number for verbal confirmation, the time and date of transmission, and the pharmacy intended to receive the transmission as well as any other information required by federal or state laws, rules, or regulations.

e. If the transmission of an electronic prescription fails, the prescriber may print the prescription, manually sign the printed prescription, and deliver the prescription to the pharmacy via facsimile transmission in accordance with subrule 21.6(2).

21.6(2) Printed (hard-copy) prescriptions. An electronically generated prescription may be printed in hard-copy format for facsimile transmission or delivery to the pharmacy.

a. A prescription for a controlled substance shall include the prescriber's manual signature. Printed or hard-copy prescriptions for Schedule II controlled substances shall not be transmitted to a pharmacy via facsimile transmission, except as authorized in rule 657—21.7(124,155A).

b. If the prescriber authenticates a prescription for a noncontrolled prescription drug utilizing an electronic signature, the printed prescription shall be printed on security paper. Security features of the paper shall ensure that prescription information is not obscured or rendered illegible when transmitted via facsimile or when scanned into an electronic record system.

c. If the facsimile transmission of a printed prescription is a result of a failed electronic transmission, the facsimile shall indicate that it was originally transmitted to the named pharmacy, the date and time of the original electronic transmission, and the fact that the original transmission failed.

PHARMACY BOARD[657](cont'd)

657—21.7(124,155A) Facsimile transmission of a prescription. A pharmacist may dispense noncontrolled and controlled drugs, including Schedule II controlled substances only as provided in this rule, pursuant to a prescription faxed to the pharmacy by the prescribing practitioner or the practitioner's agent. The means of transmission via facsimile shall ensure that prescription information is not obscured or rendered illegible due to security features of the paper utilized by the prescriber to prepare a written prescription. The faxed prescription shall serve as the original record, except as provided in subrule 21.7(1), shall be maintained for a minimum of two years from the date of the last activity on the prescription, and shall contain all information required by Iowa Code sections 155A.27 and 147.107(5), including the prescriber's signature. If the prescription is transmitted by an agent of the prescriber, the facsimile transmission shall include the first and last names and title of the agent responsible for the transmission. The pharmacist shall be responsible for verifying the authenticity of the prescription as to the source of the facsimile transmission.

21.7(1) Schedule II controlled substances—emergency situations. A pharmacist may, in an emergency situation as defined in 657—subrule 10.26(1), dispense a Schedule II controlled substance pursuant to a facsimile transmission to the pharmacy of a written, signed prescription from the prescriber or the prescriber's agent pursuant to the requirements of rule 657—10.26(124). The facsimile shall serve as the temporary written record required by 657—subrule 10.26(2).

21.7(2) Schedule II controlled substances—compounded injectable. A prescription for a Schedule II narcotic substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous, or intraspinal infusion may be transmitted by a prescriber or the prescriber's agent to a pharmacy via facsimile.

21.7(3) Schedule II controlled substances—long-term care facility patients. A prescription for any Schedule II controlled substance for a resident of a long-term care facility, as "long-term care facility" is defined in rule 657—23.1(155A), may be transmitted by the prescriber or the prescriber's agent to a pharmacy via facsimile. The prescription shall identify that the patient is a resident of a long-term care facility.

21.7(4) Schedule II controlled substances—hospice patients. A prescription for any Schedule II controlled substance for a patient in a hospice program licensed pursuant to Iowa Code chapter 135J or a program certified or paid for by Medicare under Title XVIII may be transmitted via facsimile by the prescriber or the prescriber's agent to the pharmacy. The prescription shall identify that the patient is a hospice patient.

657—21.8 and 21.9 Reserved.

657—21.10(124,155A) Automated medication distribution system (AMDS). Any pharmacy that utilizes an AMDS shall comply with these rules in addition to all applicable federal and state laws, rules, and regulations.

21.10(1) Policies and procedures. Pursuant to the requirements regarding policies and procedures in 657—subrule 8.3(5), each pharmacy utilizing an AMDS shall have policies and procedures that address all aspects of the operation of the AMDS to include, at a minimum:

- a. Access to drugs and patient information,
- b. Pharmacy personnel training in the proper operation of the AMDS,
- c. Methods to ensure accurate stocking of the AMDS pursuant to subrule 21.10(2),
- d. Confidentiality of patient information,
- e. Routine and preventative maintenance of the AMDS according to manufacturer recommendations,
- f. Packaging and labeling of prescription drugs loaded into or dispensed from the AMDS that is in compliance with federal and state laws, rules, and regulations, and
- g. Security and control of the prescription drugs maintained and utilized in the AMDS to include:
 - (1) Drug loading, storage, and records.
 - (2) Drugs removed from system components but not used.
 - (3) Inventory.

PHARMACY BOARD[657](cont'd)

- (4) Cross contamination.
- (5) Lot number control.
- (6) Wasted or discarded drugs.
- (7) Controlled substances.

21.10(2) *Stocking the AMDS.* The pharmacy shall have adequate procedures in place to ensure the accurate stocking of drugs into an AMDS using barcode scanning technology. Only a pharmacy technician, pharmacist-intern, or pharmacist shall be allowed to participate in the stocking of the AMDS.

21.10(3) *Pharmacist verification of drugs dispensed from AMDS.*

a. When an AMDS only dispenses drugs that were prepackaged and verified by a pharmacist prior to being stocked in the AMDS and there was no further manipulation of the drug or package other than affixing a patient-specific label, such drugs shall not require additional pharmacist verification prior to administration or dispensing to the patient or authorized representative.

b. When a drug is stocked in an AMDS and undergoes further manipulation, such as counting and packaging, such drugs shall require pharmacist verification prior to dispensing to the patient. Such verification shall be documented.

21.10(4) *Placement of AMDS.*

a. An AMDS placed outside a pharmacist's direct supervision shall only dispense pharmacist-verified packages in compliance with paragraph 21.10(3) "*a.*"

b. An AMDS that manipulates, including but not limited to counting, packaging, or labeling, prescription drugs for subsequent patient dispensing shall only be utilized in a pharmacy under the direct supervision of a pharmacist, except in an approved telepharmacy pursuant to 657—Chapter 13.

657—21.11(124,155A) Pharmacist verification of controlled substance fills—daily printout or logbook. The individual pharmacist who makes use of the pharmacy prescription application shall provide documentation of the fact that the fill information entered into the pharmacy prescription application each time the pharmacist fills a prescription order for a controlled substance is correct. If the pharmacy prescription application provides a hard-copy printout of each day's controlled substance prescription order fill data, that printout shall be verified, dated, and signed by each individual pharmacist who filled a controlled substance prescription order. Each individual pharmacist must verify that the data indicated is correct and sign this document in the same manner as the pharmacist would sign a check or legal document (e.g., J. H. Smith or John H. Smith). This document shall be maintained in a separate file at that pharmacy for a period of two years from the dispensing date. This printout of the day's controlled substance prescription order fill data shall be generated by and available at each pharmacy using a computerized pharmacy prescription application within 48 hours of the date on which the prescription was dispensed. The printout shall be verified and signed by each pharmacist involved with such dispensing. In lieu of preparing and maintaining printouts as provided above, the pharmacy may maintain a bound logbook or separate file. The logbook or file shall include a statement signed each day by each individual pharmacist involved in each day's dispensing that attests to the fact that the prescription information entered into the pharmacy prescription application that day has been reviewed by the pharmacist and is correct as shown. Pharmacist statements shall be signed in the manner previously described. The logbook or file shall be maintained at the pharmacy for a period of two years after the date of dispensing.

These rules are intended to implement Iowa Code sections 124.301, 124.306, 124.308, 147.107, 155A.27, 155A.33, and 155A.35.

ARC 3320C**SECRETARY OF STATE[721]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 17A.4 and 2017 Iowa Acts, Senate File 516, section 23, the Secretary of State hereby gives Notice of Intended Action to amend Chapter 2, “Rules of Practice,” Chapter 30, “Uniform Commercial Code,” and Chapter 40, “Corporations,” Iowa Administrative Code.

These amendments are necessary because the General Assembly has enacted 2017 Iowa Acts, Senate File 516. The Secretary of State has determined that as a result of this newly enacted law, the following amendments are necessary to fund the Technology Modernization Fund within the Secretary of State’s office.

Any interested person may make written suggestions or comments on the proposed amendments on or before October 17, 2017. Written suggestions or comments should be directed to Eric R. Gookin, Legal Counsel, Office of the Secretary of State, First Floor, Lucas State Office Building, Des Moines, Iowa 50319.

Persons who want to convey their views orally should contact the Secretary of State’s office by telephone at (515)281-0145 or in person at the Secretary of State’s office on the first floor of the Lucas State Office Building.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement 2017 Iowa Acts, Senate File 516, section 23.

The following amendments are proposed.

ITEM 1. Amend rule 721—2.3(631) as follows:

721—2.3(631) Payment for services. The secretary of state may approve accounts to be used for the payment of services provided by the secretary of state. A user of a service provided by the secretary of state may make payment for the service by authorizing a charge to be made upon an account held by the user.

2.3(1) The secretary of state may prescribe and furnish forms for the purpose of authorizing a charge to be made upon an account. The secretary of state may refuse to charge an account for service requested without the appropriate form.

2.3(2) Application for account. Application for an account shall be made upon a form prescribed and furnished by the secretary of state. The account holder is subject to the terms and conditions contained in the application. The secretary of state reserves the right to adopt changes to the terms and conditions of the account. The secretary of state reserves the right to close a delinquent account.

2.3(3) Account holders will receive a monthly statement of account. The statement will include, for each transaction, the date and amount of the transaction. A transaction may include more than one filing fee.

2.3(4) Payment in full is due within 15 days of the date of the statement of account. An account is considered delinquent after the expiration of 30 days from the date of the statement of account. Interest and finance charges may be assessed on delinquent accounts in accordance with Iowa Code chapter 535.

2.3(5) An annual fee of \$25 ~~\$100~~ shall be paid by an account holder for the privilege of maintaining an account. The annual fee shall cover a 12-month period measured from the first day of the month in which the account is approved by the secretary of state. An account that is not delinquent one month prior to the expiration of the annual period shall be renewed upon the payment of the annual fee. The secretary

SECRETARY OF STATE[721](cont'd)

of state shall charge the annual fee to the account on the statement of the account for the monthly period prior to the expiration date. The annual fee shall be used for the purpose of offsetting the expenses incurred by the secretary of state in maintaining the account.

2.3(6) Accounts maintained by the secretary of state prior to July 1, 1989, shall be terminated at the close of business on June 30, 1989, unless the holder of the account complies with subrule 2.3(5) and authorizes the secretary of state to continue the account by filing a renewal application on a form prescribed and furnished by the secretary of state.

2.3(7) The secretary of state shall assess a fee of \$10 for the receipt of a document filed under Iowa Code section 631.4(1)“d.”

ITEM 2. Amend **721—Chapter 2**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 17A, 490, 491, ~~496A~~, 497, 498, 499, 504, ~~504A~~, and 554 (Article 9) and 2017 Iowa Acts, Senate File 516, section 23.

ITEM 3. Amend subrule 30.1(10) as follows:

30.1(10) Filing fees.

a. Filing fee. The fee for filing and indexing a UCC document of one or two pages communicated on paper or in a paper-based format (including faxes) is ~~\$10~~ \$20. If there are additional pages, the fee is ~~\$20~~ \$40. But the fee for filing and indexing a UCC document communicated by a medium authorized by these rules which is other than on paper or in a paper-based format shall be ~~\$5~~ \$10.

b. UCC search fee. The fee for a UCC search request communicated verbally, on paper or in a paper-based format is \$5.

c. UCC search—copies. The fee for paper copies of UCC documents is \$1 per page.

ITEM 4. Amend **721—Chapter 30**, implementation sentence, as follows:

These rules are intended to implement ~~2000 Iowa Acts, chapter 1149, and~~ Iowa Code chapters 17A and 554 and 2017 Iowa Acts, Senate File 516, section 23.

ITEM 5. Amend rule 721—40.8(488,489,490) as follows:

721—40.8(488,489,490) Biennial reports. The secretary of state shall collect the following fees at the time the documents described in this rule are delivered to the secretary for filing.

40.8(1) A limited partnership or foreign limited partnership authorized to transact business in this state shall deliver to the secretary of state for filing a biennial report that meets the requirements of Iowa Code section 488.210.

a. The fee for filing and indexing a biennial report filed on paper or in a paper-based format is ~~\$45~~ \$60. This fee may be provided in the form of cash, personal check, cashier’s check, or money order or by secretary of state charge account.

b. The fee for an electronic filing through the secretary of state Internet Web site is ~~\$30~~ \$45. This fee must be paid by check, credit card, or secretary of state charge account.

40.8(2) A limited liability company or a foreign limited liability company authorized to transact business in this state shall deliver to the secretary of state for filing a biennial report that meets the requirements of Iowa Code section 489.209.

a. The fee for filing and indexing a biennial report filed on paper or in a paper-based format is ~~\$45~~ \$60. This fee may be provided in the form of cash, personal check, cashier’s check, or money order or by secretary of state charge account.

b. The fee for an electronic filing through the secretary of state Internet Web site is ~~\$30~~ \$45. This fee must be paid by check, credit card, or secretary of state charge account.

40.8(3) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the secretary of state for filing a biennial report that meets the requirements of Iowa Code section 490.1622.

a. The fee for filing and indexing a biennial report filed on paper or in a paper-based format is ~~\$45~~ \$60. This fee may be provided in the form of cash, personal check, cashier’s check, or money order or by a secretary of state charge account.

SECRETARY OF STATE[721](cont'd)

b. The fee for an electronic filing through the secretary of state Internet Web site is ~~\$30~~ \$45. This fee must be paid by check, credit card, or secretary of state charge account.

ITEM 6. Amend **721—Chapter 40**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 490, 491, ~~496A~~, 499, ~~504A~~ 504, and 548 and 2017 Iowa Acts, Senate File 516, section 23.

ARC 3319C

SECRETARY OF STATE[721]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 17A.4 and 2017 Iowa Acts, House File 516, section 37, the Secretary of State hereby gives Notice of Intended Action to amend Chapter 22, “Voting Systems,” Iowa Administrative Code.

These amendments are necessary because the General Assembly has enacted 2017 Iowa Acts, House File 516. The Secretary of State has determined that as a result of this newly enacted law, the proposed amendments are necessary to keep the administrative rules in compliance with the Iowa Code. 2017 Iowa Acts, House File 516, section 37, creates a revolving loan fund to help counties with the purchase of electronic poll books, creating the need to update Chapter 22. Additionally, the amendments propose new rules governing e-poll book technological and operational requirements.

Any interested person may make written suggestions or comments on the proposed amendments on or before October 17, 2017. Written suggestions or comments should be directed to Eric R. Gookin, Election Administrator, Office of the Secretary of State, First Floor, Lucas State Office Building, Des Moines, Iowa 50319.

Persons who want to convey their views orally should contact the Secretary of State’s office by telephone at (515)281-0145 or in person at the Secretary of State’s office on the first floor of the Lucas State Office Building.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement 2017 Iowa Acts, House File 516, section 37.

The following amendments are proposed.

ITEM 1. Amend **721—Chapter 22**, title, as follows:

VOTING SYSTEMS AND ELECTRONIC POLL BOOKS

ITEM 2. Amend rule **721—22.1(52)**, definition of “De minimis change,” as follows:

“De minimis change” means a change to a certified voting system’s hardware, software, technical data package (TDP), or data, the nature of which will not materially alter the system’s reliability, functionality, capability, security and or operation. In order for a change to qualify as a de minimis change, it must not alter the reliability, functionality, capability, security and operability of the system. A de minimis change shall also ensure that when the hardware is replaced, the original hardware and the replacement hardware are electronically and mechanically interchangeable and have identical functionality and tolerances.—A Under no circumstances shall a change shall not be considered de minimis if it has reasonable and identifiable potential to affect impact the system’s operation performance and compliance with the applicable voting system standards standard.

SECRETARY OF STATE[721](cont'd)

ITEM 3. Adopt the following **new** definitions of “Electronic ballot marking device” and “Electronic poll book” in rule **721—22.1(52)**:

“*Electronic ballot marking device*” means a component of an optical scan voting system designed to assist voters with disabilities by displaying audio and visual ballot information to the voter, providing accessible methods for the voter to make selections, and then printing the voter’s choices on an optical scan ballot.

“*Electronic poll book,*” “*epollbook,*” “*e-poll book,*” or “*electronic register*” means hardware and software components used to verify and process voting activity and changes in voter registration and to check in voters. This definition includes e-poll books in use in the commissioner’s office. However, this definition does not apply to the I-Voters statewide voter registration database.

ITEM 4. Reserve rules **721—22.501** to **721—22.599**.

ITEM 5. Adopt the following **new** rule 721—22.600(47) and heading:

E-POLL BOOKS

721—22.600(47) Revolving loan fund. The purpose of this rule is to establish an e-poll book and polling place modernization panel to review applications submitted to the state commissioner for distribution of moneys from the revolving loan fund created by 2017 Iowa Acts, House File 516, section 37, to be codified at Iowa Code section 47.11.

22.600(1) Definitions.

“*E-poll book*” is as defined in rule 721—22.1(52).

“*Vendor,*” for purposes of this rule, means a person or representative of a person developing, offering, or supporting an e-poll book.

22.600(2) In order to ensure that the public funds in this rule are used responsibly and efficiently, this rule creates a panel consisting of designees of the state commissioner of elections, the state auditor, and the director of the department of management. Attendance by two of the three members constitutes a quorum.

22.600(3) The state commissioner shall convene the panel whenever necessary to review loan applications received from county commissioners requesting moneys from the fund.

22.600(4) The state commissioner may convene the panel to review proposed expenditures for updating technology standards for elections. If the state commissioner determines that there is an urgent need that an expenditure of moneys from the fund be used to update technology standards, the state commissioner may spend the moneys without convening the panel. In such instance, the state commissioner shall report that expenditure at the next meeting of the panel.

22.600(5) The panel shall create guidelines for loaning moneys from the fund to county commissioners for the updating of polling place technology. The guidelines shall be published on the state commissioner’s Web site.

22.600(6) Before distributing or loaning funds, the panel shall consider the published guidelines, but may take additional factors into consideration. The panel shall not waive any information technology security standards, but may waive other requirements. A majority vote of the panel members present is sufficient to approve funding.

22.600(7) Before any funds from the revolving loan fund are provided for the acquisition of e-poll books, the e-poll book system shall conform to the security requirements within this chapter.

This rule is intended to implement 2017 Iowa Acts, House File 516, section 37.

ITEM 6. Adopt the following **new** rule 721—22.601(47):

721—22.601(52) Operational features of e-poll books.

22.601(1) Definitions.

“*E-poll book*” is as defined in rule 721—22.1(52).

SECRETARY OF STATE[721](cont'd)

“*Vendor*,” for purposes of this rule, means a person or representative of a person developing, offering, or supporting an e-poll book.

22.601(2) Operational features. When assessing applications for funding from the revolving loan fund established by 2017 Iowa Acts, House File 516, section 37, as implemented in rule 721—22.600(47), the e-poll book and polling place modernization panel shall consider whether the e-poll book sought includes the operational features described in this subrule. Commissioners using only county funds for the purchase of e-poll book systems are not subject to the operational features described below, but are subject to all of the security requirements set forth in rule 721—22.602(47). The panel shall consider:

a. Whether the e-poll book is able to accept a secure data file that imports voter registration data into the e-poll book application from the statewide voter registration system. This requirement may not be waived by the panel.

b. Whether the e-poll book is able to securely export data files that can be imported into the statewide voter registration system, including a file to update the voter activity portion of the statewide voter registration system.

c. Whether the e-poll book is able to scan the barcodes of driver’s licenses, DOT-issued nonoperator identification cards, and the voter identification card issued pursuant to 2017 Iowa Acts, House File 516, section 18, to be codified at Iowa Code section 48A.10A.

d. Whether the e-poll book is able to verify the voter against the felon database.

e. Whether the e-poll book is able to process, record, and export the complete range of possible voter registration updates available to voters under Iowa law. The state commissioner shall maintain a form that lists the possible updates that are required by this subrule.

f. Whether the e-poll book is able to complete and print the following forms:

(1) State of Iowa Official Voter Registration Form.

(2) Election Day Voter Registration Form, including Voter’s Oath and Attester’s Oath, if applicable.

(3) Provisional Ballot Form, including the State of Iowa Official Voter Registration Form and Statement to Person Casting a Provisional Ballot.

(4) Challenger’s Statement.

(5) Affidavit of Voter Requesting Assistance.

22.601(3) Certification. A vendor providing an e-poll book platform in this state shall certify in writing to the state commissioner that the requirements of subrule 22.601(2) are met. If any of the requirements are not met, the vendor shall note the exceptions conspicuously.

This rule is intended to implement 2017 Iowa Acts, House File 516, section 37.

ITEM 7. Adopt the following **new** rule 721—22.602(47):

721—22.602(47) Security features of e-poll books. All e-poll book systems in use in this state, including those funded by county moneys, shall conform to the following security standards.

22.602(1) Definitions.

“*E-poll book*” is as defined in rule 721—22.1(47).

“*Secure*,” for purposes of this rule, means “encryption” as defined by Iowa Code section 715C.1(5).

“*Vendor*,” for purposes of this rule, means a person or representative of a person developing, offering, or supporting an e-poll book.

22.602(2) Encryption of data at rest. The e-poll book system shall ensure that all voter data is encrypted at rest. “Encrypted at rest” includes encryption of the whole hard drive, database, application data deemed confidential, and removable media. The data encryption keys shall be stored separately from the e-poll book hardware and software.

22.602(3) Encryption of data in transit. The e-poll book system shall ensure that all voter data is encrypted in transit via secure transfer protocols.

22.602(4) Security updates. The commissioner shall ensure that the computer maintains the most recent security updates available for the computer’s operating system. The vendor shall ensure that the e-poll book software remains compatible with all security updates issued for the computer’s operating

SECRETARY OF STATE[721](cont'd)

system. An e-poll book system in use in Iowa shall not be installed on an operating system that is no longer supported by the developer.

22.602(5) Authentication. Every e-poll book system shall require authentication to the operating system and to the e-poll book application separately through a minimum of a username-password combination. A commissioner shall use a unique username-password combination for each precinct.

22.602(6) Decommissioning. At the time of decommissioning, the hard drive from the computer shall be destroyed by the owner of the hardware. This shall occur before the commissioner or vendor resells, gifts, repurposes, or otherwise disposes of the equipment. A record of the destruction shall be kept by the owner.

22.602(7) Certification. A vendor providing an e-poll book platform in this state shall certify in writing to the state commissioner that all of the requirements in this rule are met.

This rule is intended to implement 2017 Iowa Acts, House File 516, section 37.

TREASURER OF STATE

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 Katie Averill, Superintendent of Banking Ronald L. Hansen, and Auditor of State Mary Mosiman has established today the following rates of interest for public obligations and special assessments. The usury rate for September is 4.25%.

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 Financial Institutions 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 September 9, 2017, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7-31 days	Minimum .05%
32-89 days	Minimum .05%
90-179 days	Minimum .05%
180-364 days	Minimum .10%
One year to 397 days	Minimum .15%
More than 397 days	Minimum .45%

TREASURER OF STATE(cont'd)

These are minimum rates only. All time deposits 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.

USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph “a,” the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

October 1, 2016 — October 31, 2016	3.50%
November 1, 2016 — November 30, 2016	3.75%
December 1, 2016 — December 31, 2016	3.75%
January 1, 2017 — January 31, 2017	4.25%
February 1, 2017 — February 28, 2017	4.50%
March 1, 2017 — March 31, 2017	4.50%
April 1, 2017 — April 30, 2017	4.50%
May 1, 2017 — May 31, 2017	4.50%
June 1, 2017 — June 30, 2017	4.25%
July 1, 2017 — July 31, 2017	4.25%
August 1, 2017 — August 31, 2017	4.25%
September 1, 2017 — September 30, 2017	4.25%
October 1, 2017 — October 31, 2017	4.25%

ARC 3326C**UTILITIES DIVISION[199]****Notice of Intended Action**

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

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

Pursuant to Iowa Code sections 474.5, 476.2 and 17A.4, the Utilities Board (Board) gives notice that on September 7, 2017, the Board issued an order in Docket No. RMU-2016-0031, In re: Review of Rule Making Rules [199 IAC Chapter 3], “Order Commencing Rule Making,” proposing to amend the Board’s Chapter 3 rules governing rule making.

The Board is undertaking a comprehensive review of its rules and, as part of that review, is attempting to make the rules more readable, streamline reporting requirements in the rules, ensure the rules are current, and transition away from providing forms within the rules. The intent of these amendments is to promote ease of access for those interacting with the Board.

The proposed amendments would update and streamline the filing rules related to rule-making dockets and further clarify the processes used by the Board for petitions for rule making made by interested persons and the filing of comments once formal rule-making procedures have been commenced. The amendments would also update outdated statutory references and formalize the Board’s process for complying with the comprehensive rules review process in future years.

UTILITIES DIVISION[199](cont'd)

The order approving this Notice of Intended Action can be found on the Board's Electronic Filing System (EFS) Web site, <http://efs.iowa.gov>, in Docket No. RMU-2016-0031.

Pursuant to Iowa Code section 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before October 17, 2017. The statement should be filed electronically through the Board's EFS. Instructions for making an electronic filing can be found on the EFS Web site at <http://efs.iowa.gov>. Filings shall comply with the format requirements in 199 IAC 2.2(2) and clearly state the author's name and address and make specific reference to Docket No. RMU-2016-0031. Paper comments may only be filed with approval of the Board.

No oral presentation is scheduled at this time. Pursuant to Iowa Code section 17A.4(1)"b," an oral presentation may be requested, or the Board on its own motion after reviewing the comments may determine an oral presentation should be scheduled. Requests for an oral presentation should be filed in EFS by October 17, 2017, in Docket No. RMU-2016-0031.

After analysis and review of this rule making, the Board tentatively concludes that the proposed amendments, if adopted, will not have a detrimental effect on employment in Iowa.

These amendments are intended to implement Iowa Code sections 17A.1, 17A.7, 474.5, 476.1, and 476.2.

The following amendments are proposed.

ITEM 1. Amend rule 199—3.1(17A,474) as follows:

199—3.1(17A,474) Purpose and scope.

3.1(1) *In-general Scope.* These rules shall govern the practice and procedure in all rule-making proceedings of the ~~Iowa utilities board (board) board.~~

3.1(2) *Rules of construction.* If any provision of a rule or the application of a rule to any person or circumstance is itself or through its enabling statute held invalid, the invalidity ~~does shall~~ not affect other provisions or applications of the rule which can be given effect without the invalid provision or application, and to this end the provisions of the rule ~~are shall be~~ severable.

3.1(3) *Waiver.* The board may waive the application of any of these rules pursuant to ~~199 IAC 1.3(17A,474) rule 199—1.3(17A,474,476).~~

3.1(4) *Forms and filing requirements.* All rule-making filings shall substantially comply with the forms prescribed in ~~199 IAC 2.2(17A,474) rule 199—2.2(17A,474).~~ All filings ~~shall include an original and ten copies.~~ All filings shall be made electronically except as otherwise permitted by the board.

ITEM 2. Amend rule 199—3.2(17A,474) as follows:

199—3.2(17A,474) ~~Notice of inquiry~~ Preproceeding comments. In addition to seeking information by other methods, the board may solicit comments from the public on the subject matter of possible rule making by ~~the board~~ issuing an order through its electronic filing system or by causing notice of the subject matter to be published in the Iowa Administrative Bulletin, indicating where, when, and how persons may comment.

ITEM 3. Amend rule 199—3.3(17A,474) as follows:

199—3.3(17A,474) Petition for adoption of rules.

3.3(1) *Petitions.* Any interested person may petition the board for the adoption, amendment, or repeal of a rule.

3.3(2) *Stakeholder comments.* Other interested persons may file written comments containing data, views, or arguments concerning the petition within 20 days of the filing of the petition. Reply comments may be filed within 27 days of the filing of the petition. The board may allow additional time for filing comments and reply comments at its discretion.

3.3(3) *Board action on petition.* Pursuant to Iowa Code section 17A.7(1), the board, by written order within 60 days after the filing of a petition for rule making, shall either deny the petition on the

UTILITIES DIVISION[199](cont'd)

merits and state the reasons for the denial, commence a rule-making proceeding in accordance with Iowa Code section 17A.4, or, if exempt from the procedures of Iowa Code section 17A.4(1), adopt a rule.

ITEM 4. Rescind and reserve subrule **3.4(2)**.

ITEM 5. Adopt the following **new** subrules 3.4(5) and 3.4(6):

3.4(5) *Written comments.* Upon the commencement of a rule-making proceeding, any interested person may file written comments containing data, views, or arguments concerning the proposed adoption, amendment, or repeal of a rule within 20 days after the publication of the notice of rule making in the Iowa Administrative Bulletin or as otherwise ordered by the board. Comments shall be filed electronically unless otherwise permitted by the board.

3.4(6) *Reply comments.* The board may, in its discretion, allow for the filing of reply comments by interested persons.

ITEM 6. Rescind and reserve rules **199—3.5(17A,474)** and **199—3.6(17A,474)**.

ITEM 7. Amend subrule 3.7(1) as follows:

3.7(1) *Filing.* ~~The time period, as directed by the board, for filing of requests for oral presentation shall be not less than~~ Interested persons shall have 20 calendar days after the publication of the notice of rule making in the Iowa Administrative Bulletin to file a request for an oral presentation. The board may, in its discretion, extend the time period for making such requests.

ITEM 8. Amend subrule 3.7(2) as follows:

3.7(2) *Action on proper request.* ~~Within 15 calendar days of the filing of a request for oral presentation, the board shall determine if the request is in accordance with Iowa Code section 17A.4. If the board determines that the a request complies with Iowa Code section 17A.4, the board shall by written order schedule oral presentation on the rule making and shall cause a notice of the oral presentation to be published in the Iowa Administrative Bulletin. The notice shall state the date, time and place of the oral presentation and shall briefly describe the subject matter of the rule-making proceeding. The oral presentation on the rule making shall be not less than ten 20 calendar days after the publication of the notice. The board shall serve a similar notice on the party requesting oral presentation, on any other persons filing written comments, and on the petitioner, if any all parties by filing the notice in the board's electronic filing system.~~

ITEM 9. Amend subrule 3.8(3) as follows:

3.8(3) *Rebuttal Comments and limitations.* The board may, in its discretion, permit ~~rebuttal statements of position~~ reply comments and request the filing of written ~~statements of position~~ comments subsequent to the adjournment of the rule-making oral presentation. The board may limit the time of any oral presentation and the length of any written presentation.

ITEM 10. Amend subrule 3.9(3) as follows:

3.9(3) *Statements.* Upon the adoption, amendment, or repeal of a rule or termination of a rule-making proceeding, and if timely written request is filed by any interested person pursuant to Iowa Code section ~~17A.4(1)“b,”~~ 17A.4(2), the board shall, within 35 days of the request, issue a formal written statement of the principal reasons for and against the adoption, amendment, or repeal of the rule, or termination of the rule-making proceeding, including the reasons why the board overruled the positions in opposition to the board's decision.

ITEM 11. Amend subrule 3.10(1) as follows:

3.10(1) *Regulatory analysis.* The board shall issue a regulatory analysis of a proposed rule, or of a rule adopted without prior notice and opportunity for public participation, when required by ~~1998 Iowa Acts, chapter 1202, section 10~~ Iowa Code section 17A.4A.

ITEM 12. Amend rule 199—3.11(17A,474) as follows:

199—3.11(17A,474) Review of rules.

3.11(1) *Ongoing review.* Pursuant to Iowa Code section ~~17A.7~~ 17A.7(2), upon receipt from the administrative rules coordinator of a request for formal review of a specified rule, the board will

UTILITIES DIVISION[199](cont'd)

determine whether the rule has been reviewed within the preceding five years. If such a review was conducted, the board will report that fact to the administrative rules coordinator. If no such review has been conducted, the board will consider whether the rule should be repealed or amended or a new rule adopted in its place. The board will prepare a written report summarizing its findings, supporting reasons, and proposed course of action. Copies of the report will be sent to the administrative rules review committee and the administrative rules coordinator, and will be made available for public inspection.

3.11(2) Process. To facilitate the requirement to review its rules every five years, the board shall review a portion of its chapters each fiscal year over each five-year period.

a. In fiscal year 2018 and every fifth year thereafter, the board shall review Chapters 1 through 9 of its rules.

b. In fiscal year 2019 and every fifth year thereafter, the board shall review Chapters 10 through 18 of its rules.

c. In fiscal year 2020 and every fifth year thereafter, the board shall review Chapters 19 through 27 of its rules.

d. In fiscal year 2021 and every fifth year thereafter, the board shall review Chapters 28 through 36 of its rules.

e. In fiscal year 2022 and every fifth year thereafter, the board shall review Chapters 37 through 45 of its rules.

f. If the board adopts additional chapters in its rules, such chapters shall be reviewed every fifth fiscal year from the fiscal year in which they are made effective.

ARC 3325C**WORKFORCE DEVELOPMENT DEPARTMENT[871]****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 96.11, the Director of Workforce Development Department hereby gives Notice of Intended Action to amend Chapter 22, “Employer Records and Reports,” and Chapter 23, “Employer’s Contribution and Charges,” Iowa Administrative Code.

These proposed amendments update, clarify and simplify the procedures by which claimants and employers interact with Iowa Workforce Development. The amendments also bring the rules up to date by reflecting changes in technology and efficiencies developed within the agency since the affected rules were adopted. The agency needs to have administrative rules that address these changes.

Any interested person may make written or oral suggestions or comments on the proposed amendments on or before October 17, 2017, by sending them to David J. Steen, Attorney, Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to david.steen@iwd.iowa.gov.

These amendments do not have any fiscal impact on the State of Iowa.

Waiver provisions do not apply to this rule making.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 96.

The following amendments are proposed.

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

ITEM 1. Adopt the following **new** subrule 22.9(3):

22.9(3) An employer who fails to complete a registration timely, as stated in 22.9(2), shall be assessed a penalty of \$500. In addition, if the registration is not submitted electronically, a fee of \$200 will be charged to the employer.

ITEM 2. Adopt the following **new** rule 871—23.68(26USC6402):

871—23.68(26USC6402) Collection of covered unemployment compensation. Pursuant to 26 U.S.C. 6402(f), the department shall utilize the Treasury Offset Program in order to collect covered unemployment compensation.

This rule is intended to implement 26 U.S.C. 6402(f).

ITEM 3. Amend subrule 23.82(1), introductory paragraph, as follows:

23.82(1) Construction. The department will utilize the North America Industry Classification System manual (~~2002~~ 2017 edition) to determine which employers will be classified as construction. The manual ~~may be purchased through Bernan Press, 4611F Assembly Drive, Landham, MD 20706-4391,~~ and is available on the Internet to view or download at ~~<http://www.ntis.gov/naics>~~ <http://www.census.gov/eos/www/naics>.

ARC 3331C

ARCHITECTURAL EXAMINING BOARD[193B]

Adopted and Filed

Pursuant to the authority of Iowa Code section 544A.29, the Architectural Examining Board hereby amends Chapter 1, "Description of Organization," Iowa Administrative Code.

The amendments are a result of 2017 Iowa Acts, Senate File 408, which requires licensure rather than registration of architects practicing in this state. This bill passed the Iowa Senate on March 28, 2017, 49-0, and passed the Iowa House on April 6, 2017, 96-0; it was signed by then Governor Branstad on May 11, 2017. The amendments change terminology from registered/registration to licensed/licensure.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3169C** on July 5, 2017. A public hearing was held on July 25, 2017. There were a few comments in response to the Notice. Most of the feedback consisted of questions regarding the timing of obtaining a new seal. Two responses were supportive, and one questioned whether "architect" needed any modifier. These amendments are identical to those published under Notice.

The amendments are subject to waiver or variance pursuant to 193—Chapter 5.

The amendments were adopted by the Board on August 22, 2017.

After analysis and review of this rule making, the Professional Licensing and Regulation Bureau determined that there will be no impact on jobs and no fiscal impact to the state.

These amendments are intended to implement Iowa Code chapter 544A as amended by 2017 Iowa Acts, Senate File 408.

These amendments will become effective November 1, 2017.

The following amendments are adopted.

ITEM 1. Amend rule 193B—1.1(544A,17A), introductory paragraph, as follows:

193B—1.1(544A,17A) Duties. The board shall enforce the provisions of Iowa Code chapter 544A and shall maintain a roster of all ~~registered~~ licensed architects authorized to practice architecture in the state.

ITEM 2. Amend rule 193B—1.4(544A,17A) as follows:

193B—1.4(544A,17A) Certificates. Certificates issued to successful applicants shall contain the ~~registrant's~~ licensee's name, state ~~registration~~ license number and the signatures of the board president, vice president and secretary. All ~~registrations~~ licenses are renewable biennially on July 1, with ~~registrants~~ licensees whose last names begin with the letters A-K renewing in even-numbered years and ~~registrants~~ licensees whose last names begin with the letters L-Z renewing in odd-numbered years as provided in rule 193B—2.5(17A,272C,544A).

The board shall maintain an electronic roster of those holders of certificates of ~~registration~~ licensure who have failed to renew. The certificate of ~~registration~~ licensure may be reinstated in accord with rule 193B—2.4(544A,17A).

[Filed 9/5/17, effective 11/1/17]

[Published 9/27/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/27/17.

ARC 3332C

ARCHITECTURAL EXAMINING BOARD[193B]

Adopted and Filed

Pursuant to the authority of Iowa Code section 544A.29, the Architectural Examining Board hereby amends Chapter 2, "Registration," Iowa Administrative Code.

ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

The amendments are a result of 2017 Iowa Acts, Senate File 408, which requires licensure rather than registration of architects practicing in this state. This bill passed the Iowa Senate on March 28, 2017, 49-0, and passed the Iowa House on April 6, 2017, 96-0; it was signed by then Governor Branstad on May 11, 2017. The amendments change terminology from registered/registration to licensed/licensure.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3170C** on July 5, 2017. A public hearing was held on July 25, 2017. There were a few comments in response to the Notice. Most of the feedback consisted of questions regarding the timing of obtaining a new seal. Two responses were supportive, and one questioned whether “architect” needed any modifier. Two technical changes have been made from the Notice. In subrule 2.3(2), the word “supervisor” in the phrase “the intern architect’s supervisor” has been changed to “supervisors,” and in subrule 2.6(4), the underscored term “license” has been changed to “licensure.”

The amendments are subject to waiver or variance pursuant to 193—Chapter 5.

The amendments were adopted by the Board on August 22, 2017.

After analysis and review of this rule making, the Professional Licensing and Regulation Bureau determined that there will be no impact on jobs and no fiscal impact to the state.

These amendments are intended to implement Iowa Code chapter 544A as amended by 2017 Iowa Acts, Senate File 408.

These amendments will become effective November 1, 2017.

The following amendments are adopted.

ITEM 1. Amend **193B—Chapter 2**, title, as follows:

REGISTRATION LICENSURE

ITEM 2. Amend the following definitions in rule **193B—2.1(544A,17A)**:

“*Applicant*” means an individual who has submitted an application for registration licensure to the board.

“*Architectural intern*” means an individual who holds a professional degree from a NAAB-accredited program, has completed or is currently enrolled in the NCARB Architectural Experience Program (AXP), formerly known as the Intern Development Program (IDP), and intends to actively pursue registration licensure by completing the Architect Registration Examination.

“*AXP applicant*” means an individual who has completed the AXP training requirements set forth in the NCARB Architectural Experience Program Guidelines, formerly known as the IDP Guidelines, and has submitted an application for registration licensure to the board.

“*Inactive*” means that an architect is not engaged in Iowa in any practice for which a certificate of registration licensure is required.

“*NCARB Certification Guidelines*” means the most current edition of a document by the same title published by the National Council of Architectural Registration Boards. The document outlines the requirements for registration licensure as an architect and is available through the National Council of Architectural Registration Boards, 1801 K Street NW, Suite 1100, Washington, D.C. 20006; NCARB’s Web site www.ncarb.org; or the architectural examining board.

ITEM 3. Amend rule 193B—2.2(544A,17A) as follows:

193B—2.2(544A,17A) Application by reciprocity. Applicants for registration licensure are required to make application to the National Council of Architectural Registration Boards (NCARB) for a certificate. A completed state application form (available on the board’s Web site) and a completed NCARB certificate, received within three months of application, shall be filed in the board office before an application will be considered by the board.

2.2(1) Registration Licensure requirements. The board or the board administrator may waive examination requirements for applicants who, at the time of application, are registered licensed as architects in a different jurisdiction, where the applicant’s qualifications for registration licensure are substantially equivalent to those required of applicants for initial registration licensure in this state. All such applicants who hold an active NCARB certificate shall be deemed to possess qualifications that are substantially equivalent to those required of applicants for initial registration licensure in this state.

ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

2.2(2) *Applicants seeking architectural commission in Iowa.* A person seeking an architectural commission in this state may be admitted to this state for the purpose of offering to provide architectural services, and for that purpose only, without first being ~~registered~~ licensed in this state if:

- a. No change.
- b. The person holds a current and valid ~~registration~~ license issued by a ~~registration~~ licensing authority recognized by this state; and
- c. The person notifies the board in writing on a form provided by the board that the person:
 - (1) Holds an NCARB certificate and a current and valid ~~registration~~ license issued by a ~~registration~~ licensing authority recognized by this state,
 - (2) Is not currently ~~registered~~ licensed in this state but will be present in this state for the purpose of offering to provide architectural services on a temporary basis, and
 - (3) Has no previous or pending disciplinary action by any ~~registration~~ licensing authority; and
- d. No change.
- e. The person provides the board with a sworn statement of intent to apply immediately to the board for ~~registration~~ licensure if selected as the architect for a project in this state.

The person is prohibited from actually providing architectural services until the person has been issued a valid ~~registration~~ license in this state.

2.2(3) *Board refusal to issue ~~registration~~ license.* The board may refuse to issue a certificate of ~~registration~~ licensure to any person otherwise qualified upon any of the grounds for which a certificate of ~~registration~~ licensure may be revoked or suspended or may otherwise discipline a ~~registrant~~ licensee based upon a suspension, revocation, or other disciplinary action taken by a licensing authority in this or another jurisdiction. For purposes of this subrule, “disciplinary action” includes the voluntary surrender of a ~~registration~~ license to resolve a pending disciplinary investigation or proceeding. A certified copy of the record or order of suspension, revocation, voluntary surrender, or other disciplinary action is prima facie evidence of such fact.

ITEM 4. Amend rule 193B—2.3(544A,17A) as follows:

193B—2.3(544A,17A) Application for ~~registration~~ licensure by examination.

2.3(1) Eligibility.

- a. To be admitted to the examination, an applicant for ~~registration~~ licensure shall:
 - (1) and (2) No change.
- b. No change.

2.3(2) Documentation of AXP training units shall be submitted on AXP report forms published by NCARB and shall be verified by signatures of the ~~registered~~ licensed architects serving as the intern architect’s ~~supervisor~~ supervisors in accordance with the requirements outlined in the NCARB Architectural Experience Program Guidelines. The completed AXP report form shall demonstrate attainment of an aggregate of the minimum number of value units in each training area and shall be submitted to NCARB for evaluation.

2.3(3) and **2.3(4)** No change.

2.3(5) To be eligible for ~~registration~~ licensure, all applicants shall have passed all divisions of the ARE prepared and provided by NCARB, have completed the NCARB Architectural Experience Program, and have attained an NCARB council record. A completed NCARB council record shall be transmitted to and filed in the board office within three months of application. Upon receipt of the council record, the board shall provide the applicant with an application for ~~registration~~ licensure form. The board shall issue a ~~registration~~ license number to the applicant upon receipt of the completed application form and appropriate fee.

2.3(6) The board may refuse to issue a certificate of ~~registration~~ licensure to any person otherwise qualified upon any of the grounds for which a ~~registration~~ license may be revoked or suspended or may otherwise discipline a ~~registrant~~ licensee based upon a suspension, revocation, or other disciplinary action taken by a licensing authority in this or another jurisdiction. For purposes of this subrule, “disciplinary action” includes the voluntary surrender of a ~~registration~~ license to resolve a pending

ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

disciplinary investigation or proceeding. A certified copy of the record or order of suspension, revocation, voluntary surrender, or other disciplinary action is prima facie evidence of such fact.

ITEM 5. Amend rule 193B—2.4(544A,17A), introductory paragraph, as follows:

193B—2.4(544A,17A) Examination. Examinations for registration licensure as an architect shall be conducted by the board or its authorized representative.

ITEM 6. Amend rule 193B—2.5(17A,272C,544A) as follows:

193B—2.5(17A,272C,544A) Renewal of certificates of registration licensure.

2.5(1) Active status. Certificates of registration licensure expire biennially on June 30. In order to maintain authorization to practice in Iowa, a registrant licensee is required to renew the certificate of registration licensure prior to the expiration date. A registrant licensee who fails to renew by the expiration date is not authorized to practice architecture in Iowa until the certificate is reinstated as provided in rule 193B—2.6(544A,17A).

a. A registrant licensee whose last name begins with the letter A through K shall renew in even-numbered years, and a registrant licensee whose last name begins with the letter L through Z shall renew in odd-numbered years.

b. It is the policy of the board to send to each registrant licensee a notice of the pending expiration date at the registrant's licensee's last-known address approximately one month prior to the date the certificate of registration licensure is scheduled to expire. The notice, when provided, may be by e-mail communication or in the quarterly newsletter. Failure to receive this notice does not relieve the registrant licensee of the responsibility to timely renew the certificate and pay the renewal fee. A registrant licensee should contact the board office if the registrant licensee does not receive a renewal notice prior to the date of expiration.

c. Upon the board's receipt of a timely and sufficient renewal application as provided in 193—subrule 7.40(3), the board's administrator shall issue a new certificate of registration licensure reflecting the next expiration date, unless grounds exist for denial of the application. However, the board will accept an otherwise sufficient renewal application that is untimely if the board receives the application and late fee within 30 days of the date of expiration.

d. If grounds exist to deny a timely and sufficient application to renew, the board shall send written notification to the applicant by restricted certified mail, return receipt requested. Grounds may exist to deny an application to renew if, for instance, the registrant licensee failed to satisfy the continuing education as required as a condition for registration licensure. If the basis for denial is pending disciplinary action or disciplinary investigation which is reasonably expected to culminate in disciplinary action, the board shall proceed as provided in 193—Chapter 7. If the basis for denial is not related to a pending or imminent disciplinary action, the applicant may contest the board's decision as provided in 193—subrule 7.40(1).

e. When a registrant licensee appears to be in violation of mandatory continuing education requirements, the board may, in lieu of proceeding to a contested case hearing on the denial of a renewal application as provided in rule 193—7.40(546,272C), offer a registrant licensee the opportunity to sign a consent order. While the terms of the consent order will be tailored to the specific circumstances at issue, the consent order will typically impose a penalty between \$50 and \$250, depending on the severity of the violation; establish deadlines for compliance; and require that the registrant licensee complete hours equal to double the deficiency in addition to the required hours; and may impose additional educational requirements on the registrant licensee. Any additional hours completed in compliance with the consent order cannot again be claimed at the next renewal. The board will address subsequent offenses on a case-by-case basis. A registrant licensee is free to accept or reject the offer. If the offer of settlement is accepted, the registrant licensee will be issued a renewed certificate of registration licensure and will be subject to disciplinary action if the terms of the consent order are not complied with. If the offer of settlement is rejected, the matter will be set for hearing, if timely requested by the applicant pursuant to 193—subrule 7.40(1).

ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

f. The board may notify a registrant licensee whose certificate of registration licensure has expired. The failure of the board to provide this courtesy notification or the failure of the registrant licensee to receive the notification shall not extend the date of expiration.

g. A registrant licensee who continues to practice architecture in Iowa after the registration license has expired shall be subject to disciplinary action. Such unauthorized activity may also be grounds to deny a registrant's licensee's application for reinstatement.

2.5(2) Inactive status. This subrule establishes a procedure under which a person issued a certificate of registration licensure as an architect may apply to the board to register be licensed as inactive. Registration Licensure under this subrule is available to a certificate holder residing within or outside the state of Iowa who is not engaged in Iowa in any practice for which a certificate of registration licensure as an architect is required. A person eligible to register be licensed as inactive may, as an alternative to such registration licensure, allow the certificate of registration licensure to lapse. During any period of inactive status, a person shall not use the title "architect" or any other title that might imply that the person is offering services as an architect by such an action in violation of Iowa Code section 544A.15. The board will continue to maintain a data base of persons registered licensed as inactive, including information which is not routinely maintained after a certificate has lapsed through the person's failure to renew. A person who registers is licensed as inactive will accordingly receive renewal applications, board newsletters and other mass communications from the board.

a. No change.

b. Renewal. A person registered licensed as inactive may renew the person's certificate of registration licensure on the biennial schedule described in 193B—2.5(17A,272C,544A). This person shall be exempt from the continuing education requirements and will be charged a reduced renewal fee as provided in 193B—2.9(544A,17A). An inactive certificate of registration licensure shall lapse if not timely renewed. However, the board will accept an otherwise sufficient renewal application that is untimely if the board receives the application and late fee within 30 days of the date of expiration.

c. Permitted practices. A person may, while registered licensed as inactive, perform for a client, business, employer, government body, or other entity those services which may lawfully be provided by a person to whom a certificate of registration licensure has never been issued. Such services may be performed as long as the person does not in connection with such services use the title "architect" or any other title restricted for use only by architects pursuant to Iowa Code section 544A.15 (with or without additional designations such as "inactive" or "retired"). Restricted titles may be used only by active architects who are subject to continuing education requirements to ensure that the use of such titles is consistently associated with the maintenance of competency through continuing education.

d. Prohibited practices. A person who, while registered licensed as inactive, engages in any of the practices described in Iowa Code sections 544A.15 and 544A.16 is subject to disciplinary action.

2.5(3) Retired status. A person who held a registration license as an architect and who does not reasonably expect to return to the workforce in any capacity for which a certificate of registration licensure is required due to bona fide retirement or disability may apply to the board for retired status and, if granted, may use the title "architect retired" in the context of non-income-producing personal activities. If the board determines an applicant is eligible, the retired status would become effective on the first scheduled registration license renewal date. Applicants do not need to reinstate an expired registration license to be eligible for retired status. Applicants may apply for retired status on forms provided by the board. The board will not provide a refund of biennial registration license fees if an application for retired status is granted in a biennium in which the applicant has previously paid the biennial fees for either active or inactive status. Persons registered licensed in retired status are exempt from the renewal requirement.

a. No change.

b. Permitted practices. Persons registered licensed in retired status may engage in the practices identified in paragraph 2.5(2)"c." Such persons may also provide services as technical experts before a court, including prelitigation preparation, discovery, and testimony, on matters directly related to architectural services provided by such persons prior to registering being licensed with the board in retired status.

ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

c. Exemption. A person whose registration license as an architect has been placed on probation, suspended, revoked, or voluntarily surrendered in connection with a disciplinary investigation or proceeding shall not be eligible for retired status unless, upon appropriate application, the board first reinstates the registration license to good standing.

ITEM 7. Amend rule 193B—2.6(544A,17A) as follows:

193B—2.6(544A,17A) Reinstatement of lapsed certificate of registration licensure to active status.

An individual may reinstate a lapsed certificate of registration licensure to active registration licensure as follows:

2.6(1) No change.

2.6(2) Pay the reinstatement fee of \$100 plus \$25 per month or partial month of expired registration licensure up to a maximum of \$750. All applicants for reinstatement shall be assessed the \$100 reinstatement fee. The \$25 per month shall not be assessed if the applicant for reinstatement did not, during the period of lapse, engage in any acts or practices for which an active architect registration license is required in Iowa. Falsely claiming an exemption from the monthly fee is a ground for discipline; in addition, other grounds for discipline may arise from practicing on a lapsed certificate, license or permit to practice.

2.6(3) Provide a written statement outlining the applicant's professional activities performed in Iowa during the period of ~~nonregistration~~ in which the individual was unlicensed. The statement shall include a list of all projects with which the applicant had involvement and shall explain the service provided by the applicant.

2.6(4) Submit documented evidence of completion of 24 continuing education hours, which should have been reported on the June 30 renewal date on which the applicant failed to renew, and 12 continuing education hours for each year or portion of a year of expired registration licensure up to a maximum of 48 continuing education hours. All continuing education hours must be completed in health, safety, and welfare subjects acquired in structured educational activities and be in compliance with requirements in 193B—Chapter 3. The continuing education hours used for reinstatement may not be used again at the next renewal. Out-of-state residents may submit a statement from their resident state's licensing board as documented evidence of compliance with their resident state's mandatory continuing education requirements during the period of ~~nonregistration~~ in which the individual was unlicensed. The statement shall bear the seal of the licensing board. Out-of-state residents whose resident state has no mandatory continuing education shall comply with the documented evidence requirements outlined in this subrule.

ITEM 8. Amend rule 193B—2.7(544A) as follows:

193B—2.7(544A) Reinstatement from inactive status or retired status to active status.

2.7(1) An individual may reinstate an inactive registration license to an active registration license as follows:

a. Pay one-half of the current active registration license fee.

b. Submit documented evidence of completion of 24 continuing education hours in compliance with requirements in 193B—Chapter 3. All continuing education hours must be completed in health, safety, and welfare subjects acquired in structured educational activities. The hours used to reinstate to active status cannot again be used to renew.

(1) At the first biennial renewal date of July 1 that is less than 12 months from the date of the filing of the application to restore the certificate of registration licensure to active status, the person shall not be required to report continuing education hours.

(2) At the first biennial renewal date of July 1 that is more than 12 months, but less than 24 months, from the date of the filing of the application to restore the certificate of registration licensure to active status, the person shall report 12 hours of previously unreported continuing education hours.

c. Provide a written statement in which the applicant affirms that the applicant has not engaged in any of the practices in Iowa that are listed in Iowa Code section 544A.16 during the period of inactive registration licensure.

ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

2.7(2) An individual may reinstate a retired registration license to an active registration license as follows:

a. Pay the current active registration license fee. If the individual is reinstating to active status at a date that is less than 12 months from the next biennial renewal date, one-half of the current active registration license fee shall be paid.

b. Submit documented evidence of completion of 24 continuing education hours in compliance with requirements in 193B—Chapter 3. All continuing education hours must be completed in health, safety, and welfare subjects acquired in structured educational activities. The hours used to reinstate to active status cannot again be used to renew.

(1) At the first biennial renewal date of July 1 that is less than 12 months from the date of the filing of the application to restore the certificate of registration licensure to active status, the person shall not be required to report continuing education hours.

(2) At the first biennial renewal date of July 1 that is more than 12 months, but less than 24 months, from the date of the filing of the application to restore the certificate of registration licensure to active status, the person shall report 12 hours of previously unreported continuing education hours.

c. Provide a written statement in which the applicant affirms that the applicant has not engaged in any of the practices in Iowa that are listed in Iowa Code section 544A.16 during the period of retired registration licensure.

2.7(3) No change.

ITEM 9. Amend rule 193B—2.8(544A,17A) as follows:

193B—2.8(544A,17A) Finding of probable cause for unlicensed practice. The board may find probable cause to file charges for unlicensed practice if the individual continues to offer services defined as the practice of architecture outlined in Iowa Code section 544A.16 while using the title “architect,” “architectural designer,” or similar designation during the period of lapsed registration licensure.

ITEM 10. Amend rule 193B—2.9(544A,17A) as follows:

193B—2.9(544A,17A) Fee schedule. Under the authority provided in Iowa Code chapter 544A, the following fees are hereby adopted:

Examination fees:

Fees for examination subjects shall be paid directly to the testing service selected by NCARB

Initial <u>registration license</u> fee	\$ 50
(plus \$5 per month until renewal)	
Reciprocal application and <u>registration license</u> fee	\$200
Biennial renewal fee	\$200
Biennial renewal fee (inactive)	\$100
Retired status	None

ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

Reinstatement of lapsed individual registration <u>license</u>	\$100 + renewal fee + \$25 per month or partial month of expired registration <u>license</u>
Reinstatement of inactive individual registration <u>license</u>	\$100
Reinstatement of retired individual registration <u>license</u>	\$200
Duplicate wall certificate fee	\$ 50
Late renewal fee	\$ 25

(for renewals postmarked on or after July 1 and before July 30)

[Filed 9/5/17, effective 11/1/17]

[Published 9/27/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/27/17.

ARC 3333C

ARCHITECTURAL EXAMINING BOARD[193B]

Adopted and Filed

Pursuant to the authority of Iowa Code section 544A.29, the Architectural Examining Board hereby amends Chapter 3, "Continuing Education," Iowa Administrative Code.

The amendments are a result of 2017 Iowa Acts, Senate File 408, which requires licensure rather than registration of architects practicing in this state. This bill passed the Iowa Senate on March 28, 2017, 49-0, and passed the Iowa House on April 6, 2017, 96-0; it was signed by then Governor Branstad on May 11, 2017. The amendments change terminology from registered/registration to licensed/licensure.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3171C** on July 5, 2017. A public hearing was held on July 25, 2017. There were a few comments in response to the Notice. Most of the feedback consisted of questions regarding the timing of obtaining a new seal. Two responses were supportive, and one questioned whether "architect" needed any modifier. These amendments are identical to those published under Notice.

The amendments are subject to waiver or variance pursuant to 193—Chapter 5.

The amendments were adopted by the Board on August 22, 2017.

After analysis and review of this rule making, the Professional Licensing and Regulation Bureau determined that there will be no impact on jobs and no fiscal impact to the state.

These amendments are intended to implement Iowa Code chapter 544A as amended by 2017 Iowa Acts, Senate File 408.

These amendments will become effective November 1, 2017.

The following amendments are adopted.

ITEM 1. Amend rule 193B—3.1(544A,272C) as follows:

193B—3.1(544A,272C) Continuing education. The following rules adopted by the architectural examining board are in compliance with Iowa Code chapter 544A and section 272C.2 requiring professional and occupational licensees to participate in a continuing education program as a condition of ~~registration~~ license renewal.

ITEM 2. Amend rule **193B—3.2(544A,272C)**, definition of "Continuing education," as follows:

"*Continuing education*" or "*CE*" means postlicensure learning that enables a ~~registered~~ licensed architect to increase or update knowledge of and competence in technical and professional subjects related to the practice of architecture to safeguard the public's health, safety, and welfare.

ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

ITEM 3. Amend rule 193B—3.3(544A,272C) as follows:

193B—3.3(544A,272C) Basic requirements.

3.3(1) To renew ~~registration~~ registration licensure, an architect must, in addition to meeting all other requirements, complete a minimum of 24 CEHs for each 24-month period since the architect's last renewal of initial ~~registration~~ registration licensure or be exempt from these continuing education requirements as provided in rule 193B—3.5(544A,272C). Failure to comply with these requirements may result in nonrenewal of the architect's ~~registration~~ license.

3.3(2) and 3.3(3) No change.

3.3(4) An architect who holds ~~registration~~ registration licensure in Iowa for less than 12 months from the date of initial ~~registration~~ registration licensure or who is reinstating to active status shall not be required to report CEHs at the first ~~registration~~ license renewal. An architect who holds ~~registration~~ registration licensure in Iowa for more than 12 months, but less than 23 months from the date of initial ~~registration~~ registration licensure or who is reinstating to active status, shall be required to report 12 CEHs earned in the preceding 12 months at the first ~~registration~~ license renewal.

ITEM 4. Amend rule 193B—3.4(544A,272C) as follows:

193B—3.4(544A,272C) Authorized structured educational activities. The following list may be used by all ~~registrants~~ licensees in determining the types of activities which may fulfill CE requirements if the activities are conducted as structured educational activities on health, safety, and welfare subjects:

1. to 4. No change.

ITEM 5. Amend rule 193B—3.5(544A,272C) as follows:

193B—3.5(544A,272C) Exemptions.

3.5(1) As provided in Iowa Code section 272C.2(4), a ~~registered~~ licensed architect shall be deemed to have complied with the continuing education requirements set forth in this chapter if the architect attests in the required affidavit that for not less than 21 months of the preceding two-year period of ~~registration~~ licensure, the architect:

a. No change.

b. Is a resident of another state or district having a continuing education requirement for ~~registration~~ licensure as an architect and has complied with all requirements of that state or district for practice therein; or

c. No change.

3.5(2) Architects who so attest on their affidavits that they are retired from active practice or are not engaged in active practice may maintain their ~~registrations~~ licenses in retired or inactive status without satisfying CE requirements. Such architects may, however, reenter practice only after satisfying the board of their proficiency. Proficiency may be established by any one of the following:

a. to c. No change.

3.5(3) No change.

[Filed 9/5/17, effective 11/1/17]

[Published 9/27/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/27/17.

ARC 3334C

ARCHITECTURAL EXAMINING BOARD[193B]

Adopted and Filed

Pursuant to the authority of Iowa Code section 544A.29, the Architectural Examining Board hereby amends Chapter 4, "Rules of Conduct," Iowa Administrative Code.

ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

The amendments are a result of 2017 Iowa Acts, Senate File 408, which requires licensure rather than registration of architects practicing in this state. This bill passed the Iowa Senate on March 28, 2017, 49-0, and passed the Iowa House on April 6, 2017, 96-0; it was signed by then Governor Branstad on May 11, 2017. The amendments change terminology from registered/registration to licensed/licensure.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3174C** on July 5, 2017. A public hearing was held on July 25, 2017. There were a few comments in response to the Notice. Most of the feedback consisted of questions regarding the timing of obtaining a new seal. Two responses were supportive, and one questioned whether “architect” needed any modifier. These amendments are identical to those published under Notice.

The amendments are subject to waiver or variance pursuant to 193—Chapter 5.

The amendments were adopted by the Board on August 22, 2017.

After analysis and review of this rule making, the Professional Licensing and Regulation Bureau determined that there will be no impact on jobs and no fiscal impact to the state.

These amendments are intended to implement Iowa Code chapter 544A as amended by 2017 Iowa Acts, Senate File 408.

These amendments will become effective November 1, 2017.

The following amendments are adopted.

ITEM 1. Amend rule 193B—4.1(544A,17A), introductory paragraph, as follows:

193B—4.1(544A,17A) Rules of conduct. Failure by a ~~registrant~~ licensee to adhere to the provisions of Iowa Code sections 272C.10 and 544A.13 and the following rules of conduct shall be grounds for disciplinary action.

ITEM 2. Amend subrule 4.1(1) as follows:

4.1(1) Definitions. The following definition applies as used in Iowa Code chapter 544A and this chapter of the architectural examining board rules, unless the context otherwise requires.

“*Responsible charge*” means the amount of control over and detailed professional knowledge of the content of technical submissions during their preparation as is ordinarily exercised by a ~~registered~~ licensed architect applying the required professional standard of care, including but not limited to an architect’s integration of information from manufacturers, suppliers, installers; the architect’s consultants, owners, contractors; or other sources the architect reasonably trusts that is incidental to and intended to be incorporated into the architect’s technical submissions if the architect has coordinated and reviewed such information. Other review, or review and correction, of technical submissions after they have been prepared by others does not constitute the exercise of responsible charge because the reviewer has neither control over nor detailed professional knowledge of the content of such submissions throughout their preparation.

ITEM 3. Amend subrule 4.1(4) as follows:

4.1(4) Full disclosure.

a. to *c.* No change.

d. An architect shall not deliberately make a materially false statement or deliberately fail to disclose a material fact requested in connection with application for ~~registration~~ licensure or renewal of ~~registration~~ license.

e. An architect shall not assist the application for ~~registration~~ licensure of a person known by the architect to be unqualified in respect to education, training, experience or character.

f. No change.

ITEM 4. Amend subrule 4.1(5) as follows:

4.1(5) Compliance with laws.

a. An architect shall not, in the conduct of architectural practice, knowingly violate any state or federal criminal law. A “conviction” for purposes of this paragraph and Iowa Code section 544A.13 means a conviction for an indictable offense and includes the court’s acceptance of a guilty plea, a deferred judgment from the time of entry of the deferred judgment until the time the defendant is discharged by the court without entry of judgment, or other finding of guilt by a court of competent

ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

jurisdiction. A copy of the record of conviction, guilty plea, deferred judgment, or other finding of guilt is conclusive evidence. A ~~registered~~ licensed architect shall notify the board of a conviction within 30 days of the conviction.

b. No change.

c. An architect shall comply with the ~~registration~~ licensing laws and regulations governing the architect's professional practice in any United States jurisdiction.

d. An ~~Iowa-registered~~ Iowa-licensed architect shall report to the board in writing any revocation, suspension, or other disciplinary action taken by a licensing authority in any other state or jurisdiction within 30 days of the final action.

ITEM 5. Amend subrule 4.1(6) as follows:

4.1(6) Professional conduct.

a. No change.

b. An architect shall not sign or seal drawings, specifications, reports or other professional work for which the architect does not have direct professional knowledge and direct supervisory control; provided, however, that in the case of the portions of professional work prepared by the architect's consultants, ~~registered~~ licensed under this or another professional ~~registration~~ licensing law of this jurisdiction, the architect may sign or seal that portion of the professional work if the architect has reviewed that portion, has coordinated its preparation and intends to be responsible for its adequacy.

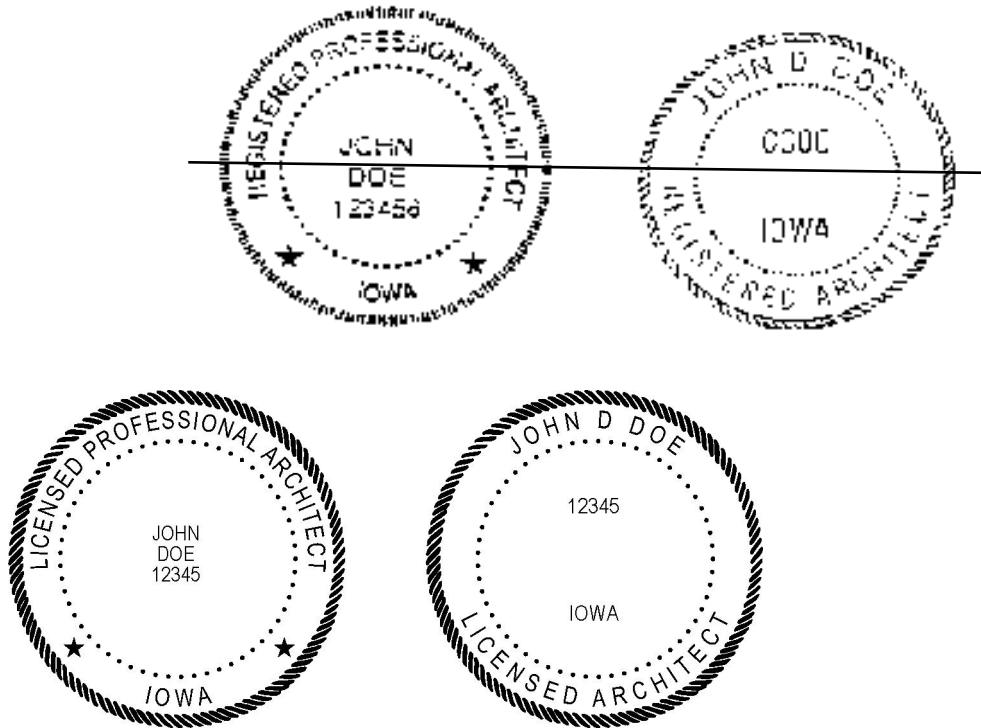
c. and d. No change.

ITEM 6. Amend subrule 4.1(7) as follows:

4.1(7) Seal and certificate of responsibility.

a. No change.

b. Description of seal: The diameter of the outside circle shall be approximately 1¾ inches. The seal shall include the name of the ~~registered~~ licensed architect and the words "~~Registered~~ Licensed Architect". The Iowa ~~registration~~ license number and the word "Iowa" shall be included. The seal shall substantially conform to the samples shown below:



c. No change.

ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

d. Each technical submission submitted to a client or any public agency, hereinafter referred to as the official copy, shall contain an information block on its first page or on an attached cover sheet with application of a seal by the architect in responsible charge and an information block with application of a seal by each professional consultant contributing to the technical submission. The seal and original signature shall be applied only to a final technical submission. Each official copy of a technical submission shall be stapled, bound or otherwise attached together so as to clearly establish the complete extent of the technical submission. Each information block shall display the seal of the individual responsible for that portion of the technical submission. The area of responsibility for each sealing professional shall be designated in the area provided in the information block, so that responsibility for the entire technical submission is clearly established by the combination of the stated seal responsibilities. The information block will substantially conform to the sample shown below:

S E A L	<p>I hereby certify that the portion of this technical submission described below was prepared by me or under my direct supervision and responsible charge. I am a duly registered <u>licensed</u> architect under the laws of the state of Iowa.</p> <hr/> <p style="text-align: center;">Signature Date</p> <p>Printed or typed name _____</p> <p>License number _____</p> <p>My license renewal date is June 30, _____</p> <p>Pages or sheets covered by this seal: _____</p> <p>_____</p> <p>_____</p> <p>_____</p>
---------	---

e. to h. No change.

[Filed 9/5/17, effective 11/1/17]

[Published 9/27/17]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 9/27/17.

ARC 3335C

ARCHITECTURAL EXAMINING BOARD[193B]

Adopted and Filed

Pursuant to the authority of Iowa Code section 544A.29, the Architectural Examining Board hereby amends Chapter 5, “Exceptions,” Iowa Administrative Code.

The amendment is a result of 2017 Iowa Acts, Senate File 408, which requires licensure rather than registration of architects practicing in this state. This bill passed the Iowa Senate on March 28, 2017, 49-0, and passed the Iowa House on April 6, 2017, 96-0; it was signed by then Governor Branstad on May 11, 2017. The amendment changes terminology from registered/registration to licensed/licensure.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3172C** on July 5, 2017. A public hearing was held on July 25, 2017. There were a few comments in response to the Notice. Most of the feedback consisted of questions regarding the timing of obtaining a new

ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

seal. Two responses were supportive, and one questioned whether “architect” needed any modifier. This amendment is identical to that published under Notice.

The amendment is subject to waiver or variance pursuant to 193—Chapter 5.

The amendment was adopted by the Board on August 22, 2017.

After analysis and review of this rule making, the Professional Licensing and Regulation Bureau determined that there will be no impact on jobs and no fiscal impact to the state.

This amendment is intended to implement Iowa Code chapter 544A as amended by 2017 Iowa Acts, Senate File 408.

This amendment will become effective November 1, 2017.

The following amendment is adopted.

Amend rule 193B—5.2(544A) as follows:

193B—5.2(544A) Exceptions. An architect ~~registered~~ licensed in this state is required to perform professional architectural services for all buildings except those listed below. Persons who are not ~~registered~~ licensed architects may perform planning and design services in connection with any of the following:

5.2(1) to 5.2(6) No change.

[Filed 9/5/17, effective 11/1/17]

[Published 9/27/17]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 9/27/17.

ARC 3336C

ARCHITECTURAL EXAMINING BOARD[193B]

Adopted and Filed

Pursuant to the authority of Iowa Code section 544A.29, the Architectural Examining Board hereby amends Chapter 6, “Disciplinary Action Against Registrants,” Iowa Administrative Code.

The amendments are a result of 2017 Iowa Acts, Senate File 408, which requires licensure rather than registration of architects practicing in this state. This bill passed the Iowa Senate on March 28, 2017, 49-0, and passed the Iowa House on April 6, 2017, 96-0; it was signed by then Governor Branstad on May 11, 2017. The amendments change terminology from registered/registration to licensed/licensure.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3173C** on July 5, 2017. A public hearing was held on July 25, 2017. There were a few comments in response to the Notice. Most of the feedback consisted of questions regarding the timing of obtaining a new seal. Two responses were supportive, and one questioned whether “architect” needed any modifier. These amendments are identical to those published under Notice.

The amendments are subject to waiver or variance pursuant to 193—Chapter 5.

The amendments were adopted by the Board on August 22, 2017.

After analysis and review of this rule making, the Professional Licensing and Regulation Bureau determined that there will be no impact on jobs and no fiscal impact to the state.

These amendments are intended to implement Iowa Code chapter 544A as amended by 2017 Iowa Acts, Senate File 408.

These amendments will become effective November 1, 2017.

The following amendments are adopted.

ITEM 1. Amend **193B—Chapter 6**, title, as follows:

DISCIPLINARY ACTION AGAINST REGISTRANTS LICENSEES

ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

ITEM 2. Amend rule 193B—6.3(544A,272C) as follows:

193B—6.3(544A,272C) Peer investigative committee. A peer investigative committee may be appointed by the president to investigate a complaint. The committee members will consist of one or more architects, serve at the discretion of the president, and shall have been registered licensed to practice in Iowa for at least five years. The committee will review and determine the facts of the complaint and make a report to the board in a timely manner.

ITEM 3. Amend rule 193B—6.4(544A,272C) as follows:

193B—6.4(544A,272C) Investigation report. Upon completion of the investigation, the investigator(s) shall prepare for the board's consideration a report containing the position or defense of the registrant licensee to determine what further action is necessary. The board may:

1. No change.
2. Allow the registrant licensee who is the subject of the complaint an opportunity to appear before a committee of the board for an informal discussion regarding the circumstances of the alleged violation.
3. and 4. No change.

ITEM 4. Amend rule 193B—6.5(544A,272C) as follows:

193B—6.5(544A,272C) Informal discussion. If the board considers it advisable, or if requested by the affected registrant licensee, the board may grant the registrant licensee an opportunity to appear before the board or a committee of the board for a voluntary informal discussion of the facts and circumstances of an alleged violation. The registrant licensee may be represented by legal counsel at the informal discussion. The registrant licensee is not required to attend the informal discussion.

Unless disqualification is waived by the registrant licensee, board members who personally investigated a disciplinary complaint are disqualified from making decisions at a later formal hearing. Because board members generally rely upon staff, investigators, auditors, peer review committees, or expert consultants to conduct investigations, the issue rarely arises. An informal discussion, however, is a form of investigation because it is conducted in a question-and-answer format. In order to preserve the ability of all board members to participate in board decision making, registrants licensees who desire to attend an informal discussion must therefore waive their right to seek disqualification of a board member or staff based solely on the board member's or staff's participation in an informal discussion. Registrants Licensees would not be waiving their right to seek disqualification on any other ground. By electing to attend an informal discussion, a registrant licensee accordingly agrees that participating board members or staff are not disqualified from acting as a presiding officer in a later contested case proceeding or from advising the decision maker.

Because an informal discussion constitutes a part of the board's investigation of a pending disciplinary case, the facts discussed at the informal discussion may be considered by the board in the event the matter proceeds to a contested case hearing and those facts are independently introduced into evidence. The board may seek a consent order at the time of the informal discussion. If the parties agree to a consent order, a statement of charges shall be filed simultaneously with the consent order.

ITEM 5. Amend rule 193B—6.6(544A,272C) as follows:

193B—6.6(544A,272C) Decisions. The board shall make findings of fact and conclusions of law and may take one or more of the following actions:

6.6(1) No change.

6.6(2) Revoke the architect's registration license. In the event of a revocation, the registrant licensee shall not be allowed to remain a partner or shareholder of a business entity if the law requires all partners or shareholders of such entity to be registered licensed architects.

6.6(3) Suspend the registrant's registration licensee's license as authorized by law.

6.6(4) Impose civil penalties, the amount which shall be set at the discretion of the board but which shall not exceed \$1000. Civil penalties may be imposed for any of the disciplinary violations specified

ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

in Iowa Code sections 544A.13 and 544A.15 and these rules. Factors the board may consider when determining whether to assess civil penalties and the amount to assess include:

- a. to k.* No change.
 - l.* Whether the ~~registrant~~ licensee acted in bad faith.
 - m.* The extent to which the ~~registrant~~ licensee cooperated with the board.
 - n.* Whether the ~~registrant~~ licensee practiced architecture with a lapsed, inactive, suspended or revoked certificate of ~~registration~~ licensure.
 - 6.6(5)** No change.
 - 6.6(6)** Require reexamination, using one or more parts of the examination given to architectural ~~registrant~~ licensee candidates.
 - 6.6(7)** and **6.6(8)** No change.
 - 6.6(9)** Issue a consent order.
- Voluntary surrender of ~~registration~~ licensure is considered as disciplinary action.

[Filed 9/5/17, effective 11/1/17]

[Published 9/27/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/27/17.

ARC 3337C

ARCHITECTURAL EXAMINING BOARD[193B]

Adopted and Filed

Pursuant to the authority of Iowa Code section 544A.29, the Architectural Examining Board hereby amends Chapter 7, "Disciplinary Action—Unlicensed Practice," Iowa Administrative Code.

The amendment is a result of 2017 Iowa Acts, Senate File 408, which requires licensure rather than registration of architects practicing in this state. This bill passed the Iowa Senate on March 28, 2017, 49-0, and passed the Iowa House on April 6, 2017, 96-0; it was signed by then Governor Branstad on May 11, 2017. The amendment changes terminology from registered/registration to licensed/licensure.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3175C** on July 5, 2017. A public hearing was held on July 25, 2017. There were a few comments in response to the Notice. Most of the feedback consisted of questions regarding the timing of obtaining a new seal. Two responses were supportive, and one questioned whether "architect" needed any modifier. This amendment is identical to that published under Notice.

The amendment is subject to waiver or variance pursuant to 193—Chapter 5.

The amendment was adopted by the Board on August 22, 2017.

After analysis and review of this rule making, the Professional Licensing and Regulation Bureau determined that there will be no impact on jobs and no fiscal impact to the state.

This amendment is intended to implement Iowa Code chapter 544A as amended by 2017 Iowa Acts, Senate File 408.

This amendment will become effective November 1, 2017.

The following amendment is adopted.

Amend rule 193B—7.3(544A) as follows:

193B—7.3(544A) Civil penalties against ~~nonregistrant~~ unlicensed person. The board may impose civil penalties by order against a person who is not ~~registered~~ licensed as an architect pursuant to Iowa Code chapter 544A based on the unlawful practices specified in Iowa Code section 544A.15(3). In addition to the procedures set forth in Iowa Code section 544A.15(3), this rule shall apply.

7.3(1) The notice of the board's intent to impose a civil penalty required by Iowa Code section 544A.15(3) shall be served upon the ~~nonregistrant~~ unlicensed person by restricted certified mail, return receipt requested, or personal service in accordance with Rule of Civil Procedure 1.305. Alternatively,

ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

the ~~nonregistrant~~ unlicensed person may accept service personally or through authorized counsel. The notice shall include the following:

a. to d. No change.

e. Notice of the ~~nonregistrant's~~ unlicensed person's right to a hearing and the time frame in which hearing must be requested.

f. No change.

7.3(2) ~~Nonregistrants~~ Unlicensed persons must request a hearing within 30 days of the date the notice is mailed, if served through restricted certified mail to the last-known address, or within 30 days of the date of service, if service is accepted or made in accordance with Rule of Civil Procedure 1.305. A request for hearing must be in writing and is deemed made on the date of the United States Postal Service postmark or the date of personal service.

7.3(3) No change.

7.3(4) If a request for hearing is timely made, the board shall issue a notice of hearing and conduct a hearing in the same manner as applicable to disciplinary cases against ~~registered~~ licensed architects.

7.3(5) In addition to the factors set forth in Iowa Code section 544A.15(3), the board may consider the following when determining the amount of civil penalty to impose, if any:

a. to g. No change.

h. Whether the ~~nonregistrant~~ unlicensed person acted in bad faith.

i. The extent to which the ~~nonregistrant~~ unlicensed person cooperated with the board.

7.3(6) ~~A nonregistrant~~ An unlicensed person may waive the right to hearing and all attendant rights and enter into a consent order imposing a civil penalty at any stage of the proceeding upon mutual consent of the board.

7.3(7) No change.

[Filed 9/5/17, effective 11/1/17]

[Published 9/27/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/27/17.

ARC 3338C

IOWA FINANCE AUTHORITY[265]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 16.5(1)"r," 16.35 and 17A.3(1)"b," the Iowa Finance Authority hereby amends Chapter 12, "Low-Income Housing Tax Credits," Iowa Administrative Code.

These amendments adopt an updated 2018 9% Qualified Allocation Plan (QAP) for the Low-Income Housing Tax Credit Program, which is incorporated by reference in rule 265—12.1(16).

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 2, 2017, as **ARC 3225C**. The Authority received public comment on the QAP and made certain changes to the QAP based on those comments. The only changes to the amendments published under Notice are in subrules 12.1(2) and 12.2(2) and reflect the change in the date subsequent to which no amendments or additions to the QAPs are included. The date proposed in the Notice was July 12, 2017, and that date has been changed to September 6, 2017.

The Iowa Finance Authority adopted these amendments on September 6, 2017.

After analysis and review of this rule making, the impact on jobs is expected to be consistent with the impact of previous years' QAPs. The Low-Income Housing Tax Credit Program has a substantial positive impact on job creation in Iowa with many jobs created annually in the construction, finance, and property management fields, among others.

These amendments are intended to implement Iowa Code sections 16.5(1)"r," 16.35, 17A.12, and 17A.16 and Internal Revenue Code Section 42.

These amendments will become effective on November 1, 2017.

The following amendments are adopted.

IOWA FINANCE AUTHORITY[265](cont'd)

ITEM 1. Amend subrule 12.1(2) as follows:

12.1(2) *Nine percent qualified allocation plan.* The qualified allocation plan entitled Iowa Finance Authority Low-Income Housing Tax Credit Program ~~2017~~ 2018 Qualified Allocation Plan (“9% QAP”) shall be the qualified allocation plan for the allocation of 9 percent low-income housing tax credits consistent with IRC Section 42 and the applicable Treasury regulations and Iowa Code section 16.35. The 9% QAP is incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2). The 9% QAP does not include any amendments or editions created subsequent to ~~September 7, 2016~~ September 6, 2017.

ITEM 2. Amend subrule 12.2(2) as follows:

12.2(2) *9% QAP.* The 9% QAP can be reviewed and copied in its entirety on the authority’s Web site at <http://www.iowafinanceauthority.gov>. Copies of the 9% QAP, application, and all related attachments and exhibits shall be deposited with the administrative rules coordinator and at the state law library and shall be available on the authority’s Web site. The 9% QAP incorporates by reference IRC Section 42 and the regulations in effect as of ~~September 7, 2016~~ September 6, 2017. Additionally, the 9% QAP incorporates by reference Iowa Code section 16.35. These documents are available from the state law library, and information about these statutes, regulations and rules is on the authority’s Web site.

[Filed 9/7/17, effective 11/1/17]

[Published 9/27/17]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 9/27/17.

ARC 3339C

LABOR SERVICES DIVISION[875]

Adopted and Filed

Pursuant to the authority of Iowa Code section 92.21, the Labor Commissioner hereby amends Chapter 32, “Child Labor,” Iowa Administrative Code.

Iowa Code section 92.10 requires an employer to maintain on file a work permit for an employee under 16 years of age. As part of the process of obtaining a child labor permit, proof of age must be submitted. The acceptable documents for proof of age are set forth in both Iowa Code section 92.11 and 875—paragraph 32.2(2)“a.” 2016 Iowa Acts, House File 2274, added a driver’s instruction permit to the list of acceptable documents for proof of age. This amendment removes the list of acceptable documents from paragraph 32.2(2)“a” and replaces it with a reference to the statutory list.

Notice of Intended Action was published in the August 2, 2017, Iowa Administrative Bulletin as **ARC 3220C**. One person filed a comment objecting to the statutory language that requires work permits. This amendment is identical to the amendment published under Notice of Intended Action.

No variance procedures are included in this rule. Variance procedures are set forth in 875—Chapter 1.

After analysis and review of this rule making, no impact on jobs will occur.

This amendment is intended to implement Iowa Code chapter 92.

This amendment shall become effective on November 1, 2017.

The following amendment is adopted.

Amend paragraph **32.2(2)“a”** as follows:

a. The minor, parent, guardian, or custodian shall obtain ~~one of the following documents~~ evidence as set forth in Iowa Code section 92.11(2) establishing the minor’s age:.

~~(1) A certified copy of the minor’s birth certificate, if it is available.~~

~~(2) If a certified copy of the minor’s birth certificate is not available, the minor’s passport or a certified copy of the minor’s baptismal record.~~

~~(3) If the documents listed in (1) and (2) are not available, one of the following documents shall be used:~~

LABOR SERVICES DIVISION[875](cont'd)

1. ~~A visa issued by the U.S. government.~~
2. ~~A resident alien card issued by the U.S. government.~~
3. ~~A physician's affidavit certifying the minor's age. A sample physician's affidavit is available at the labor division's Web site.~~

[Filed 9/8/17, effective 11/1/17]

[Published 9/27/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/27/17.

ARC 3345C**PHARMACY BOARD[657]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 124.201 and 124.301, the Board of Pharmacy hereby amends Chapter 7, "Hospital Pharmacy Practice," Chapter 8, "Universal Practice Standards," Chapter 21, "Electronic Data in Pharmacy Practice," Chapter 23, "Long-Term Care Pharmacy Practice," and Chapter 100, "Iowa Real-Time Electronic Pseudoephedrine Tracking System," and rescinds Chapter 10, "Controlled Substances," Iowa Administrative Code, and adopts a new chapter with the same title.

Pursuant to Iowa Code section 17A.7(2), this rule making is the result of an overall review of administrative rules relating to controlled substances. The rule making rescinds current Chapter 10 and adopts a new, reorganized chapter in lieu thereof. Chapter 10 establishes the minimum standards for registration of entities involved in the handling and prescribing of controlled substances, accountability and security for and designation of controlled substances, and minimum standards for prescriptions issued and dispensed for controlled substances. The minimum standards are based, in large part, upon federal minimum standards for accountability, security, and designation of controlled substances.

The updated chapter is reorganized to provide clarity, removes rules that are no longer relevant or that are identified in other chapters, consolidates rules and subrules where appropriate, updates language to provide consistency and clarity where confusion has been noted, and identifies newly designated practitioners with authority to prescribe. To be consistent with recent rule making by the Board, the chapter expands the requirement for registration to include nonresident pharmacies shipping controlled substances into Iowa and emergency medical service programs located in Iowa or servicing Iowa with controlled substances. The rule making provides that a pharmacy technician can be involved in the sale of a pseudoephedrine-containing product.

The rule making provides consistency in the registration renewal process, identifying a grace period and terms for reactivation of a registration following the grace period. The requirement of pharmacists to initial each line of a DEA Form 222 upon receipt of Schedule II controlled substances is removed to be consistent with federal regulations. With respect to the handling and dispensing of controlled substances, the rule making requires all registrants to maintain policies and procedures to ensure security and accountability; requires all registrants to maintain a perpetual inventory log of Schedule II controlled substances (previously required only of pharmacies and service programs); requires all registrants to maintain records of dispensing controlled substances to patients or research subjects (previously only required of pharmacies and service programs); provides authority for pharmacists to add the name of the supervising physician on a Schedule II controlled substance prescription, after consultation with the physician assistant who issued the prescription; and requires documentation of each individual involved in the dispensing of a controlled substance prescription.

To provide consistency with federal regulations, the rule making authorizes a pharmacist to fill a Schedule II controlled substance in partial quantities as provided in the federal Comprehensive Addiction and Recovery Act of 2016 and temporarily places into controlled schedules several substances recently designated by the federal Drug Enforcement Administration (DEA) as controlled substances. The rule making also adds two new rules, as are being provided in all the Board's licensing chapters, to provide clear direction on the responsibility of registrants to notify the Board when they have been subject to

PHARMACY BOARD[657](cont'd)

disciplinary sanctions or criminal convictions as well as to summarize the Board's authority to sanction registrations. The amendments update references to provisions in Chapter 10 that are found in other chapters of the Board's rules.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3136C** on June 21, 2017. No public comments were received for this rule making. Changes were made in rule 657—10.3(124) to provide that required registration of nonresident facilities and practitioners involved in the distributing, dispensing, or administering of controlled substances into Iowa is delayed until January 1, 2018.

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

These amendments were approved at the August 30, 2017, regular meeting of the Board of Pharmacy. After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 124.201, 124.301 to 124.308, 124.402, 124.403, 124.501, 126.2, 126.11, 147.88, 155A.13, 155A.17, 155A.26, 155A.37, and 205.3.

These amendments will become effective November 1, 2017.

The following amendments are adopted.

ITEM 1. Amend subparagraph **7.11(2)“c”(1)** as follows:

(1) Schedule II controlled substance. An outpatient medication order for administration of a Schedule II controlled substance shall be written and, except as provided in rule ~~657—10.25(124)~~ 657—10.29(124) regarding the issuance of multiple Schedule II prescriptions, may authorize the administration of an appropriate amount of the prescribed substance for a period not to exceed 90 days from the date ordered.

ITEM 2. Amend subparagraph **8.35(7)“f”(2)** as follows:

(2) The inventory of controlled substances shall be completed pursuant to the requirements in ~~657—10.35(124,155A)~~ 657—10.19(124,155A).

ITEM 3. Amend subparagraph **8.35(7)“f”(5)** as follows:

(5) Controlled substances requiring destruction or other disposal shall be transferred in the same manner as all other drugs. The new owner is responsible for the disposal of these substances as provided in rule ~~657—10.18(124)~~ 657—10.22(124).

ITEM 4. Rescind 657—Chapter 10 and adopt the following **new** chapter in lieu thereof:

CHAPTER 10 CONTROLLED SUBSTANCES

657—10.1(124) Purpose and scope. This chapter establishes the minimum standards for any activity that involves controlled substances. Any person or business that manufactures; distributes; dispenses; prescribes; conducts instructional activities, research, or chemical analysis with; or imports or exports controlled substances listed in Schedules I through V of Iowa Code chapter 124 in or into the state of Iowa, or that proposes to engage in such activities, shall obtain and maintain a registration issued by the board unless exempt from registration pursuant to rule 657—10.8(124). A person or business required to be registered shall not engage in any activity for which registration is required until the application for registration is granted and the board has issued a certificate of registration to such person or business. A registration is not transferable to any person or business.

657—10.2(124) Definitions. For the purposes of this chapter, the following definitions shall apply:

“*Authorized collection program*” means a program administered by a registrant that has modified its registration with DEA to collect controlled substances for the purpose of disposal. Federal regulations for such programs can be found at http://deadiversion.usdoj.gov/drug_disposal/. Modification to the registrant's Iowa controlled substances Act registration shall not be required.

“*Board*” means the Iowa board of pharmacy.

“*CSA*” means the Iowa uniform controlled substances Act.

PHARMACY BOARD[657](cont'd)

“*CSA registration*” or “*registration*” means the registration issued by the board pursuant to the CSA that signifies the registrant’s authorization to engage in registered activities with controlled substances.

“*DEA*” means the United States Department of Justice, Drug Enforcement Administration.

“*Individual practitioner*” means a physician or surgeon (M.D.), osteopathic physician or surgeon (D.O.), dentist (D.D.S. or D.M.D.), doctor of veterinary medicine (D.V.M.), podiatric physician (D.P.M.), optometrist (O.D.), physician assistant (P.A.), resident physician, advanced registered nurse practitioner (A.R.N.P.), or prescribing psychologist.

657—10.3(124) Who shall register. The following persons or businesses shall register on forms provided by the board:

1. Manufacturers, distributors, importers, and exporters located in Iowa. Effective January 1, 2018, nonresident manufacturers, distributors, importers, and exporters distributing controlled substances into Iowa.

2. Reverse distributors located in Iowa. Effective January 1, 2018, nonresident reverse distributors engaging in the transfer of controlled substances with registrants located in Iowa.

3. Individual practitioners located in Iowa who are administering, dispensing, or prescribing controlled substances and individual practitioners located outside of Iowa who are dispensing or prescribing controlled substances via telehealth services to patients located in Iowa.

4. Pharmacies located in Iowa that are dispensing controlled substances. Effective January 1, 2018, pharmacies located outside of Iowa that are delivering controlled substances to patients located in Iowa.

5. Hospitals located in Iowa that are administering or dispensing controlled substances. Effective January 1, 2018, hospitals located outside of Iowa that are administering or dispensing controlled substances to patients located in Iowa.

6. Emergency medical service programs that are administering controlled substances to patients located in Iowa.

7. Care facilities that are located in Iowa.

8. Researchers, analytical laboratories, and teaching institutions that are located in Iowa.

9. Animal shelters and dog training facilities that are located in Iowa.

657—10.4 Reserved.

657—10.5(124) Application. Applicants for initial registration, registration renewal pursuant to rule 657—10.6(124), or modifications pursuant to rule 657—10.9(124) shall complete the appropriate application and shall include all required information and attachments. Each registration application shall require submission of a \$90 registration fee except as provided in subrule 10.5(3).

10.5(1) Signature requirements. Each application, attachment, or other document filed as part of an application shall be signed by the applicant as follows:

a. If the applicant is an individual practitioner, the practitioner shall sign the application and supporting documents.

b. If the applicant is a business, the application and supporting documents shall be signed by the person ultimately responsible for the security and maintenance of controlled substances at the registered location.

10.5(2) Submission of multiple applications. Any person or business required to obtain more than one registration pursuant to rule 657—10.7(124) or 657—10.8(124) may submit all applications in one package. Each application shall be complete and shall not refer to any accompanying application or any attachment to an accompanying application for required information.

10.5(3) Registration fee exemptions. The registration fee is waived for federal, state, and local law enforcement agencies and for the following federal and state institutions: hospitals, health care or teaching institutions, and analytical laboratories authorized to possess, manufacture, distribute, and dispense controlled substances in the course of official duties. In order to enable law enforcement agency laboratories to obtain and transfer controlled substances for use as standards in chemical analysis,

PHARMACY BOARD[657](cont'd)

such laboratories shall maintain a registration to conduct chemical analysis (analytical laboratory). Such laboratories shall be exempt from any registration fee. Exemption from payment of any fees as provided in this subrule does not relieve the entity of registration or of any other requirements or duties prescribed by law.

657—10.6(124) Registration renewal. Each registration shall be renewed prior to its biennial expiration. A registrant may renew its registration up to 60 days prior to the registration expiration. The fee for registration renewal shall be \$90.

10.6(1) *Delinquent registration grace period.* A registration that is not renewed prior to the first day of the month following expiration shall be delinquent. A registrant may continue operations within the first 30 days following expiration while the license is delinquent if the registrant is in the process of renewing the registration. Failure to renew a registration prior to the first day of the month following expiration, but when submitting a completed renewal application within the 30 days following expiration, shall require payment of the renewal fee and a penalty fee of \$90.

10.6(2) *Delinquent registration reactivation beyond grace period.* If a registration renewal application is not postmarked or hand-delivered to the board office within 30 days following its expiration date, the registrant may not conduct operations that involve controlled substances until the registrant reactivates the registration. A registrant may apply for reactivation by submitting a registration application for reactivation and a \$360 fee. As part of the reactivation application, the registrant shall disclose the activities conducted with respect to controlled substances while the registration was expired. A registrant that continues to conduct activities with respect to controlled substances without an active registration may be subject to disciplinary sanctions.

657—10.7(124) Separate registration for independent activities; coincident activities. The following activities are deemed to be independent of each other and shall require separate registration. Any person or business engaged in more than one of these activities shall be required to separately register for each independent activity, provided, however, that registration in an independent activity shall authorize the registrant to engage in activities identified coincident with that independent activity.

10.7(1) *Manufacturing controlled substances.* A person or business registered to manufacture controlled substances in Schedules I through V may distribute any substances for which registration to manufacture was issued. A person or business registered to manufacture controlled substances in Schedules II through V may conduct chemical analysis and preclinical research, including quality control analysis, with any substances listed in those schedules for which the person or business is registered to manufacture.

10.7(2) *Distributing controlled substances.* This independent activity includes the delivery, other than by administering or dispensing, of controlled substances listed in Schedules I through V. No coincident activities are authorized.

10.7(3) *Dispensing, administering, prescribing, or instructing with controlled substances.* These independent activities include, but are not limited to, prescribing, administering, and dispensing by individual practitioners; dispensing by pharmacies and hospitals; and conducting instructional activities with controlled substances listed in Schedules II through V. A person or business registered for these independent activities may conduct research and instructional activities with those substances for which the person or business is registered to the extent authorized under state law. If an entity that engages in the distribution, administration, dispensing, or storing of controlled substances maintains multiple licenses, such as a hospital that has both inpatient and outpatient pharmacies, a separate registration shall be maintained for each license.

10.7(4) *Conducting research with controlled substances listed in Schedule I.* A researcher may manufacture or import the substances for which registration was issued provided that such manufacture or import is permitted under the federal DEA registration. A researcher may distribute the substances for which registration was issued to persons or businesses registered or authorized to conduct research with that class of substances or registered or authorized to conduct chemical analysis with controlled substances.

PHARMACY BOARD[657](cont'd)

10.7(5) *Conducting research with controlled substances listed in Schedules II through V.* A researcher may conduct chemical analysis with controlled substances in those schedules for which registration was issued, may manufacture such substances if and to the extent such manufacture is permitted under the federal DEA registration, and may import such substances for research purposes. A researcher may distribute controlled substances in those schedules for which registration was issued to persons registered or authorized to conduct chemical analysis, instructional activities, or research with such substances, and to persons exempt from registration pursuant to Iowa Code section 124.302(3), and may conduct instructional activities with controlled substances.

10.7(6) *Conducting chemical analysis with controlled substances.* A person or business registered to conduct chemical analysis with controlled substances listed in Schedules I through V may manufacture and import controlled substances for analytical or instructional activities; may distribute such substances to persons registered or authorized to conduct chemical analysis, instructional activities, or research with such substances and to persons exempt from registration pursuant to Iowa Code section 124.302(3); may export such substances to persons in other countries performing chemical analysis or enforcing laws relating to controlled substances or drugs in those countries; and may conduct instructional activities with controlled substances.

10.7(7) *Importing or exporting controlled substances.* A person or business registered to import controlled substances listed in Schedules I through V may distribute any substances for which such registration was issued.

657—10.8(124) Separate registrations for separate locations; exemption from registration. A separate registration is required for each principal place of business or professional practice location where controlled substances are manufactured, distributed, imported, exported, dispensed, stored, or collected for the purpose of disposal unless the person or business is exempt from registration pursuant to Iowa Code section 124.302(3), this rule, or federal regulations.

10.8(1) *Warehouse.* A warehouse where controlled substances are stored by or on behalf of a registered person or business shall be exempt from registration except as follows:

a. Registration of the warehouse shall be required if such controlled substances are distributed directly from that warehouse to registered locations other than the registered location from which the substances were delivered to the warehouse.

b. Registration of the warehouse shall be required if such controlled substances are distributed directly from that warehouse to persons exempt from registration pursuant to Iowa Code section 124.302(3).

10.8(2) *Sales office.* An office used by agents of a registrant where sales of controlled substances are solicited, made, or supervised shall be exempt from registration. Such office shall not contain controlled substances, except substances used for display purposes or for lawful distribution as samples, and shall not serve as a distribution point for filling sales orders.

10.8(3) *Prescriber's office.* An office used by a prescriber who is registered at another location and where controlled substances are prescribed but where no supplies of controlled substances are maintained shall be exempt from registration. However, a prescriber who practices at more than one office location where controlled substances are administered or otherwise dispensed as a regular part of the prescriber's practice shall register at each location wherein the prescriber maintains supplies of controlled substances.

10.8(4) *Prescriber in hospital.* A prescriber who is registered at another location and who treats patients and may order the administration of controlled substances in a hospital other than the prescriber's registered practice location shall not be required to obtain a separate registration at the location of the hospital.

10.8(5) *Affiliated interns, residents, or foreign physicians.* An individual practitioner who is an intern, resident, or foreign physician may dispense and prescribe controlled substances under the registration of the hospital or other institution which is registered and by whom the practitioner is employed provided that:

a. The hospital or other institution by which the individual practitioner is employed has determined that the practitioner is permitted to dispense or prescribe drugs by the appropriate licensing board.

PHARMACY BOARD[657](cont'd)

b. Such individual practitioner is acting only in the scope of employment or practice in the hospital, institution, internship program, or residency program.

c. The hospital or other institution authorizes the intern, resident, or foreign physician to dispense or prescribe under the hospital registration and designates a specific internal code number, letters, or combination thereof which shall be appended to the institution's DEA registration number, preceded by a hyphen (e.g., AP1234567-10 or AP1234567-12).

d. The hospital or institution maintains a current list of internal code numbers identifying the corresponding individual practitioner, available for the purpose of verifying the authority of the prescribing individual practitioner.

657—10.9(124) Modification or termination of registration. A registered individual or business shall apply to modify a current registration as provided by this rule.

10.9(1) Change of substances authorized. Any registrant shall apply to modify the substances authorized by the registration by submitting a written request to the board. The request shall include the registrant's name, address, telephone number, registration number, and the substances or schedules to be added to or removed from the registration and shall be signed by the same person who signed the most recent application for registration or registration renewal. No fee shall be required for the modification.

10.9(2) Change of address of registered location.

a. *Individual practitioner or researcher.* An entity registered as an individual practitioner or researcher shall apply to change the address of the registered location by submitting a written request to the board. The request shall include the registrant's name, current address, new address, telephone number, effective date of the address change, and registration number, and shall be signed by the registered individual practitioner or the same person who signed the most recent application for registration or registration renewal. No fee shall be required for the modification.

b. *Pharmacy, hospital, care facility, service program, manufacturer, distributor, analytical laboratory, teaching institution, importer, or exporter.* An entity registered as a pharmacy, hospital, care facility, service program, manufacturer, distributor, analytical laboratory, teaching institution, importer, or exporter shall apply to change the address of the registered location by submitting a completed application and fee for registration as provided in rule 657—10.5(124).

10.9(3) Change of registrant's name.

a. *Individual practitioner or researcher.* An entity registered as an individual practitioner or researcher shall apply to change the registrant's name by submitting a written request to the board. The request shall include the registrant's current name, new name, address, telephone number, effective date of the name change, and registration number, and shall be signed by the registered individual practitioner or the same person who signed the most recent application for registration or registration renewal. No fee shall be required for the modification. Change of name, as used in this paragraph, refers to a change of the legal name of the registrant and does not authorize the transfer of a registration issued to an individual practitioner or researcher to another individual practitioner or researcher.

b. *Pharmacy, hospital, care facility, service program, manufacturer, distributor, analytical laboratory, teaching institution, importer, or exporter.* An entity registered as a pharmacy, hospital, care facility, service program, manufacturer, distributor, analytical laboratory, teaching institution, importer, or exporter shall apply to change the registrant name by submitting a completed application and fee for registration as provided in rule 657—10.5(124).

10.9(4) Change of ownership of registered business entity. A change of immediate ownership of a pharmacy, hospital, care facility, service program, manufacturer, distributor, analytical laboratory, teaching institution, importer, or exporter shall require the submission of a completed application and fee for registration as provided in rule 657—10.5(124).

10.9(5) Change of responsible individual. Any registrant, except an individual practitioner or researcher or a pharmacy or hospital, shall apply to change the responsible individual authorized by the registration by submitting a written request to the board. The request shall include the registrant's name, address, and telephone number; the name and title of the current responsible individual and of

PHARMACY BOARD[657](cont'd)

the new responsible individual; the effective date of the change; and the registration number and shall be signed by the new responsible individual. No fee shall be required for the modification.

a. Individual practitioners and researchers. Responsibility under a registration issued to an individual practitioner or researcher shall remain with the named individual practitioner or researcher. The responsible individual under such registration may not be changed or transferred.

b. Pharmacies and hospitals. The responsible pharmacist may execute a power of attorney for DEA order forms to change responsibility under the registration issued to the pharmacy or hospital. The power of attorney shall include the name, address, DEA registration number, and CSA registration number of the registrant. The power of attorney shall identify the current and new responsible individuals and shall authorize the new responsible individual to execute applications and official DEA order forms to requisition Schedule II controlled substances. The power of attorney shall be signed by both individuals, shall be witnessed by two adults, and shall be maintained by the registrant and available for inspection or copying by representatives of the board or other state or federal authorities. The responsible individual may be changed on the CSA registration by submission of a completed application and fee for registration as provided in rule 657—10.5(124).

10.9(6) Termination of registration. A registration issued to an individual or business shall terminate when the registered individual or business ceases legal existence, discontinues business, or discontinues professional practice. A registration issued to an individual shall terminate upon the death of the individual.

657—10.10(124) Denial, modification, suspension, or revocation of registration.

10.10(1) Grounds for suspension or revocation. The board may suspend or revoke any registration upon a finding that the registrant:

- a.* Has furnished false or fraudulent material information in any application filed under this chapter.
- b.* Has had the registrant's federal registration to manufacture, distribute, or dispense controlled substances suspended or revoked.
- c.* Has been convicted of a public offense under any state or federal law relating to any controlled substance. For the purpose of this rule only, a conviction shall include a plea of guilty, a forfeiture of bail or collateral deposited to secure a defendant's appearance in court which forfeiture has not been vacated, or a finding of guilt in a criminal action even though entry of the judgment or sentence has been withheld and the individual has been placed on probation.
- d.* Has committed such acts as would render the registrant's registration under Iowa Code section 124.303 inconsistent with the public interest as determined by that section.
- e.* Has been subject to discipline by the registrant's respective professional licensing board and the discipline revokes or suspends the registrant's professional license or otherwise disciplines the registrant's professional license in a way that restricts the registrant's authority to handle or prescribe controlled substances. A copy of the record of licensee discipline or a copy of the licensee's surrender of the professional license shall be conclusive evidence.

10.10(2) Limited suspension or revocation. If the board finds grounds to suspend or revoke a registration, the board may limit revocation or suspension of the registration to the particular controlled substance, substances, or schedules with respect to which the grounds for revocation or suspension exist. If the revocation or suspension is limited to a particular controlled substance, substances, or schedules, the registrant shall be given a new certificate of registration reflecting the restrictions imposed by the revocation or suspension; no fee shall be required for the new certificate of registration. The registrant shall deliver the old certificate of registration to the board.

10.10(3) Denial of registration or registration renewal. If, upon examination of an application for registration or registration renewal, including any other information the board has or receives regarding the applicant, the board determines that the issuance of the registration would be inconsistent with the public interest, the board shall serve upon the applicant an order to show cause why the registration should not be denied.

10.10(4) Considerations in denial of registration. In determining the public interest, the board shall consider all of the following factors:

PHARMACY BOARD[657](cont'd)

- a. Maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels.
- b. Compliance with applicable state and local law.
- c. Any convictions of the applicant under any federal and state laws relating to any controlled substance.
- d. Past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion.
- e. Furnishing by the applicant of false or fraudulent material in any application filed under this chapter.
- f. Suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense controlled substances as authorized by federal law.
- g. Any other factors relevant to and consistent with the public health and safety.

10.10(5) Order to show cause. Before denying, modifying, suspending, or revoking a registration, the board shall serve upon the applicant or registrant an order to show cause why the registration should not be denied, modified, revoked, or suspended. The order to show cause shall contain a statement of the basis therefore and shall call upon the applicant or registrant to appear before an administrative law judge or the board at a time and place not less than 30 days after the date of service of the order. The order to show cause shall also contain a statement of the legal basis for such hearing and for the denial, revocation, suspension, or modification of registration and a summary of the matters of fact and law asserted. If the order to show cause involves the possible denial of registration renewal, the order shall be served not later than 30 days before the expiration of the registration. Proceedings to refuse renewal of registration shall not abate the existing registration, which shall remain in effect pending the outcome of the administrative hearing unless the board issues an order of immediate suspension pursuant to subrule 10.10(9).

10.10(6) Hearing requested. If an applicant or registrant that has received an order to show cause desires a hearing on the matter, the applicant or registrant shall file a request for a hearing within 30 days after the date of service of the order to show cause. If a hearing is requested, the board shall hold a hearing pursuant to 657—Chapter 35 at the time and place stated in the order and without regard to any criminal prosecution or other proceeding. Unless otherwise ordered by the board, an administrative law judge employed by the department of inspections and appeals shall be assigned to preside over the case and to draft a proposed decision for the board's consideration.

10.10(7) Waiver of hearing. If an applicant or registrant entitled to a hearing on an order to show cause fails to file a request for hearing, or if the applicant or registrant requests a hearing but fails to appear at the hearing, the applicant or registrant shall be deemed to have waived the opportunity for a hearing unless the applicant or registrant shows good cause for such failure.

10.10(8) Final board order when hearing waived. If an applicant or registrant entitled to a hearing waives or is deemed to have waived the opportunity for a hearing, the executive director of the board may cancel the hearing and issue, on behalf of the board, the board's final order on the order to show cause.

10.10(9) Order of immediate suspension. The board may suspend any registration simultaneously with the service upon the registrant of an order to show cause why such registration should not be revoked or suspended if the board finds there is an imminent danger to the public health or safety that warrants such action. If the board suspends a registration simultaneously with the service of the order to show cause upon the registrant, it shall serve upon the registrant with the order to show cause an order of immediate suspension containing a statement of its findings regarding the danger to public health or safety. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, under the provisions of the Iowa administrative procedure Act, unless sooner withdrawn by the board or dissolved by the order of the district court or an appellate court.

10.10(10) Disposition of controlled substances. If the board suspends or revokes a registration, the registrant shall promptly return the certificate of registration to the board. Also, upon service of the order of the board suspending or revoking the registration, the registrant shall deliver all affected controlled substances in the registrant's possession to the board or authorized agent of the board. Upon receiving the

PHARMACY BOARD[657](cont'd)

affected controlled substances from the registrant, the board or its authorized agent shall place all such substances under seal and retain the sealed controlled substances pending final resolution of any appeals or until a court of competent jurisdiction directs otherwise. No disposition may be made of the substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application, orders the sale of perishable substances and the deposit of proceeds of the sale with the court. Upon a revocation order's becoming final, all such controlled substances may be forfeited to the state.

10.10(11) Notifications. The board shall promptly notify the DEA and the Iowa department of public safety of all orders suspending or revoking registration and all forfeitures of controlled substances.

657—10.11 Reserved.

657—10.12(124) Inspection. The board may inspect, or cause to be inspected, the establishment of an applicant or registrant. The board shall review the application for registration and other information regarding an applicant or registrant in order to determine whether the applicant or registrant has met the applicable standards of Iowa Code chapter 124 and these rules.

657—10.13(124) Security requirements. All registrants shall provide effective controls and procedures to guard against theft and diversion of controlled substances. In order to determine whether a registrant has provided effective controls against diversion, the board shall use the security requirements set forth in these rules as standards for the physical security controls and operating procedures necessary to prevent diversion.

10.13(1) Physical security. Physical security controls shall be commensurate with the schedules and quantity of controlled substances in the possession of the registrant in normal business operation. A registrant shall periodically review and adjust security measures based on rescheduling of substances or changes in the quantity of substances in the possession of the registrant.

a. Controlled substances listed in Schedule I shall be stored in a securely locked, substantially constructed cabinet or safe.

b. Controlled substances listed in Schedules II through V may be stored in a securely locked, substantially constructed cabinet or safe. However, pharmacies and hospitals may disperse these substances throughout the stock of noncontrolled substances in a manner so as to obstruct the theft or diversion of the controlled substances.

c. Controlled substances collected via an authorized collection program for the purpose of disposal shall be stored pursuant to federal regulations, which can be found at http://deadiversion.usdoj.gov/drug_disposal/.

10.13(2) Factors in evaluating physical security systems. In evaluating the overall security system of a registrant or applicant necessary to maintain effective controls against theft or diversion of controlled substances, the board may consider any of the following factors it deems relevant to the need for strict compliance with the requirements of this rule:

a. The type of activity conducted.

b. The type, form, and quantity of controlled substances handled.

c. The location of the premises and the relationship such location bears to security needs.

d. The type of building construction comprising the facility and the general characteristics of the building or buildings.

e. The type of vault, safe, and secure enclosures available.

f. The type of closures on vaults, safes, and secure enclosures.

g. The adequacy of key control systems or combination lock control systems.

h. The adequacy of electronic detection and alarm systems, if any.

i. The adequacy of supervision over employees having access to controlled substances, to storage areas, or to manufacturing areas.

j. The extent of unsupervised public access to the facility, including the presence and characteristics of perimeter fencing, if any.

PHARMACY BOARD[657](cont'd)

k. The procedures for handling business guests, visitors, maintenance personnel, and nonemployee service personnel.

l. The availability of local police protection or of the registrant's or applicant's security personnel.

m. The adequacy of the registrant's or applicant's system for monitoring the receipt, manufacture, distribution, and disposition of controlled substances.

10.13(3) *Manufacturing and compounding storage areas.* Raw materials, bulk materials awaiting further processing, and finished products which are controlled substances listed in any schedule shall be stored pursuant to federal laws and regulations.

657—10.14(124) *Accountability of controlled substances.* The registrant shall maintain ultimate accountability of controlled substances and records maintained at the registered location.

10.14(1) *Records.* Pursuant to rule 657—10.36(124,155A), records shall be available for inspection and copying by the board or its authorized agents for two years from the date of the record.

10.14(2) *Policies and procedures.* The registrant shall have policies and procedures that identify, at a minimum:

a. Adequate storage for all controlled substances to ensure security and proper conditions with respect to temperature and humidity.

b. Access to controlled substances and records of controlled substances by employees of the registrant.

c. Proper disposition of controlled substances.

657—10.15 Reserved.

657—10.16(124) *Receipt and disbursement of controlled substances.* Each transfer of a controlled substance between two registrants, to include a transfer between two separately registered locations regardless of any common ownership, except as provided in subrule 10.16(2), shall require a record of the transaction. Each registrant shall maintain a copy of the record for at least two years from the date of the transfer. Records of the transfer of Schedule II controlled substances shall be created and maintained separately from records of the transfer of Schedules III through V controlled substances pursuant to rule 657—10.36(124,155A). Upon receipt of a controlled substance, the individual responsible for receiving the controlled substance shall date and sign the receipt record.

10.16(1) *Record.* The record, unless otherwise provided in these rules or pursuant to federal law, shall include the following:

a. The name of the substance.

b. The strength and dosage form of the substance.

c. The number of units or commercial containers acquired from other registrants, including the date of receipt and the name, address, and DEA registration number of the registrant from which the substances were acquired.

d. The number of units or commercial containers distributed to other registrants, including the date of distribution and the name, address, and DEA registration number of the registrant to which the substances were distributed.

e. The number of units or commercial containers disposed of in any other manner, including the date and manner of disposal and the name, address, and DEA registration number of the registrant to which the substances were distributed for disposal, if appropriate.

10.16(2) *Distribution of samples and other complimentary packages.* Complimentary packages and samples of controlled substances may be distributed to practitioners pursuant to federal and state law only if the person distributing the items provides to the practitioner a record that contains the information found in this subrule. The individual responsible for receiving the controlled substances shall sign and date the record.

a. The name, address, and DEA registration number of the supplier.

b. The name, address, and DEA registration number of the practitioner.

c. The name, strength, dosage form, and quantity of the specific controlled substances delivered.

PHARMACY BOARD[657](cont'd)

- d. The date of delivery.

657—10.17(124) Ordering or distributing Schedule I or II controlled substances.

10.17(1) DEA Form 222. Except as otherwise provided by subrule 10.17(2) 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, and endorsed and shall contain no alteration, erasure, or change of any 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.

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 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.

10.17(2) 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 Schedule I or 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 reconciling the order. A purchaser shall, for each order filled, retain the

PHARMACY BOARD[657](cont'd)

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.

657—10.18(124) Schedule II perpetual inventory. Each registrant located in Iowa that maintains Schedule II controlled substances shall maintain a perpetual inventory system for all Schedule II controlled substances pursuant to this rule. All records relating to the perpetual inventory shall be maintained at the registered location 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.

10.18(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.

10.18(2) Information included. The perpetual inventory record shall identify all receipts for and disbursements of Schedule II controlled substances by drug or by national drug code (NDC) number. The record shall be updated to identify each receipt, disbursement, and current balance of each individual drug or NDC number. The record shall also include incident reports and reconciliation records pursuant to subrules 10.18(3) and 10.18(4).

10.18(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.

10.18(4) Reconciliation. The registrant shall be responsible for reconciling or ensuring the completion of a reconciliation of the perpetual inventory balance with the physical inventory of all Schedule II controlled substances at least annually. In case of any discrepancies between the physical inventory and the perpetual inventory, the registrant shall be notified immediately. The registrant shall determine the need for further investigation, and significant discrepancies shall be reported to the board pursuant to rule 657—10.21(124) and to the DEA pursuant to federal DEA regulations. Periodic reconciliation records shall be maintained and available for review and copying by the board or its authorized agents for a period of two years from the date of the record. The reconciliation process may be completed using either of the following procedures or a combination thereof:

a. The individual responsible for a disbursement verifies that the physical inventory matches the perpetual inventory following each disbursement 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. If any Schedule II controlled substances in the registrant's current inventory have been disbursed and verified in this manner within the year and there are no discrepancies noted, no additional reconciliation action is required. A perpetual inventory record for a drug that has had no activity within the year shall be reconciled pursuant to paragraph 10.18(4) "b."

PHARMACY BOARD[657](cont'd)

b. A physical count of each Schedule II controlled substance stocked by the registrant shall be completed at least once each year, and that count shall be reconciled with the perpetual inventory record balance. The physical count and reconciliation may be completed over a period of time not to exceed one year in a manner that ensures that the perpetual inventory and the physical inventory of Schedule II controlled substances are annually reconciled. The individual performing the reconciliation shall record the date, the time, the individual's initials or unique identification, and any discrepancies between the physical inventory and the perpetual inventory.

657—10.19(124) Physical count and record of inventory. Each registrant shall be responsible for taking a complete and accurate inventory of all stocks of controlled substances under the control of the registrant pursuant to this rule. The responsible individual may delegate the actual taking of any inventory.

10.19(1) Record and procedure. Each inventory record, except the periodic count and reconciliation required pursuant to subrule 10.18(4), shall comply with the requirements of this subrule and shall be maintained for a minimum of 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 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. Controlled substances on hand shall include prescriptions prepared for dispensing to a patient but not yet delivered to the patient, substances maintained in emergency medical service programs, care facility or hospice emergency supplies, outdated or adulterated substances pending destruction, and substances stored in a warehouse on behalf of the registrant. Controlled substances obtained through an authorized collection program for the purpose of disposal shall not be examined, inspected, counted, sorted, inventoried, or otherwise handled.

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 either prior to opening or 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.
- (3) The quantity of the substance.
- (4) Information required of authorized collection programs pursuant to federal regulations for such collection programs.
- (5) The signature of the person or persons responsible for taking the inventory.
- (6) The date and time (opening or closing) of the inventory.

g. For all substances listed in Schedule I or II, the quantity shall be an exact count or measure of the substance.

h. For all substances listed in Schedule III, IV, or V, the quantity may be an estimated count or measure of the substance unless the container has been opened and originally held more than 100 dosage units. If the opened commercial container originally held more than 100 dosage units, an exact count of the contents shall be made. Products packaged in nonincremented containers may be estimated to the nearest one-fourth container.

10.19(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, storage, 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.

PHARMACY BOARD[657](cont'd)

10.19(3) 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 annually. The annual inventory may be taken on any date that is within 372 days after the date of the previous annual inventory.

10.19(4) Change of ownership, pharmacist in charge, or registered location. When there is a change in ownership, pharmacist in charge, or location for a registration, an inventory shall be taken of all controlled substances in compliance with subrule 10.19(1). The inventory shall be taken following the close of business the last day under terminating ownership, terminating pharmacist in charge's employment, or at the location being vacated. The inventory shall serve as the ending inventory for the terminating owner, terminating pharmacist in charge, or location being vacated, as well as a record of the beginning inventory for the new owner, pharmacist in charge, or location.

10.19(5) Discontinuing registered activity. A registrant shall take an inventory of controlled substances at the close of business 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 which the substances are transferred.

10.19(6) New or rescheduled controlled substances. On the effective date of the addition of a previously noncontrolled substance to any schedule of controlled substances or the rescheduling of a previously controlled substance to another schedule, any registrant who possesses the newly scheduled or rescheduled controlled substance shall take an inventory of all stocks of the substance on hand. That inventory record shall be maintained with the most recent controlled substances inventory record. Thereafter, the controlled substance shall be included in the appropriate schedule of each inventory made by the registrant.

657—10.20 Reserved.

657—10.21(124) Report of theft or loss. A registrant shall report to the board and the DEA any theft or significant loss of controlled substances when the loss is attributable to other than inadvertent error. Thefts or other losses of controlled substances shall be reported whether or not the controlled substances are subsequently recovered or the responsible parties are identified and action taken against them.

10.21(1) Immediate notice to board. If the theft was committed by a registrant or licensee of the board, or if there is reason to believe that the theft was committed by a registrant or licensee of the board, the registrant from which the controlled substances were stolen shall notify the board immediately upon discovery of the theft and shall identify to the board the registrant or licensee suspected of the theft.

10.21(2) Immediate notice to DEA. A registrant shall deliver notice, immediately upon discovery of a reportable theft or loss of controlled substances, to the Des Moines DEA field office via telephone, facsimile, or a brief written message explaining the circumstances of the theft or loss.

10.21(3) Timely report submission. Within 14 calendar days of discovery of the theft or loss, a registrant shall submit directly to the DEA a Form 106 or alternate required form via the DEA Web site at <http://www.deadiversion.usdoj.gov/>. A copy of the report that was completed and submitted to the DEA shall be immediately submitted to the board via facsimile, e-mail attachment, or personal or commercial delivery.

10.21(4) Record maintained. A copy of the report shall be maintained in the registrant's files for a minimum of two years following the date the report was completed.

657—10.22(124) Disposal of registrant stock. A registrant shall dispose of controlled substances pursuant to the requirements of this rule. Disposal records shall be maintained by the registrant for at least two years from the date of the record.

10.22(1) Registrant stock supply. Controlled substances shall be removed from current inventory and disposed of by one of the following procedures.

a. The registrant shall utilize the services of a DEA-registered and Iowa-licensed reverse distributor.

PHARMACY BOARD[657](cont'd)

b. The board may authorize and instruct the registrant to dispose of the controlled substances in one of the following manners:

- (1) By delivery to an agent of the board or to the board office.
- (2) By destruction of the drugs in the presence of a board officer, agent, inspector, or other authorized individual.
- (3) By such other means as the board may determine to ensure that drugs do not become available to unauthorized persons.

10.22(2) *Waste resulting from administration or compounding.* 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 wastage. The record shall include the following:

- a. The controlled substance wasted.
- b. The date of wastage.
- c. The quantity or estimated quantity of the wasted controlled substance.
- d. The source of the controlled substance, including identification of the patient to whom the substance was administered or the drug compounding process utilizing the controlled substance.
- e. The reason for the waste.
- f. The signatures of both individuals involved in the wastage.

657—10.23(124) Disposal of previously dispensed controlled substances. Except as provided in 657—Chapter 23 for care facilities, a registrant may not dispose of previously dispensed controlled substances unless the registrant has modified its registration with DEA to administer an authorized collection program. A registrant shall not take possession of a previously dispensed controlled substance except for reuse for the same patient.

657—10.24(124,126,155A) Prescription requirements. All prescriptions for controlled substances shall be dated as of, and signed on, the day issued. Controlled substances prescriptions shall be valid for six months following date of issue. A prescription for a Schedule III, IV, or V controlled substance may include authorization to refill the prescription no more than five times within the six months following date of issue. A prescription for a Schedule II controlled substance shall not be refilled.

10.24(1) *Form of prescription.* All prescriptions for controlled substances shall bear the full name and address of the patient; the drug name, strength, dosage form, quantity prescribed, and directions for use; and the name, address, and DEA registration number of the prescriber. All prescriptions for controlled substances issued by individual prescribers shall include the legibly preprinted, typed, or hand-printed name of the prescriber as well as the prescriber's written or electronic signature.

a. When an oral order is not permitted, or when a prescriber is unable to prepare and transmit an electronic prescription in compliance with DEA requirements for electronic prescriptions, prescriptions shall be written with ink, indelible pencil, or typed print and shall be manually signed by the prescriber. If the prescriber utilizes an electronic prescription application that meets DEA requirements for electronic prescriptions, the prescriber may electronically prepare and transmit a prescription for a controlled substance to a pharmacy that utilizes a pharmacy prescription application that meets DEA requirements for electronic prescriptions.

b. A prescriber's agent may prepare a prescription for the review, authorization, and manual or electronic signature of the prescriber, but the prescribing practitioner is responsible for the accuracy, completeness, and validity of the prescription.

c. An electronic prescription for a controlled substance shall not be transmitted to a pharmacy except by the prescriber in compliance with DEA regulations.

PHARMACY BOARD[657](cont'd)

d. A prescriber shall securely maintain the unique authentication credentials issued to the prescriber for utilization of the electronic prescription application and authentication of the prescriber's electronic signature. Unique authentication credentials issued to any individual shall not be shared with or disclosed to any other prescriber, agent, or individual.

e. A corresponding liability rests upon the pharmacist who fills a prescription not prepared in the form prescribed by this rule.

10.24(2) Verification by pharmacist. The pharmacist shall verify the authenticity of the prescription with the individual prescriber or the prescriber's agent in each case when a written or oral prescription for a Schedule II controlled substance is presented for filling and neither the prescribing individual practitioner issuing the prescription nor the patient or patient's agent is known to the pharmacist. The pharmacist shall verify the authenticity of the prescription with the individual prescriber or the prescriber's agent in any case when the pharmacist questions the validity of, including the legitimate medical purpose for, the prescription. The pharmacist is required to record the manner by which the prescription was verified and include the pharmacist's name or unique identifier.

10.24(3) Intern, resident, foreign physician. An intern, resident, or foreign physician exempt from registration pursuant to subrule 10.8(5) shall include on all prescriptions issued the hospital's registration number and the special internal code number assigned by the hospital in lieu of the prescriber's registration number required by this rule. Each prescription shall include the stamped or legibly printed name of the prescribing intern, resident, or foreign physician as well as the prescriber's signature.

10.24(4) Valid prescriber/patient relationship. Once the prescriber/patient relationship is broken and the prescriber is no longer available to treat the patient or to oversee the patient's use of the controlled substance, a prescription shall lose its validity. A prescriber/patient relationship shall be deemed broken when the prescriber dies, retires, or moves out of the local service area or when the prescriber's authority to prescribe is suspended, revoked, or otherwise modified to exclude authority for the schedule in which the prescribed substance is listed. The pharmacist, upon becoming aware of the situation, shall cancel the prescription and any remaining refills. However, the pharmacist shall exercise prudent judgment based upon individual circumstances to ensure that the patient is able to obtain a sufficient amount of the drug to continue treatment until the patient can reasonably obtain the service of another prescriber and a new prescription can be issued.

10.24(5) Facsimile transmission of a controlled substance prescription. With the exception of an authorization for emergency dispensing as provided in rule 657—10.26(124), a prescription for a controlled substance in Schedules II, III, IV and V may be transmitted via facsimile from a prescriber to a pharmacy only as provided in rule 657—21.9(124,155A).

657—10.25(124) Dispensing records. Each registrant shall create a record of controlled substances dispensed to a patient or research subject.

10.25(1) Record maintained and available. The record shall be maintained for two years from the date of dispensing and be available for inspection and copying by the board or its authorized agents.

10.25(2) Record contents. The record shall include the following information:

- a. The name and address of the person to whom dispensed.
- b. The date of dispensing.
- c. The name or NDC number, strength, dosage form, and quantity of the substance dispensed.
- d. The name of the prescriber, unless dispensed by the prescriber.
- e. The unique identification of each technician, pharmacist, pharmacist-intern, prescriber, or prescriber's agent involved in dispensing.
- f. The serial number or unique identification number of the prescription.

657—10.26(124) Schedule II emergency prescriptions.

10.26(1) Emergency situation defined. For the purposes of authorizing an oral or facsimile transmission of a prescription for a Schedule II controlled substance listed in Iowa Code section

PHARMACY BOARD[657](cont'd)

124.206, the term “emergency situation” means those situations in which the prescribing practitioner determines that all of the following apply:

a. Immediate administration of the controlled substance is necessary for proper treatment of the intended ultimate user.

b. No appropriate alternative treatment is available, including administration of a drug that is not a Schedule II controlled substance.

c. It is not reasonably possible for the prescribing practitioner to provide a manually signed written prescription to be presented to the pharmacy before the pharmacy dispenses the controlled substance, or the prescribing practitioner is unable to provide a DEA-compliant electronic prescription to the pharmacy before the pharmacy dispenses the controlled substance.

10.26(2) Requirements of emergency prescription. In the case of an emergency situation as defined in subrule 10.26(1), a pharmacist may dispense a controlled substance listed in Schedule II pursuant to a facsimile transmission or upon receiving oral authorization of a prescribing individual practitioner provided that:

a. The quantity prescribed and dispensed is limited to the smallest available quantity to meet the needs of the patient during the emergency period. Dispensing beyond the emergency period requires a written prescription manually signed by the prescribing individual practitioner or a DEA-compliant electronic prescription.

b. If the pharmacist does not know the prescribing individual practitioner, the pharmacist shall make a reasonable effort to determine that the authorization came from an authorized prescriber. The pharmacist shall record the manner by which the authorization was verified and include the pharmacist’s name or unique identification.

c. The pharmacist shall prepare a temporary written record of the emergency prescription. The temporary written record shall consist of a hard copy of the facsimile transmission or a written record of the oral transmission authorizing the emergency dispensing. A written record is not required to consist of a handwritten record and may be a printed facsimile or a print of a computer-generated record of the prescription if the printed record includes all of the required elements for the prescription. If the emergency prescription is transmitted by the practitioner’s agent, the record shall include the first and last names and title of the individual who transmitted the prescription.

d. If the emergency prescription is transmitted via facsimile transmission, the means of transmission shall not obscure or render the prescription information illegible due to security features of the paper utilized by the prescriber to prepare the written prescription, and the hard-copy record of the facsimile transmission shall not be obscured or rendered illegible due to such security features.

e. Within seven days after authorizing an emergency prescription, the prescribing individual practitioner shall cause a written prescription for the emergency quantity prescribed to be delivered to the dispensing pharmacist. In addition to conforming to the requirements of rule 657—10.24(124,126,155A), the prescription shall have written on its face “Authorization for Emergency Dispensing” and the date of the emergency order. The written prescription may be delivered to the pharmacist in person or by mail, but if delivered by mail it must be postmarked within the seven-day period. The written prescription shall be attached to and maintained with the temporary written record prepared pursuant to paragraph 10.26(2)“c.”

f. The pharmacist shall notify the board and the DEA if the prescribing individual fails to deliver a written prescription. Failure of the pharmacist to so notify the board and the DEA, or failure of the prescribing individual to deliver the required written prescription as herein required, shall void the authority conferred by this subrule.

g. Pursuant to federal law and subrule 10.27(3), the pharmacist may fill a partial quantity of an emergency prescription so long as the total quantity dispensed in all partial fillings does not exceed the total quantity prescribed and that the remaining portions are filled no later than 72 hours after the prescription is issued.

657—10.27(124) Schedule II prescriptions—partial filling. The partial filling of a prescription for a controlled substance listed in Schedule II is permitted as provided in this rule and federal regulations.

PHARMACY BOARD[657](cont'd)

10.27(1) *Insufficient supply on hand.* If the pharmacist is unable to supply the full quantity authorized in a prescription and makes a notation of the quantity supplied on the prescription record, a partial fill of the prescription is permitted. The remaining portion of the prescription must be filled within 72 hours of the first partial filling. If the remaining portion is not or cannot be filled within the 72-hour period, the pharmacist shall so notify the prescriber. No further quantity may be supplied beyond 72 hours without a new prescription.

10.27(2) *Long-term care or terminally ill patient.* A prescription for a Schedule II controlled substance written for a patient in a long-term care facility (LTCF) or for a patient with a medical diagnosis documenting a terminal illness may be filled in partial quantities to include individual dosage units as provided by this subrule.

a. If there is any question whether a patient may be classified as having a terminal illness, the pharmacist shall contact the practitioner prior to partially filling the prescription. Both the pharmacist and the practitioner have a corresponding responsibility to ensure that the controlled substance is for a terminally ill patient.

b. The pharmacist shall record on the prescription whether the patient is “terminally ill” or an “LTCF patient.” For each partial filling, the dispensing pharmacist shall record on the back of the prescription or on another appropriate uniformly maintained and readily retrievable record, the date of the partial filling, the quantity dispensed, the remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist.

c. The total quantity of Schedule II controlled substances dispensed in all partial fillings shall not exceed the total quantity prescribed. Schedule II prescriptions for patients in an LTCF or for patients with a medical diagnosis documenting a terminal illness shall be valid for a period not to exceed 60 days from the issue date unless sooner terminated by the discontinuance of the drug.

d. Information pertaining to current Schedule II prescriptions for patients in an LTCF or for patients with a medical diagnosis documenting a terminal illness may be maintained in a computerized system pursuant to rule 657—21.4(124,155A).

10.27(3) *Patient or prescriber request.* At the request of the patient or prescriber, a prescription for a Schedule II controlled substance may be partially filled pursuant to this subrule and federal law. The total quantity dispensed in all partial fillings shall not exceed the total quantity prescribed. Except as provided in paragraph 10.26(2) “g,” the remaining portion of a prescription partially filled pursuant to this subrule may be filled within 30 days of the date the prescription was issued.

657—10.28(124) Schedule II medication order. Schedule II controlled substances may be administered or dispensed to institutionalized patients pursuant to a medication order as provided in 657—subrule 7.13(1) or rule 657—23.18(124,155A), as applicable.

657—10.29(124) Schedule II—issuing multiple prescriptions. An individual prescriber may issue multiple prescriptions authorizing the patient to receive a total of up to a 90-day supply of a Schedule II controlled substance pursuant to the provisions and limitations of this rule.

10.29(1) *Refills prohibited.* The issuance of refills for a Schedule II controlled substance is prohibited. The use of multiple prescriptions for the dispensing of Schedule II controlled substances, pursuant to this rule, ensures that the prescriptions are treated as separate dispensing authorizations and not as refills of an original prescription.

10.29(2) *Legitimate medical purpose.* Each separate prescription issued pursuant to this rule shall be issued for a legitimate medical purpose by an individual prescriber acting in the usual course of the prescriber’s professional practice.

10.29(3) *Dates and instructions.* Each prescription issued pursuant to this rule shall be dated as of and manually signed by the prescriber on the day the prescription is issued. Each separate prescription, other than the first prescription if that prescription is intended to be filled immediately, shall contain written instructions indicating the earliest date on which a pharmacist may fill each prescription.

10.29(4) *Authorized fill date unalterable.* Regardless of the provisions of rule 657—10.30(124), when a prescription contains instructions from the prescriber indicating that the prescription shall not be

PHARMACY BOARD[657](cont'd)

filled before a certain date, a pharmacist shall not fill the prescription before that date. The pharmacist shall not contact the prescriber for verbal authorization to fill the prescription before the fill date originally indicated by the prescriber pursuant to this rule.

10.29(5) *Number of prescriptions and authorized quantity.* An individual prescriber may issue for a patient as many separate prescriptions, to be filled sequentially pursuant to this rule, as the prescriber deems necessary to provide the patient with adequate medical care. The cumulative effect of the filling of each of these separate prescriptions shall result in the receipt by the patient of a quantity of the Schedule II controlled substance not exceeding a 90-day supply.

10.29(6) *Prescriber's discretion.* Nothing in this rule shall be construed as requiring or encouraging an individual prescriber to issue multiple prescriptions pursuant to this rule or to see the prescriber's patients once every 90 days when prescribing Schedule II controlled substances. An individual prescriber shall determine, based on sound medical judgment and in accordance with established medical standards, how often to see patients and whether it is appropriate to issue multiple prescriptions pursuant to this rule.

657—10.30(124) Schedule II—changes to a prescription. With appropriate verification, a pharmacist may add information provided by the patient or patient's agent, such as the patient's address, to a Schedule II controlled substance prescription.

10.30(1) *Changes prohibited.* A pharmacist shall never change the patient's name, the controlled substance prescribed except for generic substitution, or the name or signature of the prescriber.

10.30(2) *Changes authorized.* After consultation with the prescriber or the prescriber's agent and documentation of such consultation, a pharmacist may change or add the following information on a Schedule II controlled substance prescription:

- a. The drug strength.
- b. The dosage form.
- c. The drug quantity.
- d. The directions for use.
- e. The date the prescription was issued.
- f. The prescriber's address or DEA registration number.
- g. The name of the supervising prescriber if the prescription was issued by a physician assistant.

657—10.31 Reserved.

657—10.32(124) Schedule III, IV, or V prescription. No prescription for a controlled substance listed in Schedule III, IV, or V shall be filled or refilled more than six months after the date on which it was issued nor be refilled more than five times.

10.32(1) *Record.* Each filling and refilling of a prescription shall be entered in a uniformly maintained and readily retrievable record in accordance with rule 657—10.25(124). If the pharmacist merely initials or affixes the pharmacist's unique identifier and dates the back of the prescription, it shall be deemed that the full face amount of the prescription has been dispensed.

10.32(2) *Oral refill authorization.* The prescribing practitioner may authorize additional refills of Schedule III, IV, or V controlled substances on the original prescription through an oral refill authorization transmitted to an authorized individual at the pharmacy provided the following conditions are met:

a. The total quantity authorized, including the amount of the original prescription, does not exceed five refills nor extend beyond six months from the date of issuance of the original prescription.

b. The pharmacist, pharmacist-intern, or technician who obtains the oral authorization from the prescriber who issued the original prescription documents, on or with the original prescription, the date authorized, the quantity of each refill, the number of additional refills authorized, and the unique identification of the authorized individual.

c. The quantity of each additional refill is equal to or less than the quantity authorized for the initial filling of the original prescription.

PHARMACY BOARD[657](cont'd)

d. The prescribing practitioner must execute a new and separate prescription for any additional quantities beyond the five-refill, six-month limitation.

10.32(3) *Partial fills.* The partial filling of a prescription for a controlled substance listed in Schedule III, IV, or V is permissible provided that each partial fill is recorded in the same manner as a refill pursuant to subrule 10.32(1). The total quantity dispensed in all partial fills shall not exceed the total quantity prescribed.

10.32(4) *Medication order.* A Schedule III, IV, or V controlled substance may be administered or dispensed to institutionalized patients pursuant to a medication order as provided in 657—subrule 7.13(1) or rule 657—23.9(124,155A), as applicable.

657—10.33(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.

10.33(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.

10.33(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.
- c.* 48 dosage units of any controlled substance containing opium.
- d.* 24 dosage units of any other controlled substance.

10.33(3) *Age of purchaser.* The purchaser shall be at least 18 years of age.

10.33(4) *Identification.* The pharmacist shall require every purchaser under this rule who is not known by the pharmacist to present a government-issued photo identification, including proof of age when appropriate.

10.33(5) *Record.* A bound record book (i.e., with pages sewn or glued to the spine) 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 approved the dispensing of the substance to the purchaser.

10.33(6) *Prescription not required under other laws.* No other federal or state law or regulation requires a prescription prior to distributing or dispensing the Schedule V controlled substance.

657—10.34(124) *Dispensing products containing ephedrine, pseudoephedrine, or phenylpropanolamine without a prescription.* 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, pharmacist-intern, or certified pharmacy technician to a purchaser at retail pursuant to the conditions of this rule.

10.34(1) *Who may dispense.* Dispensing shall be by a licensed Iowa pharmacist, by a registered pharmacist-intern under the direct supervision of a pharmacist preceptor, or by a registered certified pharmacy technician under the direct supervision of a pharmacist, except as authorized in 657—Chapter 100. This subrule does not prohibit, after the pharmacist, pharmacist-intern, or certified pharmacy technician 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 another pharmacy employee.

PHARMACY BOARD[657](cont'd)

10.34(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.

10.34(3) *Frequency and quantity.* Dispensing without a prescription 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 without a prescription to the same purchaser within a single calendar day shall not exceed 3,600 mg.

10.34(4) *Age of purchaser.* The purchaser shall be at least 18 years of age.

10.34(5) *Identification.* The pharmacist, pharmacist-intern, or certified pharmacy technician shall require every purchaser under this rule to present a current government-issued photo identification, including proof of age when appropriate. The pharmacist, pharmacist-intern, or certified pharmacy technician 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.

10.34(6) *Record.* Purchase records shall be recorded in the real-time electronic pseudoephedrine tracking system (PTS) established and administered by the governor's office of drug control policy pursuant to 657—Chapter 100. If the PTS is unavailable for use, the purchase record shall be recorded in an alternate format and submitted to the PTS as provided in 657—subrule 100.3(4).

a. Alternate record contents. The alternate 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, pharmacist-intern, or certified pharmacy technician who approved the dispensing of the product.

b. Alternate record format. The record shall 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 that is capable of producing a hard-copy printout of a record.
- (3) A record in an electronic data collection system that captures each of the data elements required by this subrule and that is capable of producing a hard-copy printout of a record.

c. PTS records retrieval. Pursuant to 657—subrule 100.4(6), the pharmacy shall be able to produce a hard-copy printout of transactions recorded in the PTS by the pharmacy for one or more specific products for a specified period of time upon request by the board or its representative or to such other persons or governmental agencies authorized by law to receive such information.

10.34(7) *Notice required.* The pharmacy shall ensure that the following notice is provided to purchasers of ephedrine, pseudoephedrine, or phenylpropanolamine products and that the notice is displayed with or on the electronic signature device or is displayed in the dispensing area and 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.”

657—10.35 Reserved.

657—10.36(124,155A) Records. Every record required to be kept under this chapter or under Iowa Code chapter 124 shall be kept by the registrant and be available for inspection and copying by the board or its representative for at least two years from the date of such record except as otherwise required in these rules. Controlled substances records shall be maintained in a readily retrievable manner that establishes

PHARMACY BOARD[657](cont'd)

the receipt and distribution of all controlled substances. Original records more than 12 months old may be maintained in a secure remote storage area unless such remote storage is prohibited under federal law. If the secure storage area is not located within the same physical structure as the registrant, the records must be retrievable within 48 hours of a request by the board or its authorized agent.

10.36(1) *Schedule I and II records.* Records of controlled substances listed in Schedules I and II shall be maintained separately from all other records of the registrant.

10.36(2) *Schedule III, IV, and V records.* Records of controlled substances listed in Schedules III, IV, and V shall be maintained either separately from all other records of the registrant or in such form that the required information is readily retrievable from the ordinary business records of the registrant.

10.36(3) *Date of record.* The date on which a controlled substance is actually received, imported, distributed, exported, disposed of, or otherwise transferred shall be used as the date of receipt, importation, distribution, exportation, disposal, or transfer.

657—10.37 Reserved.

657—10.38(124) Revision of controlled substances schedules.

10.38(1) *Designation of new controlled substance.* The board may designate any new substance as a controlled substance to be included in any of the schedules in Iowa Code chapter 124 no sooner than 30 days following publication in the Federal Register of a final order so designating the substance under federal law. Designation of a new controlled substance under this subrule shall be temporary as provided in Iowa Code section 124.201(4).

10.38(2) *Objection to designation of a new controlled substance.* The board may object to the designation of any new substance as a controlled substance within 30 days following publication in the Federal Register of a final order so designating the substance under federal law. The board shall file objection to the designation of a substance as controlled, shall afford all interested parties an opportunity to be heard, and shall issue the board's decision on the new designation as provided in Iowa Code section 124.201(4).

657—10.39(124) Temporary designation of controlled substances.

10.39(1) Amend Iowa Code section 124.206(7) by adding the following new paragraph "c":

c. Dronabinol [(-)-delta-9-trans-tetrahydrocannabinol] in an oral solution in a drug product approved for marketing by the U.S. Food and Drug Administration.

10.39(2) Amend Iowa Code section 124.204(9) by adding the following new paragraphs:

t. Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: 5F-ADB; 5F-MDMB-PINACA.

u. Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate, its optical, positional, and geometric isomers, salts and salts of isomers. Other name: 5F-AMB.

v. N-(adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: 5F-APINACA, 5F-AKB48.

w. N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts and salts of isomers. Other name: ADB-FUBINACA.

x. Methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: MDMB-CHMICA, MMB-CHMINACA.

y. Methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate, its optical, positional, and geometric isomers, salts and salts of isomers. Other name: MDMB-FUBINACA.

z. N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers. Other names: 4-fluoroisobutyryl fentanyl, para-fluoroisobutyryl fentanyl.

PHARMACY BOARD[657](cont'd)

657—10.40(124) Excluded and exempt substances. The Iowa board of pharmacy hereby excludes from all schedules the current list of “Excluded Nonnarcotic Products” identified in Title 21, CFR Part 1308, Section 22, and the list of “Exempted Prescription Products” described in Title 21, CFR Part 1308, Section 32. Copies of such lists may be obtained by written request to the board office at 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688.

657—10.41(124) Anabolic steroid defined. Anabolic steroid, as defined in Iowa Code section 126.2(2), includes any substance identified as such in Iowa Code section 124.208(6) or 126.2(2).

657—10.42 Reserved.

657—10.43(124) Reporting discipline and criminal convictions. A registrant shall provide written notice to the board of any disciplinary or enforcement action imposed by any licensing or regulatory authority on any license or registration held by the registrant no later than 30 days after the final action. Discipline may include, but is not limited to, fine or civil penalty, citation or reprimand, probationary period, suspension, revocation, and voluntary surrender. A registrant shall provide written notice to the board of any criminal conviction of the registrant or of any owner that is related to the operation of the registered location no later than 30 days after the conviction. The term criminal conviction includes instances when the judgment of conviction or sentence is deferred.

657—10.44(124) Discipline. Pursuant to 657—Chapter 36, the board may fine, suspend, revoke, or impose other disciplinary sanctions on a registration for any of the following:

1. Any violation of the federal Food, Drug, and Cosmetic Act or federal regulations promulgated under the Act.
2. Any conviction of a crime related to controlled substances committed by the registrant, or if the registrant is an association, joint stock company, partnership, or corporation, by any managing officer.
3. Refusing access to the registered location or registrant records to an agent of the board for the purpose of conducting an inspection or investigation.
4. Failure to maintain registration pursuant to 657—Chapter 10.
5. Any violation of Iowa Code chapters 124, 124A, 124B, 126, 155A, or 205, or any rule of the board, including the disciplinary grounds set forth in 657—Chapter 36.

These rules are intended to implement Iowa Code sections 124.201, 124.301 to 124.308, 124.402, 124.403, 124.501, 126.2, 126.11, 147.88, 155A.13, 155A.17, 155A.26, 155A.37, and 205.3.

ITEM 5. 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. A pharmacist may dispense a Schedule II controlled substance to fill an emergency prescription authorization pursuant to the requirements of rule ~~657—10.22(124)~~ 657—10.26(124). The means of transmission via facsimile shall ensure that prescription information is not obscured or rendered illegible due to security features of the paper utilized by the prescriber to prepare a written prescription. 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 faxed prescription drug order, if transmitted by the practitioner’s agent, shall identify the transmitting agent by first and last names and title and shall include the prescriber’s signature or electronic signature. A prescription for a controlled substance shall include the prescriber’s manual signature. If the controlled substance prescription is not manually signed by the prescriber, the pharmacist shall orally verify the authenticity and the content of the prescription by contacting the prescriber or the prescriber’s agent via telephone. The receiving pharmacist shall be responsible for verifying the authenticity of an electronically

PHARMACY BOARD[657](cont'd)

transmitted prescription or of an electronic signature as provided by rule 657—8.19(124,126,155A) or 657—21.3(124,155A). This rule shall not apply to a prescription drug order transmitted pursuant to 657—paragraph 8.15(1)“d.”

ITEM 6. Amend rule 657—21.13(124,155A) as follows:

657—21.13(124,155A) Facsimile transmission of a prescription for Schedule II controlled substances—emergency situations. A pharmacist may in an emergency situation as defined in ~~657—subrule 10.22(1)~~ rule 657—10.26(124) dispense Schedule II controlled substances pursuant to a facsimile transmission to the pharmacy of a written, signed prescription from the prescribing practitioner or the practitioner’s agent pursuant to the requirements of ~~657—10.22(124)~~ rule 657—10.26(124). The facsimile or a print of the facsimile transmission shall serve as the temporary written record required by ~~657—subrule 10.22(2)~~ rule 657—10.26(124).

ITEM 7. Amend rule 657—23.18(124,155A) as follows:

657—23.18(124,155A) Schedule II orders. This rule shall not apply to Schedule II controlled substances orders in facilities that utilize a floor stock distribution system as provided in subrule 23.11(4). Schedule II controlled substances in all other facilities shall be dispensed only upon receipt of an electronic prescription prepared, transmitted, and received in compliance with DEA regulations for electronic prescriptions or an original written order signed by the prescribing individual practitioner or upon receipt of a facsimile transmission of an original written order signed by the prescribing individual practitioner pursuant to rule 657—21.15(124,155A). In emergency situations as defined in ~~657—subrule 10.22(1)~~ rule 657—10.26(124), Schedule II controlled substances may be dispensed in compliance with the requirements of rule ~~657—10.22(124)~~ 657—10.26(124) or rule 657—21.13(124,155A), as applicable. In all cases, any order for a Schedule II controlled substance shall specify the total quantity authorized by the prescriber.

ITEM 8. Amend subrule 100.3(4) as follows:

100.3(4) Availability of electronic PTS. If the electronic PTS is unavailable for use, the dispenser shall maintain a written record of each transaction pursuant to ~~657—subrule 10.32(6)~~ 10.34(6). The dispenser shall enter the information from the written record into the PTS within 72 hours of the time the PTS is again available and shall include in the electronic record that the record is a delayed entry.

[Filed 9/8/17, effective 11/1/17]

[Published 9/27/17]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 9/27/17.

ARC 3346C

PHARMACY BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code section 17A.7(2), the Board of Pharmacy hereby rescinds Chapter 24, “Pharmacy Internet Sites,” and amends Chapter 25, “Child Support Noncompliance,” Chapter 26, “Petitions for Rule Making,” Chapter 27, “Declaratory Orders,” Chapter 29, “Sales of Goods and Services,” and Chapter 31, “Student Loan Default or Noncompliance with Agreement for Payment of Obligation,” Iowa Administrative Code.

Pursuant to Iowa Code section 17A.7(2), this rule making is the result of an overall review of administrative rules. These amendments update language in Board rules to reflect the current name and contact information for the Board and, in some Items, correct inaccurate citations to rules and laws. Additionally, during the 2017 Legislative Session of the 87th General Assembly, 2017 Iowa Acts, Senate File 484, was signed into law, rescinding Iowa Code section 155A.13B regarding pharmacy Internet sites. As a result, Item 1 of this rule making rescinds 657—Chapter 24.

PHARMACY 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 June 21, 2017, Iowa Administrative Bulletin as **ARC 3133C**. The Board received no written comments regarding the proposed amendments. The adopted amendments are identical to those published under Notice.

These amendments were approved during the August 30, 2017, meeting of the Board of Pharmacy. After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 17A.7(2) and 2017 Iowa Acts, Senate File 484.

These amendments will become effective on November 1, 2017.

The following amendments are adopted.

ITEM 1. Rescind and reserve **657—Chapter 24**.

ITEM 2. Amend rule **657—25.1(252J)**, definition of “Board,” as follows:

“Board” means the Iowa board of pharmacy ~~examiners~~.

ITEM 3. Amend subrule 25.2(3) as follows:

25.2(3) Preparation and service of denial notice. The executive ~~secretary/director~~ director of the board is authorized to prepare and serve the notice upon the licensee.

ITEM 4. Amend subrule 25.3(3) as follows:

25.3(3) Preparation and service of revocation or suspension notice. The executive ~~secretary/director~~ director of the board is authorized to prepare and serve the revocation or suspension notice upon the licensee and is directed to notify the licensee that the license will be suspended unless the license is already suspended on other grounds. In the event that the license is on suspension, the executive ~~secretary/director~~ director shall notify the licensee of the board’s intention to revoke the license.

ITEM 5. Amend subrule 25.3(5) as follows:

25.3(5) Reinstatement following license suspension, revocation, or denial of renewal. A licensee shall pay all board fees required for license renewal or license reinstatement, and all continuing education requirements shall be met, before a license will be reinstated after the board has suspended a license pursuant to the Act. A licensee whose license to practice pharmacy has been revoked shall complete the examination components as indicated in rule ~~657—2.10(155A)~~ 657—2.1(147,155A) and shall pay all required examination fees pursuant to rule ~~657—2.2(147)~~ 657—2.3(147,155A). A licensee whose registration to practice as a pharmacist-intern, as a pharmacy technician, or as a pharmacy support person or whose registration to handle controlled substances under Iowa Code chapter 124 has been revoked shall complete the appropriate application and pay all board fees required for new registration.

ITEM 6. Amend rule 657—26.1(17A) as follows:

657—26.1(17A) Petition for rule making. Any person, association, agency, or political subdivision may file a petition for rule making with the board of pharmacy at 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688. A petition is deemed filed when received by that office. The board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be typewritten, machine printed, or legibly handwritten in ink and must substantially conform to the following form:

IOWA BOARD OF PHARMACY EXAMINERS

Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject matter).	}	PETITION FOR RULE MAKING
--	---	-----------------------------

The petition shall include the following information:

1. to 5. No change.

PHARMACY BOARD[657](cont'd)

- 6. Any request by petitioner for a meeting provided for by rule 657—26.4(17A).
- 7. No change.

ITEM 7. Amend rule 657—26.3(17A) as follows:

657—26.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to Executive ~~Secretary/Director~~ Director, Iowa Board of Pharmacy ~~Examiners~~, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688, or via electronic mail to loyd.jessen@ibpe.state-ia.us and andrew.funk@iowa.gov.

ITEM 8. Amend rule 657—27.1(17A) as follows:

657—27.1(17A) Petition for declaratory order. Any person may file a petition with the board of pharmacy ~~examiners~~, hereinafter referred to as “the board,” for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the Iowa Board of Pharmacy ~~Examiners~~ at 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688. A petition is deemed filed when it is received by that office. The board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition shall be typewritten or legibly handwritten in ink and shall substantially conform to the following form:

IOWA BOARD OF PHARMACY EXAMINERS

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).



PETITION FOR
DECLARATORY ORDER

The petition shall provide the following information:

- 1. to 8. No change.

The petition shall be dated and signed by the petitioner or the petitioner’s representative. It shall also include the name, mailing address, and telephone number of the petitioner and petitioner’s representative and a statement indicating the person to whom communications concerning the petition should be directed.

ITEM 9. Amend subrule 27.3(3) as follows:

27.3(3) A petition for intervention shall be filed at the board office at 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688. Such a petition is deemed filed when it is received by that office. The board will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention shall be typewritten or legibly handwritten in ink and shall substantially conform to the following form:

IOWA BOARD OF PHARMACY EXAMINERS

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).



PETITION FOR
INTERVENTION

The petition for intervention shall provide the following information:

- 1. to 6. No change.

The petition shall be dated and signed by the intervenor or the intervenor’s representative. It shall also include the name, mailing address, and telephone number of the intervenor and intervenor’s representative, and a statement indicating the person to whom communications should be directed.

PHARMACY BOARD[657](cont'd)

ITEM 10. Amend rule 657—27.5(17A) as follows:

657—27.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Iowa Board of Pharmacy ~~Examiners~~, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688.

ITEM 11. Amend rule 657—27.6(17A) as follows:

657—27.6(17A) Service and filing of petitions and other papers.

27.6(1) No change.

27.6(2) Filing—when required. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Iowa Board of Pharmacy ~~Examiners~~, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the board.

27.6(3) Method of service, time of filing, and proof of mailing. Method of service, time of filing, and proof of mailing shall be as provided by ~~657—35.11(17A,272C)~~ 657—35.17(17A,272C).

ITEM 12. Amend rule 657—27.8(17A) as follows:

657—27.8(17A) Action on petition.

27.8(1) Within the time allowed by ~~1998 Iowa Acts, chapter 1202, section 13(5)~~ Iowa Code section 17A.9(5), after receipt of a petition for a declaratory order, the ~~executive secretary/director or designee board~~ shall take action on the petition as required by ~~1998 Iowa Acts, chapter 1202, section 13(5)~~ Iowa Code section 17A.9(5).

27.8(2) No change.

ITEM 13. Amend rule 657—27.9(17A) as follows:

657—27.9(17A) Refusal to issue order.

27.9(1) The board shall not issue a declaratory order where prohibited by ~~1998 Iowa Acts, chapter 1202, section 13(1)~~ Iowa Code section 17A.9(1) and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. to 10. No change.

27.9(2) and **27.9(3)** No change.

ITEM 14. Amend **657—Chapter 27**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section 17A.9 ~~as amended by 1998 Iowa Acts, chapter 1202, section 13.~~

ITEM 15. Amend rule 657—29.1(68B) as follows:

657—29.1(68B) Selling of goods or services by members of the board. The board members shall not sell, either directly or indirectly, any goods or services to individuals, associations, or corporations that are subject to the regulatory authority of the board of pharmacy ~~examiners~~ except as authorized by these rules.

ITEM 16. Amend subrules 29.3(1) and 29.3(2) as follows:

29.3(1) A member of the board may sell goods or services to any individual, association, or corporation regulated by any division within the department of public health, other than the board of pharmacy ~~examiners~~. This consent is granted because the sale of such goods or services does not affect the board member's duties or functions on the board.

29.3(2) A member of the board may sell goods or services to any individual, association, or corporation regulated by the board of pharmacy ~~examiners~~ if those goods or services are routinely provided to the public as part of that person's regular professional practice. This consent is granted because the sale of such goods or services does not affect the board member's duties or functions on the board. In the event an individual, association, or corporation to whom a board member sells goods

PHARMACY BOARD[657](cont'd)

or services is directly involved in any matter pending before the board, including a disciplinary matter, that board member shall not participate in any deliberation or decision concerning that matter. In the event a complaint is filed with the board concerning the services provided by the board member to a member of the public, that board member is otherwise prohibited by law from participating in any discussion or decision by the board in that case.

ITEM 17. Amend rule 657—29.4(68B) as follows:

657—29.4(68B) Application for consent. Prior to selling a good or service to an individual, association, or corporation subject to the regulatory authority of the board of pharmacy ~~examiners~~, a board member must obtain prior written consent unless the sale is specifically allowed in rule 657—29.3(68B). The request for consent must be in writing, signed by the board member requesting consent. The application must provide a clear statement of all relevant facts concerning the sale. The application should identify the parties to the sale and the amount of compensation. The application should also explain why the sale should be allowed.

ITEM 18. Amend rule **657—31.1(261)**, definition of “Board,” as follows:

“Board” means the Iowa board of pharmacy ~~examiners~~.

ITEM 19. Amend subrule 31.2(3) as follows:

31.2(3) Preparation and service of denial notice. The executive ~~secretary/director~~ director of the board is authorized to prepare and serve the notice upon the licensee.

ITEM 20. Amend subrule 31.3(3) as follows:

31.3(3) Preparation and service of revocation or suspension notice. The executive ~~secretary/director~~ director of the board is authorized to prepare and serve the notice upon the licensee and is directed to notify the licensee that the license will be suspended unless the license is already suspended on other grounds. In the event that the license is on suspension, the executive ~~secretary/director~~ director shall notify the licensee of the board’s intention to revoke the license.

ITEM 21. Amend subrule 31.3(5) as follows:

31.3(5) Reinstatement following license suspension, revocation, or denial of renewal. All board fees required for license renewal or license reinstatement shall be paid by licensees, and all continuing education requirements shall be met, before a license will be renewed or reinstated after the board has suspended a license pursuant to the Act. A licensee whose license to practice pharmacy has been revoked shall complete the examination components as indicated in rule ~~657—2.10(155A)~~ 657—2.1(147,155A) and shall pay all required examination fees pursuant to rule ~~657—2.2(147)~~ 657—2.3(147,155A). A licensee whose registration to practice as a pharmacist-intern, as a pharmacy technician, or as a pharmacy support person or whose registration to handle controlled substances under Iowa Code chapter 124 has been revoked shall complete the appropriate application and pay all board fees required for new registration.

[Filed 9/8/17, effective 11/1/17]

[Published 9/27/17]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 9/27/17.

ARC 3347C

PHARMACY BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.22 and 147.76, the Board of Pharmacy hereby amends Chapter 34, “Rules for Waivers and Variances,” Iowa Administrative Code.

These amendments eliminate duplicative information regarding filing deadlines and contested case procedures that are established in greater detail in 657—Chapter 35, “Contested Cases.” The required

PHARMACY BOARD[657](cont'd)

contents of the petition for waiver have also been simplified to eliminate information and requirements for information and documentation that have been deemed unnecessary or excessively burdensome, such as a signed release authorizing a person with information regarding a petition to provide the Board with such information.

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 June 21, 2017, Iowa Administrative Bulletin as **ARC 3134C**. The Board received no written comments regarding the proposed amendments. The adopted amendments are identical to those published under Notice.

These amendments were approved during the August 30, 2017, meeting of the Board of Pharmacy.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 17A.9A, 17A.22, 22.2, 124.301, 126.17, 147.76, 155A.2, 205.11, 205.13, 272C.3, and 272C.4.

These amendments will become effective on November 1, 2017.

The following amendments are adopted.

ITEM 1. Amend rule 657—34.2(17A,124,126,147,155A,205,272C) as follows:

657—34.2(17A,124,126,147,155A,205,272C) Scope of chapter. This chapter outlines generally applicable standards and a uniform process for the granting of ~~individual~~ waivers from rules adopted by the board in situations when no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

ITEM 2. Amend rule 657—34.4(17A) as follows:

657—34.4(17A) Criteria for waiver or variance. In response to a petition ~~completed pursuant to rule 34.6(17A) for waiver~~, the board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

1. to 4. No change.

ITEM 3. Amend rule 657—34.5(17A,124,126,147,155A,205,272C) as follows:

657—34.5(17A,124,126,147,155A,205,272C) Filing of petition. A petition for a waiver shall be submitted in writing to the board as follows:

34.5(1) License, registration, or permit application. If the petition relates to a license, registration, or permit application, the petition shall be made in ~~accordance~~ conjunction with the application requirements for the license, registration, or permit in question.

34.5(2) Contested cases. If the petition relates to a procedural rule governing a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case. A petition cannot be submitted to waive a substantive rule the respondent has been charged with violating in a pending contested case.

34.5(3) Other. If the petition does not relate to a license, registration, or permit application or to a pending contested case, the petition may be submitted to the board's executive ~~secretary/director~~ director.

ITEM 4. Amend rule 657—34.6(17A) as follows:

657—34.6(17A) Content of petition. A petition for waiver shall include the following information where applicable and known to the petitioner:

1. to 3. No change.

4. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in rule 657—34.4(17A). This shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.

PHARMACY BOARD[657](cont'd)

~~5. A history of any prior contacts between the board and the petitioner relating to the regulated activity, license, registration, or permit affected by the proposed waiver. This history shall include a description of each affected license, registration, or permit held by the petitioner and any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, registration, or permit within the last five years.~~

~~6. 5.~~ Any information known to the petitioner regarding the board's treatment of similar cases.

~~7. 6.~~ The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of the waiver.

~~8. 7.~~ The name, address, and telephone number of any person who would be adversely affected by the granting of a petition for waiver.

~~9. 8.~~ The name, address, and telephone number of any person with knowledge of facts relevant to the proposed waiver.

~~10. Signed releases authorizing persons with knowledge regarding the request to furnish the board with information relevant to the proposed waiver.~~

ITEM 5. Amend rule 657—34.7(17A) as follows:

657—34.7(17A) Additional information and providing notice. Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. ~~If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the board's executive secretary/director, a committee of the board, or a quorum of the board. The board may provide notice of a petition for waiver to any person who might be affected by the waiver. The board shall provide public notice of any petitions for waiver by including any petitions for waiver on the agenda of the board meeting during which the petition for waiver will be discussed.~~

ITEM 6. Rescind and reserve rules **657—34.8(17A)** and **657—34.9(17A)**.

ITEM 7. Rescind subrules **34.10(4)**, **34.10(7)**, **34.10(8)** and **34.10(9)**.

ITEM 8. Renumber subrules **34.10(5)** and **34.10(6)** as **34.10(4)** and **34.10(5)**.

[Filed 9/8/17, effective 11/1/17]

[Published 9/27/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/27/17.

ARC 3344C

PHARMACY BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3, 17A.22, and 147.76, the Board of Pharmacy hereby rescinds Chapter 35, "Contested Cases," and Chapter 36, "Discipline," Iowa Administrative Code, and adopts new Chapters 35 and 36 with the same titles.

The amendments rescind current chapters regarding contested cases and discipline and adopt new chapters in lieu thereof. Many of the current rules are reorganized and moved from one chapter to another, and duplicative rules are eliminated. Because many of these rules are cross-referenced between the two chapters, and because disciplinary actions are governed by the procedures regarding contested cases, these two chapters have been reviewed and reorganized and are now proposed jointly.

Pursuant to the requirements of Iowa Code chapter 17A, the rules establish the procedures relating to contested cases, including required filings and timelines, requirements for notice of hearing and statements of charges, identification of the presiding officer, and the duties and authority of the presiding officer. The rules address the procedures for disciplinary hearings and nondisciplinary hearings, describe the circumstances under which a presiding Board member may need to withdraw from participation

PHARMACY BOARD[657](cont'd)

in a contested case hearing, identify and prohibit ex parte communications, establish the standards of evidence in a contested case, provide for default judgment, and define a final decision of the Board.

The rules identify the grounds for disciplinary action against a license, registration, or permit issued by the Board of Pharmacy, identify the disciplinary sanctions that may be imposed by the Board upon finding a violation of applicable Iowa Code or Iowa Administrative Code requirements, and identify minimum procedures for reinstatement of a license, registration, or permit that was previously suspended, revoked, or surrendered pursuant to these rules. The rules identify the Board's authority to issue an administrative subpoena, the required basis for such a subpoena, and the procedures for the issuance and enforcement of a subpoena.

The rules establish the requirements for issuance of a confidential order for mental or physical examination of a licensee or registrant that is not a disciplinary action or order, provide for the utilization of a peer review committee when needed, and provide for the assessment of a hearing fee and authorized hearing costs on the subject of a disciplinary hearing that results in disciplinary action against a licensee.

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 June 21, 2017, Iowa Administrative Bulletin as **ARC 3135C**. The Board received no written comments regarding the proposed amendments. The adopted amendments differ from those published under Notice. Minor changes have been made as follows:

- In subrule 35.35(1), the Iowa Code reference is changed from section 17A.18 to section 17A.18A.

- Subrule 36.3(1) has been amended to include “that may violate the board’s rules or that are related to” and now reads as follows:

“**36.3(1) General.** The board may, upon receipt of a written or verbal complaint or upon its own motion pursuant to other evidence received by the board, review and investigate alleged acts or omissions that may violate the board’s rules or that are related to the ethical or professional conduct of a licensee.”

- In subrule 36.10(2), the last word in the first sentence has been changed from “license” to “licensee.”

The amendments were approved during the August 30, 2017, meeting of the Board of Pharmacy.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 17A.10 to 17A.23, 124.304, 124B.12, 126.17, 147.55, 155A.6 to 155A.6B, 155A.12, 155A.13 to 155A.13C, 155A.15 to 155A.18, 155A.26, 205.11, 272C.3 to 272C.6, 272C.9, and 272C.10.

These amendments will become effective on November 1, 2017.

The following amendments are adopted.

ITEM 1. Rescind 657—Chapter 35 and adopt the following **new** chapter in lieu thereof:

CHAPTER 35
CONTESTED CASES

657—35.1(17A,124,124B,126,147,155A,205,272C) Scope and applicability. This chapter applies to contested case proceedings conducted by the board of pharmacy.

657—35.2(17A,272C) Definitions. Except where otherwise specifically defined by law:

“*Board*” means the Iowa board of pharmacy.

“*Contested case*” means a proceeding defined by Iowa Code section 17A.2(5), including but not limited to licensee disciplinary proceedings, license denial proceedings, and license reinstatement proceedings.

“*Issuance*” means the date of mailing of a decision or order, or date of delivery if service is by other means, unless another date is specified in the order.

“*License*” means any license, registration, or permit issued by the board, regardless of whether the license, registration, or permit is active.

PHARMACY BOARD[657](cont'd)

“*Licensee*” means any person or entity possessing a license, registration, or permit issued by the board, regardless of whether the license, registration, or permit is active.

“*Party*” means the state of Iowa, as represented by the office of the attorney general, and respondent or applicant.

“*Probable cause*” means a reasonable ground for belief in the existence of facts warranting the specified proceeding.

657—35.3(17A) Time requirements.

35.3(1) Computation. Time shall be computed as provided in Iowa Code section 4.1(34).

35.3(2) Changing time to take action. For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute or by rule. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

657—35.4(17A) Applicability of Iowa Rules of Civil Procedure. Except as expressly provided in Iowa Code chapter 17A and these rules, the Iowa Rules of Civil Procedure do not apply to contested case proceedings. However, upon application by a party, the board may permit the use of procedures provided for in the Iowa Rules of Civil Procedure unless doing so would unreasonably complicate the proceedings or impose an undue hardship on a party.

657—35.5(17A,272C) Combined statement of charges and settlement agreement. Upon a determination by the board that probable cause exists to take public disciplinary action, the board and the licensee may enter into a combined statement of charges and settlement agreement.

35.5(1) No licensee is entitled to be offered a combined statement of charges and settlement agreement.

35.5(2) Entering into a combined statement of charges and settlement agreement is completely voluntary.

35.5(3) The combined statement of charges and settlement agreement shall include a brief statement of the charges, the circumstances that led to the charges, and the terms of settlement.

35.5(4) A combined statement of charges and settlement agreement shall constitute the commencement and resolution of a contested case proceeding. By entering into a combined statement of charges and settlement agreement, the licensee waives the right to a contested case hearing on the matter.

35.5(5) A combined statement of charges and settlement agreement is a permanent public record open for inspection under Iowa Code chapter 22.

657—35.6(17A,124B,126,147,155A,205,272C) Notice of hearing.

35.6(1) Delivery. Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

a. Personal service, as provided in the Iowa Rules of Civil Procedure; or

b. Certified restricted mail, return receipt requested; or

c. Signed acknowledgment accepting service; or

d. When service cannot be accomplished using the above methods:

(1) An affidavit shall be prepared outlining the measures taken to attempt service; and

(2) Notice of hearing shall be published once each week for three consecutive weeks in a newspaper of general circulation, published or circulated in the county of last-known residence of the respondent. The first notice of hearing shall be published at least 30 days prior to the scheduled hearing.

35.6(2) Contents. The notice of hearing shall contain the following information:

a. A statement of the time, place, and nature of the hearing;

b. A statement of the legal authority and jurisdiction under which the hearing is to be held;

c. A reference to the particular sections of the statutes and rules involved;

d. A short and plain statement of the matters asserted;

PHARMACY BOARD[657](cont'd)

- e.* Identification of all parties, including the name, address and telephone number of the assistant attorney general representing the state;
- f.* Reference to the procedural rules governing conduct of the contested case proceeding;
- g.* Reference to the procedural rules governing settlement;
- h.* Identification of the presiding officer;
- i.* Notification of the time period in which a party may request, pursuant to Iowa Code section 17A.11 and rule 657—35.10(17A,272C), that the presiding officer be an administrative law judge;
- j.* Notification of the time period in which the respondent may file an answer; and
- k.* Notification of the respondent's right to request a closed hearing, if applicable.

35.6(3) Public record. A notice of hearing is a permanent public record open for inspection under Iowa Code chapter 22.

657—35.7(17A,272C) Statement of charges. In the event the board finds there is probable cause for taking public disciplinary action against a licensee, the board shall file a statement of charges. The statement of charges shall be incorporated within the notice of hearing. The statement of charges shall set forth the acts or omissions with which the respondent is charged, including the statute(s) and rule(s) which are alleged to have been violated, and shall be in sufficient detail to enable the preparation of the respondent's defense. Every statement of charges prepared by the board shall be reviewed by the office of the attorney general before it is filed. A statement of charges is a permanent public record open for inspection under Iowa Code chapter 22.

657—35.8(13,272C) Legal representation. Following the issuance of a notice of hearing, the office of the attorney general shall be responsible for the legal representation of the public interest in the contested case. The assistant attorney general assigned to prosecute a contested case before the board shall not represent the board in that case but shall represent the public interest.

657—35.9(17A,272C) Presiding officer in a disciplinary contested case. The presiding officer in a disciplinary contested case shall be the board. When acting as presiding officer, the board may request that an administrative law judge perform certain functions as an aid to the board, such as ruling on prehearing motions, conducting the prehearing conference, ruling on evidentiary objections at hearing, assisting in deliberations, and drafting the written decision for review by the board.

657—35.10(17A,272C) Presiding officer for nondisciplinary hearings.

35.10(1) Request for administrative law judge. Any party in a nondisciplinary contested case who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a request within 20 days after service of a notice of hearing.

35.10(2) Grounds for denial. The board may deny the request only upon a finding that one or more of the following apply:

- a.* There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.
- b.* An administrative law judge is unavailable to hear the case within a reasonable time.
- c.* The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.
- d.* The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.
- e.* Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.
- f.* The request was not timely filed.
- g.* The request is not consistent with a specified statute.

35.10(3) Written ruling. The board shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge, the parties shall be notified at least 10 days prior to hearing if an administrative law judge will not be available.

PHARMACY BOARD[657](cont'd)

657—35.11(17A,124B,147,155A,272C) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the board in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

657—35.12(17A,272C) Telephone or electronic proceedings. The presiding officer may resolve prehearing matters by telephone conference in which all parties have an opportunity to participate. Contested case hearings will generally not be held by telephone or electronic means in the absence of consent by all parties under compelling circumstances. Nothing shall prohibit a witness from testifying by telephone or electronic means pursuant to subrule 35.26(3).

657—35.13(17A) Disqualification.

35.13(1) *Reasons for withdrawal from participation.* A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a. Has a personal bias or prejudice concerning a party or a representative of a party.
- b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties. If the licensee elects to appear before the board in the investigation process, the licensee waives this provision.
- c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties.
- d. Has acted as counsel to any person who is a private party to that proceeding within the past two years.
- e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case.
- f. Has a spouse or relative within the third degree of relationship that:
 - (1) Is a party to the case, or an officer, director or trustee of a party;
 - (2) Is a lawyer in the case;
 - (3) Is known to have an interest that could be substantially affected by the outcome of the case; or
 - (4) Is likely to be a material witness in the case.
- g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

35.13(2) “*Personally investigated*” defined. The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other board functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and rule 657—35.28(17A,272C).

35.13(3) *Determination that withdrawal is not necessary.* In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit by affidavit for the record the relevant information and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

35.13(4) *Motion for disqualification.* If a party asserts disqualification on any appropriate ground, including those listed in subrule 35.13(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.11(3). The motion shall be filed as soon as practicable after the reason alleged

PHARMACY BOARD[657](cont'd)

in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record. The individual against whom disqualification is asserted shall make the initial determination as to whether disqualification is required. If the individual elects not to disqualify, the board shall make the final determination as to disqualification of that individual as part of the record in the case.

657—35.14(17A,272C) Consolidation—severance.

35.14(1) Consolidation. The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where:

- a. The matters at issue involve common parties or common questions of fact or law;
- b. Consolidation would expedite and simplify consideration of the issues involved; and
- c. Consolidation would not adversely affect the rights of any of the parties to those proceedings.

35.14(2) Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

657—35.15(17A,272C) Appearance. The respondent or applicant may be represented by an attorney. The attorney must file an appearance in the contested case. If the attorney is not licensed to practice law in Iowa, the attorney must fully comply with Iowa Court Rule 31.14. If the respondent or applicant is an entity, the entity may designate a representative to appear on behalf of the entity.

657—35.16(17A,272C) Answer. An answer may be filed within 20 days of service of the notice of hearing and statement of charges. An answer shall specifically admit, deny, or otherwise answer all material allegations of the statement of charges to which it responds. It shall state any facts supporting any affirmative defenses and contain as many additional defenses as the respondent may claim. An answer shall state the name, address and telephone number of the person filing the answer. Any allegation in the statement of charges not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

657—35.17(17A,272C) Service and filing of documents.

35.17(1) Filing—when required. After the notice of hearing, all documents in a contested case proceeding shall be filed with the board.

35.17(2) Filing—how made. Filing may be made by delivering or mailing the document to the board office located at 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688. Filing may also be made by e-mailing the document to the e-mail addresses identified in the notice of hearing as the appropriate e-mail address for filing. A party electing to file a document via e-mail is responsible for ensuring the document was received.

35.17(3) Filing—when made. A document is deemed filed at the time it is delivered to the board, delivered to an established courier service for immediate delivery to the board office, mailed by first-class mail or state interoffice mail to the board office, so long as there is proof of mailing, or e-mailed.

35.17(4) Service—when required. Except where otherwise provided by law, every document filed in a contested case proceeding shall be simultaneously served upon each of the parties of record to the proceeding, including the assistant attorney general representing the state. Except for an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

35.17(5) Service—how made. Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order, so long as there is proof of mailing.

35.17(6) Electronic service. Service may be made upon a party or attorney by e-mail if the person consents in writing in that case to be served in that manner. The written consent shall specify the e-mail

PHARMACY BOARD[657](cont'd)

address for such service. The written consent may be withdrawn by written notice served on the parties or attorneys.

35.17(7) Proof of mailing/e-mailing. Proof of mailing/e-mailing includes one of the following:

- a. A legible United States Postal Service postmark on the envelope;
- b. A certificate of service;
- c. A notarized affidavit; or
- d. A certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Iowa Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688, and to the names and addresses of the parties listed below by depositing the same in the United States mail, state interoffice mail, or e-mail when permitted by 657 IAC 35.17(6).

Date

Signature

657—35.18(272C) Investigative file. The board's investigative file is available to the respondent or applicant upon request only after the commencement of a contested case and only prior to the resolution of the contested case. A licensee that elects to enter into a combined statement of charges and settlement agreement is not entitled to request the investigative file. In accordance with Iowa Code section 272C.6(4), information contained within an investigative file is confidential and may only be used in connection with the disciplinary proceedings before the board.

657—35.19(17A,272C) Discovery.

35.19(1) Scope. The scope of discovery described in Iowa Rule of Civil Procedure 1.503 shall apply to contested case proceedings.

35.19(2) Procedures available. The following discovery procedures available in the Iowa Rules of Civil Procedure are available to the parties in a contested case proceeding: depositions upon oral examination or written questions; written interrogatories; production of documents, electronically stored information, and things; and requests for admission. Unless lengthened or shortened by the presiding officer, the time frames for discovery in the specific Iowa Rules of Civil Procedure govern those specific procedures.

a. Iowa Rules of Civil Procedure 1.701 through 1.717 regarding depositions shall apply to any depositions taken in a contested case proceeding. Any party taking a deposition in a contested case shall be responsible for any deposition costs, unless otherwise specified or allocated in an order. Deposition costs include, but are not limited to, reimbursement for mileage of the deponent, costs of a certified shorthand reporter, and expert witness fees, as applicable.

b. Iowa Rule of Civil Procedure 1.509 shall apply to any interrogatories propounded in a contested case proceeding.

c. Iowa Rule of Civil Procedure 1.512 shall apply to any requests for production of documents, electronically stored information, and things in a contested case proceeding.

d. Iowa Rule of Civil Procedure 1.510 shall apply to any requests for admission in a contested case proceeding. Iowa Rule of Civil Procedure 1.511 regarding the effect of an admission shall apply in contested case proceedings.

35.19(3) Disclosure and discovery conference. The mandatory disclosure and discovery conference requirements in Iowa Rules of Civil Procedure 1.500 and 1.507 do not apply to contested case proceedings. However, upon application by a party, the board may order the parties to comply with these procedures unless doing so would unreasonably complicate the proceedings or impose an undue hardship.

35.19(4) Experts. Iowa Rule of Civil Procedure 1.508 shall apply to discovery of any experts identified by a party to a contested case proceeding.

PHARMACY BOARD[657](cont'd)

35.19(5) Service. Discovery shall be served on all parties to the contested case proceeding but shall not be filed with the board.

35.19(6) Motions. A party may file a motion to compel or other motion related to discovery in accordance with this subrule. Any motion filed with the board relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is lengthened or shortened by the presiding officer. The presiding officer may rule on the basis of the written motion and any response or may order argument on the motion.

35.19(7) Use of evidence. Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

657—35.20(17A,272C) Issuance of subpoenas in a contested case.

35.20(1) Types of subpoenas. Subpoenas issued in a contested case may compel the attendance of witnesses at depositions or hearing and may compel the production of books, papers, records, and other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at deposition or hearing or may be issued separately. Subpoenas shall be issued by the executive director or designee upon a written request that complies with the requirements of this rule. A request for a subpoena of mental health records must confirm that the conditions described in subrule 35.20(3) have been satisfied prior to the issuance of the subpoena. The executive director or designee may refuse to issue a subpoena if the request does not comply with the requirements of this rule.

35.20(2) Request for subpoena—contents. A request for a subpoena shall include the following information, as applicable, unless the subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes:

- a. The name, address, and telephone number of the person requesting the subpoena;
- b. The name and address of the person to whom the subpoena shall be directed;
- c. The date, time, and location at which the person shall be commanded to attend and give testimony;
- d. Whether the testimony is requested in connection with a deposition or hearing;
- e. A description of the books, papers, records, or other real evidence requested;
- f. The date, time, and location for production or inspection and copying; and
- g. In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 35.20(3) have been satisfied.

35.20(3) Request for subpoena—mental health records. In the case of a request for a subpoena of mental health records, the request must confirm compliance with the following conditions prior to the issuance of the subpoena:

- a. The nature of the issues in the case reasonably justifies the issuance of the requested subpoena;
- b. Adequate safeguards have been established to prevent unauthorized disclosure;
- c. An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and
- d. An attempt was made to notify the patient and to secure an authorization from the patient for the release of the records at issue.

35.20(4) Content of subpoena. Each subpoena shall contain, as applicable:

- a. The caption of the case;
- b. The name, address, and telephone number of the person who requested the subpoena;
- c. The name and address of the person to whom the subpoena is directed;
- d. The date, time, and location at which the person is commanded to appear;
- e. Whether the testimony is commanded in connection with a deposition or hearing;
- f. A description of the books, papers, records or other real evidence the person is commanded to produce;
- g. The date, time, and location for production or inspection and copying;
- h. The time within which a motion to quash or modify the subpoena must be filed;

PHARMACY BOARD[657](cont'd)

- i.* The signature, address, and telephone number of the executive director or designee;
- j.* The date of issuance;
- k.* A return of service.

35.20(5) *Distribution of subpoena.* Unless a subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes, the executive director or designee shall mail copies of all subpoenas to the parties. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena.

35.20(6) *Timely motion.* Any person who is aggrieved or adversely affected by compliance with the subpoena, or any party to the contested case who desires to challenge the subpoena, shall, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified, and may be accompanied by legal briefs or factual affidavits.

35.20(7) *Consideration of motion.* Upon receipt of a timely motion to quash or modify a subpoena, the board may request an administrative law judge to issue a decision, or the board may issue a decision. Oral argument may be scheduled at the discretion of the board or the administrative law judge. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

35.20(8) *Appeal of ruling on motion.* A person aggrieved by a ruling of an administrative law judge who desires to challenge the ruling shall appeal the ruling to the board by serving on the executive director in accordance with rule 657—35.17(17A,272C), a notice of appeal within ten days after service of the decision of the administrative law judge.

35.20(9) *Judicial review.* If the person contesting the subpoena is not a party to the contested case proceeding, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is a party to the contested case proceeding, the board's decision is not final for purposes of judicial review until there is a final decision in the contested case.

35.20(10) *Refusal to obey subpoena.* In the event of a refusal to obey a subpoena, the board may petition the district court for its enforcement. Upon proper showing, the district court shall order the person to obey the subpoena and, if the person fails to obey the order of the court, the person may be found guilty of contempt of court.

657—35.21(17A,272C) Motions.

35.21(1) *Form.* No technical form for motions is required. Prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

35.21(2) *Timely response.* Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the board or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

35.21(3) *Oral argument.* The presiding officer may schedule oral argument on any motion.

35.21(4) *Timely filing.* Motions pertaining to the hearing shall be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the board or an order of the presiding officer.

35.21(5) *Dispositive motions.* Dispositive motions, such as motions for summary judgment or motions to dismiss, must be filed with the board and served on all parties to the contested case proceeding at least 30 days prior to the scheduled hearing date, unless otherwise ordered or permitted by the presiding officer. Any party may file a written response to a dispositive motion within 10 days after the motion is served, unless the time for response is otherwise lengthened or shortened by the presiding officer.

657—35.22(17A,272C) Prehearing conference.

35.22(1) *Request or order for conference.* Any party may request a prehearing conference. Prehearing conferences shall be conducted by the executive director, who may request that an

PHARMACY BOARD[657](cont'd)

administrative law judge conduct the prehearing conference. A written request for prehearing conference or an order for prehearing conference on the executive director's own motion shall be filed not less than seven days prior to the hearing date, unless authorized by the person conducting the prehearing conference. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

35.22(2) Conference subjects. Each party shall be prepared to discuss the following subjects at the prehearing conference:

a. Submission of expert and other witness lists. Witness lists may be amended subsequent to the prehearing conference within the time limits established by the executive director or administrative law judge at the prehearing conference. Any such amendments must be served on all parties. Witnesses not listed on the final witness list may be excluded from testifying unless there was good cause for the failure to include their names.

b. Submission of exhibit lists. Exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the executive director or administrative law judge at the prehearing conference. Other than rebuttal exhibits, exhibits that are not listed on the final exhibit list may be excluded from admission into evidence unless there was good cause for the failure to include them.

c. The entry of a scheduling order to include deadlines for completion of discovery.

d. Stipulations of law or fact.

e. Stipulations on the admissibility of exhibits.

f. Identification of matters which the parties intend to request be officially noticed.

g. Consideration of any additional matters which will expedite the hearing.

35.22(3) Conducted by telephone. Prehearing conferences shall be conducted by telephone unless otherwise ordered.

35.22(4) Intra-agency appeal. A party must seek intra-agency appeal to the board of prehearing rulings made by an administrative law judge in order to adequately exhaust administrative remedies. Such appeals must be filed within ten days of the date of the issuance of the challenged ruling but no later than the time for compliance with the order or the date of hearing, whichever is first.

657—35.23(17A,272C) Continuances. Unless otherwise provided, requests for continuances shall be filed with the board.

35.23(1) Requirements of request. A written request for a continuance shall:

a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's attorney.

35.23(2) Notice to parties. No request for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The presiding officer may allow an oral application for continuance at the contested case hearing only in the event of an unanticipated emergency.

35.23(3) Authorized individuals. The presiding officer or the executive director has the authority to grant or deny a request for a continuance in accordance with this subrule. The executive director or an administrative law judge may enter an order granting an uncontested request for a continuance. Upon consultation with the board chair, the executive director or an administrative law judge may deny an uncontested request for a continuance or may rule on a contested request for continuance.

35.23(4) Consideration of request. In determining whether to grant a continuance, the presiding officer or the executive director may require documentation of any grounds for a continuance and may consider:

a. Prior continuances;

b. The interests of all parties;

c. The public interest;

d. The likelihood of settlement;

e. The existence of an emergency;

PHARMACY BOARD[657](cont'd)

- f.* Any objection;
- g.* Any applicable time requirements;
- h.* The existence of a conflict in the schedules of counsel, parties, or witnesses;
- i.* The timeliness of the request; and
- j.* Other relevant factors.

657—35.24(17A,272C) Settlement agreements.

35.24(1) *Initiation and participation.* A contested case may be resolved by settlement agreement. Settlement negotiations may be initiated by any party at any stage of a contested case. No party is required to participate in the settlement process.

35.24(2) *Assistant attorney general and board chair discussion of possible settlement.* If the respondent initiates or consents to settlement negotiations, the assistant attorney general prosecuting the case may discuss settlement with the board chair without violating the prohibition against ex parte communications in Iowa Code section 17A.17 and without disqualifying the board chair from participating in the adjudication of the contested case. The full board shall not be involved in settlement negotiations until a proposed settlement agreement executed by the respondent is submitted to the board for approval.

35.24(3) *Board consideration of proposed settlement.* By signing the proposed settlement agreement, the respondent authorizes an assistant attorney general to have ex parte communications with the board related to the terms of the proposed settlement. If the board fails to approve the proposed settlement agreement, it shall be of no force or effect to either party and shall not be admissible at hearing. Upon rejecting a proposed settlement agreement, the board may suggest alternative terms of settlement, which the respondent is free to accept or reject.

35.24(4) *Public record.* A settlement agreement is a permanent public record open for inspection under Iowa Code chapter 22.

657—35.25(17A,124B,126,147,155A,205,272C) Hearing procedures in contested cases.

35.25(1) *Presiding officer.* The presiding officer shall be in control of the proceedings and shall have the authority to administer oaths and to admit or exclude testimony or evidence and shall rule on all motions and objections. The board may request that an administrative law judge assist the board by performing any of these functions.

35.25(2) *Panel of specialists.* When, in the opinion of the board, it is desirable to obtain specialists within an area of practice when holding disciplinary hearings, the board may appoint a panel of three specialists who are not board members to make findings of fact and to report to the board. Such findings shall not include any recommendation for or against licensee discipline.

35.25(3) *Right of participation or representation.* An applicant or respondent has the right to participate or to be represented in all hearings related to the party's case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any applicant or respondent may be represented by an attorney at the party's own expense.

35.25(4) *Objections.* All objections shall be timely made and stated on the record.

35.25(5) *Rights of all parties.* Subject to terms prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, submit briefs, and engage in oral argument.

35.25(6) *Disorderly conduct.* The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

35.25(7) *Sequestering witnesses.* Witnesses may be sequestered during the hearing.

35.25(8) *Appeal of administrative law judge rulings.* All rulings by an administrative law judge who acts either as presiding officer or as an aid to the board are subject to appeal to the board. While a party may seek immediate board review of rulings made by an administrative law judge when the administrative law judge is sitting with and acting as an aid to the board or panel of specialists during a hearing, such immediate review is not required to preserve error for judicial review.

PHARMACY BOARD[657](cont'd)

35.25(9) *Conduct of hearing.* The presiding officer shall conduct the hearing in the following manner:

- a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;
- b. The parties shall be given an opportunity to present opening statements;
- c. Parties shall present their cases in the sequence determined by the presiding officer;
- d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter and be subject to examination and cross-examination. The board members and administrative law judge have the right to question a witness. The presiding officer may limit questioning in a manner consistent with law;
- e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

35.25(10) *Open/closed hearing and protective order.* The hearing shall be open to the public unless the respondent requests that the hearing be closed, in accordance with Iowa Code section 272C.6(1). At the request of either party, or on the board's own motion, the presiding officer may issue a protective order to protect documents which are privileged or confidential by law.

657—35.26(17A,272C) Evidence.

35.26(1) *General.*

a. Relevant evidence is admissible, subject to the discretion of the presiding officer. Irrelevant, immaterial and unduly repetitious evidence should be excluded. A finding will be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based on hearsay or other types of evidence which may or would be inadmissible in a jury trial.

b. The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

c. Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

d. Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

e. Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. A brief statement of the grounds upon which it is based shall accompany the objection. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

f. Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

35.26(2) *Exhibits.*

a. The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties. Copies of admitted documents should be distributed to individual board members and the administrative law judge. Unless prior arrangements have been made, the party seeking admission of a document should arrive at the hearing prepared with sufficient copies of the document to distribute to opposing parties, board members, the administrative law judge, and witnesses who are

PHARMACY BOARD[657](cont'd)

expected to examine the document. The state's exhibits shall be marked numerically, and the applicant's or respondent's exhibits shall be marked alphabetically.

b. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

c. An original is not required to prove the content of a writing, recording, or photograph. Duplicates or photocopies are admissible. Any objection related to the authenticity of an exhibit shall go to the weight given to that exhibit and not preclude its admissibility.

35.26(3) Witnesses.

a. Witnesses may be sequestered during the hearing.

b. Subject to the terms prescribed by the presiding officer and the limitations in Iowa Rule of Civil Procedure 1.704, parties may present the testimony of witnesses in person, by telephone, by videoconference, by affidavit, or by written or video deposition. If a witness is providing testimony in person, by telephone, or by videoconference, use of any deposition is limited by Iowa Rule of Civil Procedure 1.704.

c. Witnesses are entitled to be represented by an attorney at their own expense. In a closed hearing, the attorney may be present only when the client testifies. The attorney may assert legal privileges personal to the client, but may not make other objections. The attorney may only ask questions of the client to prevent a misstatement from being entered into the record.

d. The parties in a contested case shall be responsible for any witness fees and expenses incurred by witnesses appearing at the contested case hearing, unless otherwise specified or allocated in an order. The costs for lay witnesses shall be determined in accordance with Iowa Code section 622.69. The costs for expert witnesses shall be determined in accordance with Iowa Code section 622.72. Witnesses are entitled to reimbursement for mileage and may be entitled to reimbursement for meals and lodging, as incurred.

657—35.27(17A,272C) Default.

35.27(1) Failure to appear. If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

35.27(2) Motion for default. Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

35.27(3) Motion to vacate. A default decision or a decision rendered on the merits after a party has failed to appear or participate in a contested case proceeding shall become final board action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or unless an appeal of a decision on the merits is timely initiated within the time provided by rule 657—35.30(17A,272C). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

35.27(4) Appeal. The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

35.27(5) Proof of good cause. Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion if a request to do so is included in that party's response.

35.27(6) "Good cause" defined. "Good cause," for purposes of this rule, shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.971.

35.27(7) Appeal of decision on motion to vacate. A decision by an administrative law judge granting or denying a motion to vacate is subject to appeal to the board within 20 days.

PHARMACY BOARD[657](cont'd)

35.27(8) Notice of hearing. If a motion to vacate is granted and no timely appeal to the board has been filed, the presiding officer shall issue a rescheduling order setting a new hearing date and the contested case shall proceed accordingly.

657—35.28(17A,272C) Ex parte communication.

35.28(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the board or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 35.13(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

35.28(2) Duration of prohibition. Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

35.28(3) "Ex parte" defined. Written, oral, or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

35.28(4) Authorized communications. To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 657—35.17(17A,272C) and may be supplemented by telephone, facsimile, electronic mail, or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

35.28(5) Communications between presiding officers. Persons who jointly act as presiding officers in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

35.28(6) Others authorized to communicate with presiding officer. The executive director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 35.28(1).

35.28(7) Communications not prohibited. Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 657—35.23(17A,272C).

35.28(8) Disclosure of prohibited communications received during pendency of case. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified.

a. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order.

b. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties.

PHARMACY BOARD[657](cont'd)

c. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

35.28(9) Disclosure of prohibited communications received prior to assignment as presiding officer. Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

35.28(10) Sanctions for violation. The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule, including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the board. Violation of ex parte communication prohibitions by board personnel shall be reported to the executive director for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

657—35.29(17A,272C) Recording costs. Contested case hearings shall be recorded by electronic means or by a certified shorthand reporter. The board may assess the costs of the certified shorthand reporter to the licensee in a disciplinary hearing which results in disciplinary action taken against the licensee by the board in accordance with 657—subrule 36.10(2). Upon request, the board shall provide a copy of the whole or any portion of the record at cost. The requesting party shall pay the cost of preparing a copy of the record or of transcribing the hearing record. If the request for the hearing record is made as a result of a petition for judicial review, the party who filed the petition shall be considered the requesting party.

657—35.30(17A,272C) Proposed decisions. Decisions issued by an administrative law judge in nondisciplinary cases are proposed decisions. A proposed decision issued by an administrative law judge becomes a final decision if not timely appealed or reviewed in accordance with this rule.

35.30(1) Appeal by party. Any adversely affected party may appeal a proposed decision to the board within 30 days after issuance of the proposed decision.

35.30(2) Review. The board may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

35.30(3) Exhaustion. A party must timely seek intra-agency appeal of a proposed decision in order to adequately exhaust administrative remedies.

35.30(4) Notice of appeal. An appeal of a proposed decision is initiated by filing a timely notice of appeal with the board. The notice of appeal must be signed by the appealing party or an attorney for that party and contain a certificate of service. The notice shall specify:

- a. The parties initiating the appeal;
- b. The proposed decision or order which is being appealed;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d. The relief sought;
- e. The grounds for relief.

35.30(5) Requests to present additional evidence. A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

35.30(6) Scheduling. The board shall issue a schedule for consideration of the appeal.

35.30(7) Briefs and arguments. Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with

PHARMACY BOARD[657](cont'd)

the briefs. The board may resolve the appeal on the briefs or provide an opportunity for oral argument. The board may shorten or extend the briefing period as appropriate.

35.30(8) Record. The record on appeal or review shall be the entire record made before the administrative law judge.

657—35.31(17A) Final decision.

35.31(1) Contents. A final decision of the board shall include findings of fact and conclusions of law. When the board presides over the reception of the evidence at the hearing, its decision is a final decision.

35.31(2) Hearing fee and costs. The board may charge a hearing fee and assess other costs to the licensee for conducting a disciplinary hearing which results in disciplinary action taken against the licensee by the board in accordance with 657—subrule 36.10(2).

35.31(3) Method of service. Final decisions shall be served on the respondent or applicant using one of the following methods:

- a. Personal service, as provided in the Iowa Rules of Civil Procedure.
- b. Certified mail, return receipt requested.
- c. Signed acknowledgment accepting service.
- d. When service cannot be accomplished using the above methods:
 - (1) An affidavit shall be prepared outlining the measures taken to attempt service; and
 - (2) The final decision shall be published once each week for three consecutive weeks in a newspaper of general circulation, published or circulated in the county of last-known residence of the respondent.
- e. If the respondent or applicant is represented by an attorney, the final decision shall be mailed to the attorney. The attorney may waive the requirement to serve the respondent or applicant through a written acknowledgment that the attorney is accepting service on behalf of the client. The state shall be served by first-class mail or state interoffice mail.

35.31(4) Public record. A final decision is a permanent public record open for inspection under Iowa Code chapter 22, in accordance with Iowa Code section 272C.6(4).

657—35.32(17A,124B,126,147,155A,205,272C) Applications for rehearing.

35.32(1) By whom filed. Any party to a contested case proceeding may file an application for rehearing from a final order.

35.32(2) Content of application. The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the board decision on the existing record and whether, upon showing good cause, the applicant requests an opportunity to submit additional evidence. A party may request the taking of additional evidence after the issuance of a final order only by establishing that:

- a. The evidence is material; and
- b. The evidence arose after the completion of the original hearing; or
- c. Good cause exists for failure to present the evidence at the original hearing; and
- d. The party has not waived the right to present additional evidence.

35.32(3) Time of filing. The application shall be filed with the board within 20 days after issuance of the final decision.

35.32(4) Notice to other parties. A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the board shall serve copies on all parties.

35.32(5) Disposition. Any application for a rehearing shall be deemed denied unless the board grants the application within 20 days after its filing.

35.32(6) Only remedy. Application for rehearing is the only procedure by which a party may request that the board reconsider a final board decision.

PHARMACY BOARD[657](cont'd)

657—35.33(17A,272C) Stays of board actions.

35.33(1) *When available.* Any party to a contested case proceeding may petition the board for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the board or pending judicial review. The petition shall state the reasons justifying a stay or other temporary remedy. The petition must be filed within 30 days of the issuance of the final order, or if a party filed a request for rehearing that was denied, the petition must be filed within 30 days after the request for rehearing was denied or deemed denied.

35.33(2) *When granted.* The board shall not grant a stay in any case in which the district court would be expressly prohibited by statute from granting a stay. In determining whether to grant a stay, the presiding officer or board shall consider the following factors:

- a. The extent to which the applicant is likely to prevail when the court finally disposes of the matter;
- b. The extent to which the applicant will suffer irreparable injury if relief is not granted;
- c. The extent to which the grant of relief to the applicant will substantially harm other parties to the proceedings;
- d. The extent to which the public interest relied on by the board is sufficient to justify the board's action in the circumstances.

35.33(3) *Exhaustion required.* A party must petition the board for a stay pursuant to this rule prior to requesting a stay from the district court in a judicial review proceeding.

657—35.34(17A,272C) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable.

657—35.35(17A,124B,126,147,155A,205,272C) Emergency adjudicative proceedings.

35.35(1) *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, the board may issue a written order in compliance with Iowa Code section 17A.18A to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the board by emergency adjudicative order. Before issuing an emergency adjudicative order, the board shall consider factors including, but not limited to, the following:

- a. Whether there has been a sufficient factual investigation to ensure that the board is proceeding on the basis of reliable information;
- b. Whether the specific circumstances that pose immediate danger to the public health, safety, or welfare have been identified and determined to be continuing;
- c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety, or welfare;
- d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety, or welfare; and
- e. Whether the specific action contemplated by the board is necessary to avoid the immediate danger.

35.35(2) *Issuance of order.*

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the agency's decision to take immediate action.

b. The written emergency adjudicative order shall be immediately served on persons who are required to comply with the order by utilizing one or more of the following procedures:

- (1) Personal service, as provided in the Iowa Rules of Civil Procedure; or
- (2) Certified restricted mail, return receipt requested; or

PHARMACY BOARD[657](cont'd)

(3) Signed acknowledgment accepting service.

c. To the degree practicable, the board shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

35.35(3) Notice. Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the board shall make reasonable immediate efforts to contact by telephone and electronic mail the persons who are required to comply with the order.

35.35(4) Completion of proceedings. Issuance of a written emergency adjudicative order shall include notification of the date on which board proceedings are scheduled for hearing. After issuance of an emergency adjudicative order, the licensee subject to the emergency adjudicative order may request a continuance of the hearing at any time by filing a request with the board. The state may only file a request for a continuance in compelling circumstances. Nothing in this subrule shall be construed to eliminate the opportunity to resolve the matter with a settlement agreement.

35.35(5) Public record. An emergency adjudicative order is a permanent public record open for inspection under Iowa Code chapter 22.

657—35.36(17A,147,272C) Application for reinstatement. Any person whose license has been revoked or has been voluntarily surrendered may apply for reinstatement. An application for reinstatement must be made in accordance with the terms specified in the board's order of revocation or order accepting the voluntary surrender. Any person whose license has been suspended and the board order imposing the suspension indicates that the respondent must apply for and receive reinstatement may apply for reinstatement in accordance with the terms specified in the board's order. All applications for reinstatement must be filed in accordance with this rule.

35.36(1) Timing of application. If the order for revocation, suspension, or acceptance of surrender of a license did not establish terms for reinstatement, an initial application for reinstatement may not be filed until at least one year has elapsed from the date of issuance of the order. Persons who have failed to satisfy the terms imposed by the board order revoking, suspending, or accepting surrender of a license shall not be entitled to apply for reinstatement.

35.36(2) Initiated by respondent. Reinstatement proceedings shall be initiated by the respondent, who shall file with the board an application for reinstatement of the respondent's license. Such application shall be docketed in the original contested case in which the license was revoked, suspended, or surrendered. The person filing the application for reinstatement shall immediately serve a copy upon the office of the attorney general and shall serve any additional documents filed in connection with the application.

35.36(3) Contents. The application shall allege facts and circumstances which, if established, will be sufficient to enable the board to determine that the basis for the revocation, suspension, or surrender no longer exists and that it shall be in the public interest for the license to be reinstated. The application shall include written evidence supporting the respondent's assertion that the basis for the revocation, suspension, or surrender no longer exists and that it shall be in the public interest for the license to be reinstated. Such evidence may include, but is not limited to, medical and mental health records establishing successful completion of any necessary medical or mental health treatment and aftercare recommendations; documentation verifying successful completion of any court-imposed terms of probation; statements from support group sponsors verifying active participation in a support group; verified statements from current and past employers attesting to employability; and evidence establishing that prior professional competency or unethical conduct issues have been resolved. The burden of proof to establish such facts shall be on the respondent.

35.36(4) Review for conformity. The executive director or designee shall review the application for reinstatement and determine if it conforms to the terms established in the board order that revoked, suspended, or accepted surrender of the license and the requirements imposed by this rule. Applications failing to comply with the specified terms or with the requirements in this rule will be denied. Such denial shall be in writing, stating the grounds, and may be appealed by requesting a hearing before the board.

PHARMACY BOARD[657](cont'd)

35.36(5) *Hearing and order.* Applications not denied for failure to conform to the terms established in the board order that revoked, suspended, or accepted surrender of the license or requirements imposed by this rule may be set for hearing before the board. The hearing shall be a contested case hearing within the meaning of Iowa Code section 17A.12, and the order to grant or deny reinstatement shall incorporate findings of fact and conclusions of law. If reinstatement is granted, terms may be imposed. Such terms may include, but are not limited to, requiring the licensee to retake and pass an examination required for initial licensure, requiring the licensee to complete continuing education, restricting the licensee from engaging in a particular practice, and imposing a probationary term with monitoring requirements. Nothing shall prohibit the board from issuing an order granting reinstatement without terms, or from entering into a stipulated order granting reinstatement with terms, in the absence of a hearing.

35.36(6) *License reactivation.* A licensee whose license is reinstated must complete the requirements for license reactivation in order to receive an active license.

35.36(7) *Public record.* An order granting or denying reinstatement is a permanent public record open for inspection under Iowa Code chapter 22.

657—35.37(17A,22,272C) *Dissemination of public records.* All documents identified in this chapter as permanent public records open for inspection under Iowa Code chapter 22 are reported to national databanks in accordance with applicable reporting requirements. In addition, these documents may be posted on the board's Web site, published in the board's newsletter, distributed to national or state associations, transmitted to mailing lists or news media, issued in conjunction with a press release, or otherwise disseminated.

657—35.38(17A) *Judicial review.* Judicial review of a final order of the board may be sought in accordance with the terms of Iowa Code chapter 17A.

These rules are intended to implement Iowa Code sections 17A.10 to 17A.23, 124.304, 124B.12, 126.17, 147.55, 155A.6 to 155A.6B, 155A.12, 155A.13 to 155A.13C, 155A.15 to 155A.18, 155A.26, 205.11, 272C.3 to 272C.6, 272C.9, and 272C.10.

ITEM 2. Rescind 657—Chapter 36 and adopt the following **new** chapter in lieu thereof:

CHAPTER 36
DISCIPLINE

657—36.1(147,155A,272C) *Authority.* The board has the authority to impose discipline for any violations of Iowa Code chapters 124, 124B, 126, 147, 155A, 205, and 272C or the rules promulgated thereunder.

657—36.2(147,155A,272C) *Definitions.* For purposes of this chapter:

“*Board*” means the Iowa board of pharmacy.

“*License*” means any license, registration, or permit issued by the board, regardless of whether the license, registration, or permit is active.

“*Licensee*” means any person or entity possessing a license, registration, or permit issued by the board, regardless of whether the license, registration, or permit is active.

657—36.3(147,155A,272C) *Complaints, investigations, and board action.*

36.3(1) *General.* The board may, upon receipt of a written or verbal complaint or upon its own motion pursuant to other evidence received by the board, review and investigate alleged acts or omissions that may violate the board's rules or that are related to the ethical or professional conduct of a licensee.

36.3(2) *Confidentiality of investigative files.* Complaint files, investigation files, and all other investigation reports and investigative information in the possession of the board or its employees or agents that relate to licensee discipline shall be confidential pursuant to Iowa Code section 272C.6(4).

PHARMACY BOARD[657](cont'd)

36.3(3) Investigation of allegations. In order to determine if probable cause exists for a disciplinary hearing, the board, the executive director, or someone designated by the executive director shall cause an investigation to be made into the allegations of the complaint. The licensee that is the subject of the complaint shall be given a reasonable opportunity to present to the investigator a position or defense respecting the allegations of the complaint prior to the commencement of a contested case.

36.3(4) Investigatory subpoena powers. The board is authorized by law to subpoena books, papers, records, and any other real evidence, whether or not privileged or confidential under law, which are necessary for the board to decide whether to institute a contested case proceeding. The issuance of investigative subpoenas is governed by rule 657—36.4(17A,147,152,272C).

36.3(5) Investigative report. Upon completion of the investigation, the investigator(s) shall prepare a report for the board's consideration. The report may contain evidence gathered by the investigator, findings made by the investigator, the licensee's response to the allegations, and the applicable laws or rules alleged to have been violated.

36.3(6) Board consideration. The board shall review all investigations. Participation in the review of investigative materials shall not bar any board member from participating in any subsequent disciplinary proceeding.

a. Board action. After reviewing an investigation, the board may institute a disciplinary proceeding by filing one or more statements of charges, approve a combined statement of charges and settlement agreement, send a confidential letter of education or administrative warning to the licensee, request additional investigation, including peer review, refer the case to another regulatory authority with jurisdiction over the issue, or close the case without further investigation.

b. Confidential action. If the board determines that formal disciplinary action is not warranted, the board may send a confidential letter of education or administrative warning to the licensee. The purpose of a confidential letter of education or administrative warning is to alert the licensee to possible violations of Iowa law or board rules so that the licensee may address the issues. Confidential letters of education and administrative warnings do not constitute formal disciplinary action and are not open for inspection under Iowa Code chapter 22. The board shall maintain a copy of the confidential letter of education or administrative warning in the confidential investigative file regarding the licensee. Confidential letters of education and administrative warnings may be used as evidence against a licensee in future administrative hearings.

657—36.4(17A,147,152,272C) Issuance of investigatory subpoenas. The board shall have the authority to issue an investigatory subpoena in accordance with the provisions of Iowa Code section 17A.13.

36.4(1) Justification. The executive director or designee may, upon the written request of a board investigator or on the executive director's own initiative, subpoena books, papers, records and other real evidence which are necessary for the board to decide whether to institute a contested case proceeding. In the case of a subpoena for mental health records, each of the following conditions shall be satisfied prior to the issuance of the subpoena:

- a.* The nature of the complaint reasonably justifies the issuance of a subpoena;
- b.* Adequate safeguards have been established to prevent unauthorized disclosure;
- c.* An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and
- d.* An attempt was made to notify the patient and to secure an authorization from the patient for release of the records at issue.

36.4(2) Contents of request. A written request for a subpoena or the executive director's written memorandum in support of the issuance of a subpoena shall contain the following:

- a.* The name and address of the person to whom the subpoena will be directed;
- b.* A specific description of the books, papers, records or other real evidence requested;
- c.* An explanation of why the documents sought to be subpoenaed are necessary for the board to determine whether it should institute a contested case proceeding; and

PHARMACY BOARD[657](cont'd)

d. In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 36.4(1) have been satisfied.

36.4(3) Contents of subpoena. Each subpoena shall contain the following:

- a.* The name and address of the person to whom the subpoena is directed;
- b.* A description of the books, papers, records or other real evidence requested;
- c.* The date, time and location for production or inspection and copying;
- d.* The time within which a motion to quash or modify the subpoena must be filed;
- e.* The signature, address and telephone number of the executive director or designee;
- f.* The date of issuance;
- g.* A return of service.

36.4(4) Motion to quash or modify. Any person who is aggrieved or adversely affected by compliance with the subpoena and who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified and may be accompanied by legal briefs or factual affidavits.

36.4(5) Timely filing of motion. Upon receipt of a timely motion to quash or modify a subpoena, the board may request an administrative law judge to issue a decision or the board may issue a decision. Oral argument may be scheduled at the discretion of the board or the administrative law judge. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

36.4(6) Appeal of administrative law judge ruling. A person aggrieved by a ruling of an administrative law judge who desires to challenge that ruling must appeal the ruling to the board by filing a notice of appeal with the board within ten days after service of the decision of the administrative law judge in accordance with rule 657—35.17(17A,272C).

36.4(7) Judicial review. If the person contesting the subpoena is not the person under investigation, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the person under investigation, the board's decision is not final for purposes of judicial review until either (1) the person is notified that the investigation has been concluded with no formal action, or (2) there is a final decision in the contested case.

657—36.5(147,272C) Peer review committee. Any case may be referred to peer review for evaluation of the professional services rendered by the licensee.

36.5(1) Contract and case referral. The board shall enter into a contract with peer reviewers to provide peer review services. The board or board staff shall determine which peer reviewer(s) will review a case and what investigative information shall be referred to a peer reviewer.

36.5(2) Written opinion. Peer reviewers shall review the information provided by the board and provide a written report to the board. The written report shall contain an opinion of the peer reviewer regarding whether the licensee conformed to minimum standards of acceptable and prevailing practice of pharmacy and the rationale supporting the opinion.

36.5(3) Confidentiality. Peer reviewers shall observe the confidentiality requirements imposed by Iowa Code section 272C.6(4).

36.5(4) Board review and action. The board shall review the committee's findings and proceed with action available under subrule 36.3(6).

657—36.6(147,155A,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions set forth in rule 657—36.7(147,155A,272C) when the board determines that the licensee has committed any of the following acts or omissions:

36.6(1) Fraud in procuring a license. Fraud in procuring a license includes but is not limited to an intentional perversion of the truth in making application for a license to practice pharmacy, to operate a pharmacy doing business in this state, or to operate as a wholesale drug distributor doing business in this state, or in making application for a registration to practice as a pharmacist-intern, a pharmacy

PHARMACY BOARD[657](cont'd)

technician, or a pharmacy support person. Fraud in procuring a license includes false representations of a material fact, whether by word or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application, or attempting to file or filing with the board any false or forged diploma, certificate, affidavit, identification, or qualification in making application for a license or registration in this state.

36.6(2) Professional incompetency. Professional incompetency includes but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of the pharmacist's practice.

b. A substantial deviation by a pharmacist from the standards of learning or skill ordinarily possessed and applied by other pharmacists in the state of Iowa acting in the same or similar circumstances.

c. A failure by a pharmacist to exercise in a substantial respect that degree of care which is ordinarily exercised by the average pharmacist in the state of Iowa acting under the same or similar circumstances.

d. A willful or repeated departure from, or the failure to conform to, the minimal standard or acceptable and prevailing practice of pharmacy in the state of Iowa.

36.6(3) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of pharmacy or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

36.6(4) Habitual intoxication or addiction to the use of drugs. Habitual intoxication or addiction to the use of drugs includes, but is not limited to:

a. The inability of a licensee to practice with reasonable skill and safety by reason of the excessive use of alcohol on a continuing basis.

b. The excessive use of drugs which may impair a licensee's ability to practice with reasonable skill or safety.

36.6(5) Conviction of a felony related to the profession or occupation of the licensee, or a conviction of a felony that would affect the licensee's ability to practice within the licensee's profession. A copy of the record of conviction or a plea of guilty shall be conclusive evidence.

36.6(6) Fraud in representations as to skill or ability. Fraud in representations as to skill or ability includes, but is not limited to, a pharmacist having made deceptive or untrue representations as to competency to perform professional services which the pharmacist is not qualified to perform by virtue of training or experience.

36.6(7) Use of untrue or improbable statements in advertisements.

36.6(8) Distribution of drugs for other than lawful purposes. The distribution of drugs for other than lawful purposes includes, but is not limited to, the disposition of drugs in violation of Iowa Code chapters 124, 126, and 155A.

36.6(9) Willful or repeated violations of the provisions of Iowa Code chapter 147 or 272C. Willful or repeated violations of these Acts include, but are not limited to, a licensee's intentionally or repeatedly violating a lawful rule or regulation promulgated by the board of pharmacy or the Iowa department of public health, violating a lawful order of the board in a disciplinary hearing, or violating the provisions of title IV (public health) of the Iowa Code.

36.6(10) Violating a statute or law of this state, another state, or the United States, without regard to its designation as either a felony or misdemeanor, which statute or law relates to the practice of pharmacy or the distribution of controlled substances, prescription drugs, or nonprescription drugs.

36.6(11) Failure to notify the board within 30 days after a final decision entered by the licensing authority of another state, territory, or country which decision resulted in a license revocation, suspension, or other disciplinary sanction.

36.6(12) Knowingly aiding, assisting, procuring, or advising another person to unlawfully practice pharmacy or to unlawfully perform the functions of a pharmacist-intern, a pharmacy technician, or a pharmacy support person.

36.6(13) Inability of a licensee to practice with reasonable skill and safety by reason of mental or physical impairment or chemical abuse.

PHARMACY BOARD[657](cont'd)

36.6(14) Being adjudged mentally incompetent by a court of competent jurisdiction. Such adjudication shall automatically suspend a license for the duration of the license or registration unless the board otherwise orders.

36.6(15) Submission of a false report of continuing education, submission of a false certification of completion of continuing education, or failure to submit biennial reports of continuing education as directed by the board.

36.6(16) Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice court claim or action.

36.6(17) Failure to file reports concerning acts or omissions committed by another licensee.

36.6(18) Willful or repeated malpractice.

36.6(19) Willful or gross negligence.

36.6(20) Obtaining any fee by fraud or misrepresentation.

36.6(21) Violating any of the grounds for revocation or suspension of a license or registration listed in Iowa Code section 147.55, Iowa Code chapter 155A, or any of the rules of the board.

36.6(22) Practicing pharmacy without an active and current Iowa pharmacist license, operating a pharmacy without a current pharmacy license, operating a prescription drug wholesale facility without a current wholesale drug license, operating an outsourcing facility without a current outsourcing facility license, practicing as a pharmacist-intern without a current pharmacist-intern registration, assisting a pharmacist with technical functions associated with the practice of pharmacy without a current pharmacy technician registration except as provided in the introductory paragraph of rule 657—3.3(155A), or assisting a pharmacist with nontechnical functions associated with the practice of pharmacy without a current pharmacy support person registration.

36.6(23) Attempting to circumvent the patient counseling requirements or discouraging patients from receiving patient counseling concerning their prescription drug orders.

36.6(24) Noncompliance with a child support order or with a written agreement for payment of child support as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 252J.

36.6(25) Student loan default or noncompliance with the terms of an agreement for payment of a student loan obligation as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 261 or default on a repayment or service obligation under any federal or state educational loan or service-conditional scholarship program upon certification by the program of such a default.

36.6(26) Engaging in any conduct that subverts or attempts to subvert a board investigation.

36.6(27) Employing or continuing to employ as a practicing pharmacist any person whose Iowa pharmacist license is not current and active, employing or continuing to employ a person to assist a pharmacist with technical functions associated with the practice of pharmacy who is not currently registered as a pharmacy technician except as provided in the introductory paragraph of rule 657—3.3(155A), or employing or continuing to employ a person to assist a pharmacist with nontechnical functions associated with the practice of pharmacy who is not currently registered as a pharmacy support person.

36.6(28) Retaliating against a pharmacist, pharmacist-intern, pharmacy technician, or pharmacy support person for making allegations of illegal or unethical activities, making required reports to the board, or cooperating with a board investigation or survey.

36.6(29) Failing to create and maintain complete and accurate records as required by state or federal law or regulation or rule of the board.

36.6(30) Violating the pharmacy or drug laws or rules of another state while under the jurisdiction of that state.

36.6(31) Having a license revoked or suspended or having other disciplinary action taken by a licensing authority of this state or of another state, territory, or country for conduct substantially equivalent to any of the grounds for disciplinary action in Iowa. A copy of the record from the licensing authority taking the disciplinary action shall be conclusive evidence of the action.

36.6(32) Failure to comply with mandatory child or dependent adult abuse reporter training requirements.

PHARMACY BOARD[657](cont'd)

36.6(33) Failure to timely provide to the board or a representative of the board prescription fill data or other required pharmacy or controlled substances records.

36.6(34) Nonpayment of a state debt as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 272D.

36.6(35) Failure to notify the board of a criminal conviction relating to the practice of pharmacy or to the distribution of drugs within 30 days of the action, regardless of the jurisdiction where it occurred.

36.6(36) Obtaining, possessing, or attempting to obtain or possess prescription drugs without lawful authority.

36.6(37) Diverting prescription drugs from a pharmacy for personal use or for distribution.

36.6(38) Practicing pharmacy, or assisting in the practice of pharmacy, while under the influence of alcohol or illicit substances.

36.6(39) Practicing pharmacy, or assisting in the practice of pharmacy, while under the influence of prescription drugs or substances for which the licensee does not have a lawful prescription or while impaired by the use of legitimately prescribed pharmacological agents, drugs, or substances.

36.6(40) Forging or altering a prescription.

36.6(41) Practicing outside the scope of the profession.

36.6(42) Dispensing, or contributing to the dispensing of, an incorrect prescription, which includes, but is not limited to, the incorrect drug, the incorrect strength, the incorrect patient or prescriber, or the incorrect or incomplete directions.

36.6(43) Failing to comply with a confidential order for evaluation.

36.6(44) Failing to comply with the terms of an initial agreement or contract with the Iowa monitoring program for pharmacy professionals committee.

657—36.7(147,155A,272C) Disciplinary sanctions.

36.7(1) *Possible sanctions.* The board has the authority to impose the following disciplinary sanctions:

- a. Revocation of a license issued by the board.
- b. Suspension of a license issued by the board until further order of the board or for a specified period.
- c. Nonrenewal of a license issued by the board.
- d. Prohibit permanently, until further order of the board, or for a specified period, the engaging in specified procedures, methods or acts.
- e. Probation.
- f. Require a licensee to complete additional education or training.
- g. Require a pharmacist to successfully complete any reexamination for licensure.
- h. Order a licensee to undergo a physical or mental examination.
- i. Impose civil penalties not to exceed \$25,000.
- j. Issue citation and warning.
- k. Such other sanctions allowed by law as may be appropriate.

36.7(2) *Considerations in determining sanctions.* The board may consider the following factors in determining the nature and severity of the disciplinary sanction to be imposed:

- a. The relative seriousness of the violation as it relates to assuring the citizens of this state a high standard of professional care.
- b. The facts of the particular violation.
- c. Any extenuating circumstances or other countervailing considerations.
- d. Number of prior violations or complaints.
- e. Seriousness of prior violations or complaints.
- f. Whether remedial action has been taken.
- g. Any other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

PHARMACY BOARD[657](cont'd)

657—36.8(147,272C) Voluntary surrender. A voluntary surrender of a license may be submitted to the board as resolution of a contested case or in lieu of continued compliance with a disciplinary order of the board. A voluntary surrender, when accepted by the board, has the same force and effect as an order of revocation. The voluntary surrender of a license during the pendency of a complaint or investigation shall be considered discipline and shall have the same force and effect as an order of revocation. A request for reinstatement of a license that has been surrendered shall be handled under the terms established by rule 657—35.36(17A,147,272C).

657—36.9(155A,272C) Order for mental or physical examination. A licensee is, as a condition of licensure, under a duty to submit to a mental or physical examination within a time period specified by order of the board. Such examination may be ordered upon a showing of probable cause and shall be at the expense of the licensee.

36.9(1) Content of order. A board order for mental or physical examination shall include the following items:

- a. A description of the type of examination to which the licensee must submit.
- b. The name and address of the examiner or treatment facility that the board has identified as having the potential to perform the examination.
- c. The time period in which the licensee must schedule the required examination.
- d. The amount of time in which the licensee is required to complete the examination.
- e. A requirement that the licensee cause a report of the examination results to be provided to the board within a specified period of time.
- f. A requirement that the licensee communicate with the board regarding the status of the examination.
- g. A provision allowing the licensee to request additional time to schedule or complete the examination or to request that the board approve an alternative examiner or treatment facility. The board shall, in its sole discretion, determine whether to grant such a request.

36.9(2) Objection to order. A licensee who is the subject of a board order and who objects to the order may file a request for hearing. The request for hearing shall specifically identify the factual and legal issues upon which the licensee bases the objection. The hearing shall be considered a contested case proceeding and shall be governed by the provisions of 657—Chapter 35. A contested case involving an objection to an examination order will be captioned in the name of Jane or John Doe in order to maintain the licensee's confidentiality.

36.9(3) Closed hearing. Any hearing on an objection to the board order shall be closed pursuant to Iowa Code section 272C.6(4).

36.9(4) Order and reports—confidential. An examination order and any subsequent examination reports issued in the course of a board investigation are confidential investigative information pursuant to Iowa Code section 272C.6(4).

657—36.10(272C) Disciplinary hearings—fees and costs.

36.10(1) Definitions. As used in this chapter in relation to a formal disciplinary action filed by the board against a licensee:

“*Deposition*” means the testimony of a person pursuant to subpoena or at the request of the state of Iowa taken in a setting other than a hearing.

“*Expenses*” means costs incurred by persons appearing pursuant to subpoena or at the request of the state of Iowa for purposes of providing testimony on the part of the state of Iowa in a hearing or other official proceeding and shall include mileage reimbursement at the rate specified in Iowa Code section 70A.9 or, if commercial air or ground transportation is used, the actual cost of transportation to and from the proceeding. Also included are actual costs incurred for meals and necessary lodging.

“*Medical examination fees*” means actual costs incurred by the board in a physical, mental, chemical abuse, or other impairment-related examination or evaluation of a licensee when the examination or evaluation is conducted pursuant to an order of the board.

PHARMACY BOARD[657](cont'd)

“*Transcript*” means a printed verbatim reproduction of everything said on the record during a hearing or other official proceeding.

“*Witness fees*” means compensation paid by the board to persons appearing pursuant to subpoena or at the request of the state of Iowa, for purposes of providing testimony on the part of the state of Iowa. For the purposes of this rule, compensation shall be the same as outlined in Iowa Code section 622.69 or 622.72 as the case may be.

36.10(2) *Hearing fee and recoverable costs.* The board may charge a fee not to exceed \$75 for conducting a disciplinary hearing that results in disciplinary action taken by the board against the licensee. In addition to the fee, the board may recover from the licensee costs for the following procedures and personnel:

- a. Recording fees of a certified shorthand reporter.
- b. Transcript.
- c. Witness fees and expenses.
- d. Depositions.

36.10(3) *Fees, costs as part of disciplinary order.* Fees and costs assessed by the board shall be described as part of the board’s final disciplinary order. Fees and costs that can be calculated at the time of the issuance of the board’s final disciplinary order shall be itemized in the order. Fees and costs that cannot be calculated at the time of the issuance of the board’s final disciplinary order may be invoiced to the licensee at a later time, provided that the board’s final disciplinary order states that the particular fees and costs will be invoiced at a later date. The board’s final disciplinary order and any invoices shall specify the time period in which the licensee shall pay the assessed fees and costs.

36.10(4) *Board treatment of collected fees, costs.* Fees and costs collected by the board shall be allocated to the expenditure category of the board in which the hearing costs were incurred. The fees and costs shall be considered repayment receipts as defined in Iowa Code section 8.2.

36.10(5) *Failure to pay assessed fees, costs.* Failure of a licensee to pay the fees and costs assessed herein within the time period specified in the board’s final disciplinary order or subsequent invoice shall constitute a violation of a lawful order of the board.

These rules are intended to implement Iowa Code sections 17A.10 to 17A.23, 124.304, 124B.12, 126.17, 147.55, 155A.6 to 155A.6B, 155A.12, 155A.13 to 155A.13C, 155A.15 to 155A.18, 155A.26, 205.11, 272C.3 to 272C.6, 272C.9, and 272C.10.

[Filed 9/8/17, effective 11/1/17]

[Published 9/27/17]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 9/27/17.

ARC 3340C

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to Iowa Code sections 17A.4, 474.5, and 476.2, the Utilities Board (Board) gives notice that on August 25, 2017, the Board issued an “Order Adopting Amendments” in Docket No. RMU-2016-0002, In re: Review of Organization and Operation [199 IAC 1], to update and streamline Chapter 1 of the Board’s rules.

Notice of Intended Action was published in the March 1, 2017, Iowa Administrative Bulletin as **ARC 2957C**. The Office of Consumer Advocate, a division of the Iowa Department of Justice, and the Iowa Communications Alliance filed comments and reply comments. The adopted amendments are identical to those published under the Notice of Intended Action.

The order approving this Adopted and Filed rule making can be found on the Board’s Electronic Filing System (EFS) Web site, <http://efs.iowa.gov>, in Docket No. RMU-2016-0002.

After analysis and review of this rule making, the Board concludes that the amendments will not have a detrimental effect on jobs in Iowa.

UTILITIES DIVISION[199](cont'd)

These amendments are intended to implement Iowa Code sections 17A.4, 474.5, and 476.2.

These amendments will become effective November 1, 2017.

The following amendments are adopted.

ITEM 1. Amend rule 199—1.3(17A,474,476,78GA,HF2206) as follows:

199—1.3(17A,474,476,78GA,HF2206) Waivers. In response to a request, ~~or on its own motion~~, the board may grant a waiver from a rule adopted by the board, in whole or in part, as applied to a specific set of circumstances, if the board finds, based on clear and convincing evidence, that:

1. to 4. No change.

The burden of persuasion rests with the person who petitions the board for the waiver. If the above criteria are met, a waiver may be granted at the discretion of the board upon consideration of all relevant factors.

Persons requesting a waiver may use the form provided in 199—subrule 2.2(17), or may submit their request as a part of another pleading. The waiver request must state the relevant facts and reasons the requester believes will justify the waiver, if they have not already been provided to the board in another pleading. The waiver request must also state the scope and operative period of the requested waiver. If the request is for a permanent waiver, the requester must state reasons why a temporary waiver would be impractical.

The waiver shall describe its precise scope and operative period. Grants or denials of waiver requests shall contain a statement of the facts and reasons upon which the decision is based. The board may condition the grant of the waiver on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question. The board may at any time cancel a waiver upon appropriate notice and opportunity for hearing.

~~This rule is intended to implement Iowa Code chapters 17A, 474, and 476 and 2000 Iowa Acts, House File 2206.~~

ITEM 2. Amend rule 199—1.4(17A,474) as follows:

199—1.4(17A,474) Duties of the board. The ~~utilities~~ board regulates electric, gas, telephone, ~~telegraph~~, and water utilities; and ~~pipelines and underground gas storage~~ certain sanitary sewer and storm water drainage facilities. The board regulates the rates and services of public utilities pursuant to Iowa Code chapter 476; certification of electric power generators pursuant to chapter 476A; construction and safety of electric transmission lines pursuant to chapter 478; and the construction and operation of pipelines and underground ~~gas or hazardous liquid~~ storage pursuant to chapters 479, 479A and 479B.

ITEM 3. Amend rule 199—1.5(17A,474), introductory paragraph, as follows:

199—1.5(17A,474) Organization. The ~~utilities division~~ board consists of the three-member board, ~~the office of the executive secretary, which heads the technical and administrative staff, and the office of general counsel.~~

ITEM 4. Rescind and reserve subrules **1.5(2)** and **1.5(3)**.

ITEM 5. Amend subrule 1.8(1) as follows:

1.8(1) Communications. All communications to the board shall, other than those filed through the board's electronic filing system, may be addressed to the Executive Secretary, Iowa Utilities Board, 1375 E. Court Avenue, Room 69, Des Moines, Iowa 50319-0069, unless otherwise specifically directed. Pleadings and other papers required to be filed with the board shall be filed ~~in the office of the executive secretary of the board~~ within the time limit, if any, for such filing. Unless otherwise specifically provided, all communications and documents are officially filed upon receipt and acceptance at the office of the board.

UTILITIES DIVISION[199](cont'd)

ITEM 6. Rescind and reserve subrule **1.8(3)**.

ITEM 7. Amend subrule 1.9(1) as follows:

1.9(1) Public information. Any interested person may examine all public records of the board by written request or in person at the ~~offices of the board offices~~. Public records ~~shall~~ may be examined ~~only~~ at the board office only during the board's regular business hours, Monday through Friday from 8 a.m. to 4:30 p.m., excluding legal holidays. Public records in docketed matters may be examined at any time using the board's electronic filing system. Unless otherwise provided by law, all public records, other than confidential records, maintained by the board shall be made available for public inspection.

ITEM 8. Amend subrule **1.9(2)**, definition of "Personally identifiable information," as follows:

"Personally identifiable information." Information about or pertaining to an individual, specifically including the following unique identifiers when combined with an individual's name: social security number or a financial account number (checking, savings, or share account number or credit, debit, or charge card number). ~~This "Personally identifiable information"~~ does not include information pertaining to corporations.

ITEM 9. Rescind and reserve subrules **1.9(3)** and **1.9(4)**.

ITEM 10. Amend subrules 1.9(5) to 1.9(8) as follows:

1.9(5) Records not routinely available for public inspection. The following records are not routinely available for public inspection. The records are listed in this subrule by category, according to the statutory basis for withholding them from inspection.

a. Materials that are specifically exempted from disclosure by statute and which the board may in its discretion withhold from public inspection. Any person may request permission to inspect particular records withheld from inspection under this subrule. At the time of the request, the board will notify all interested parties. If the request is to review materials under subparagraphs 1.9(5) "a"(1) and 1.9(5) "a"(3), the board will withhold the materials from public inspection for 14 days to allow the party who submitted the materials an opportunity to seek injunctive relief. ~~Records the commission board is authorized to withhold from public inspection under Iowa law in its discretion include, but are not limited to, the following:~~

(1) to (5) No change.

(6) Materials exempted from public inspection under any other provisions of ~~state~~ law.

b. Materials that are specifically exempted from disclosure by statute and which the board is prohibited from making available for public inspection. The board is required to withhold the following materials from public inspection:

(1) Tax records submitted to the board and required by it in the execution of its duties shall be held confidential. Iowa Code section 422.20.

(2) Reserved.

c. Materials exempted pursuant to requests deemed granted by the board. Requests to withhold from public inspection the materials and information listed in the subparagraphs below are deemed granted by the board pursuant to Iowa Code section 22.7(3) or 22.7(6), or both sections, provided that the confidential portions of the filings are identified as confidential and filed as provided in 199—14.12(17A,476) and an attorney for the company or corporate officer avers that the material or information satisfies the requirements in Iowa Code section 22.7(3) or 22.7(6), or both sections. The material or information filed pursuant to this paragraph will be deemed confidential upon the filer's receipt of a notice of electronic filing without further review or acknowledgement by the board, and the material or information shall be withheld from public inspection subject to the provisions of subparagraph 1.9(8) "b"(3).

(1) to (16) No change.

(17) The financial records, number of customers, and volumes filed by competitive natural gas providers in each company's annual report. The aggregate total sales volume is not granted confidential treatment by this subparagraph.

UTILITIES DIVISION[199](cont'd)

(18) The financial information regarding affiliate transactions required for rate-regulated utilities. This information is subject to staff and legal review to ensure the information protected is similar to other information included in this subparagraph.

1.9(6) *Requests that materials or information submitted to the board be withheld from public inspection.* Any person submitting information or materials to the board may submit a request that part or all of the information or materials not be made available for public inspection pursuant to the following requirements. In addition, parties are required to redact protected information as defined in Iowa R. Elec. P. 16.602 and 16.603.

a. Procedure. The materials to which the request applies shall be physically separated from any materials to which the request does not apply. The request shall be attached to the materials to which it applies. Each page of the materials to which the request applies shall be clearly marked confidential.

b. Content of request. Each request shall contain a statement of the legal basis for withholding the materials from inspection and the facts to support the legal basis relied upon. The facts underlying the legal basis shall be supported by affidavit executed by a corporate officer (or by an individual, if not a business entity) with personal knowledge of the specific facts. If the request is that the materials be withheld from inspection for a limited period of time, the period shall be specified.

c. Compliance. If a request complies with the requirements of paragraphs "a" and "b" of this subrule, the materials will be temporarily withheld from public inspection. The board will examine the ~~documents~~ information to determine whether the ~~documents~~ information should be afforded confidentiality. If the request is granted, the ruling will be placed in a public file in lieu of the materials withheld from public inspection.

d. Request denied. If a request for confidentiality is denied, the ~~documents~~ information will be held confidential for 14 days to allow the applicant an opportunity to seek injunctive relief. After the 14 days expire, the materials will be available for public inspection, unless the board is directed by a court to keep the information confidential.

1.9(7) *Procedures for the physical inspection of ~~commission~~ board records which are routinely available for public inspection.* The records in question must be reasonably described by the person requesting them to permit their location by staff personnel. Members of the public will not be given access to the area in which records are kept and will not be permitted to search the files.

Advance requests to have records available on a certain date may be made by telephone or by correspondence.

a. Search fees. An hourly fee ~~will~~ may be charged for searching for requested records. The fee will be based upon the pay scale of the employee who makes the search. No search fee will be charged if the records are not located, the records are not made available for inspection, or the search does not exceed one-quarter hour in duration.

b. to d. No change.

1.9(8) *Procedures for the inspection of board records which are not routinely available for public inspection.* Any person desiring to inspect board records which are not routinely available for public inspection shall file a request for inspection meeting the requirements of this subrule.

a. Content of request. The records must be reasonably described by the person requesting them, so as to permit their location by staff personnel. Requests shall be directed to the executive secretary of the board.

b. Procedure. Requests for inspection shall be acted upon as follows:

(1) If the board is prohibited from disclosing the records, the request for inspection will be denied with a statement setting forth the specific grounds for denial.

(2) If the board is prohibited from disclosing part of a document from inspection, that part will be ~~deleted~~ redacted and the remainder will be made available for inspection.

(3) In the case of requests to inspect records not routinely available for public inspection under 1.9(5) "a"(1), 1.9(5) "a"(3), and 1.9(5) "c," the board will notify all interested parties of the request to view the materials. The board will withhold the materials from public inspection for 14 days to allow the party who submitted the materials an opportunity to seek injunctive relief. If injunctive relief is not requested within this period, the records will be produced for inspection. Requests to review materials

UTILITIES DIVISION[199](cont'd)

not routinely available for public inspection under any other category of paragraph 1.9(5)“a” will be acted upon by the board. If the request is granted by the board, or is partially granted and partially denied, the person who submitted the records to the board will be afforded 14 days from the date of the written ruling in which to seek injunctive relief. If injunctive relief is not requested within this period, the records will be produced for inspection.

ITEM 11. Amend subrule 1.9(12) as follows:

1.9(12) Data processing system. ~~The~~ As required by Iowa Code section 22.11(1)“g,” the board does not currently have a data processing system which matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information on another record system.

[Filed 8/28/17, effective 11/1/17]

[Published 9/27/17]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 9/27/17.

ARC 3341C

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]

Adopted and Filed

Pursuant to the authority of Iowa Code section 35A.13, the Iowa Department of Veterans Affairs hereby amends Chapter 2, “Petition for Rule Making,” Chapter 3, “Declaratory Rulings,” Chapter 4, “Agency Procedure for Rule Making,” Chapter 6, “Fair Information Practices,” Chapter 11, “Injured Veterans Grant Program,” Chapter 14, “Veterans Trust Fund,” Chapter 15, “Veterans Commemorative Property,” and Chapter 16, “Limited Residency Vietnam Conflict Veterans Bonus,” Iowa Administrative Code.

These amendments update, where applicable, the building number, address, telephone and fax numbers and Web address of the Department.

Notice of Intended Action was published in the July 5, 2017, Iowa Administrative Bulletin as **ARC 3147C**. No comments were received. These amendments are identical to those published under Notice of Intended Action.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 35A.

These amendments will become effective on November 1, 2017.

The following amendments are adopted.

ITEM 1. Amend rule 801—2.1(17A) as follows:

801—2.1(17A) Petition for rule making.

In lieu of the words “(designate office)”, insert “the office of the executive director. This office is located at Camp Dodge, Building ~~A6A 3465, 7700 NW Beaver Drive~~ 7105 NW 70th Avenue, Johnston, Iowa 50131-~~4902~~ 1824”.

In lieu of the words “(agency name)”, insert “Iowa commission of veterans affairs”.

2.1(3) The executive director shall notify the chairperson of the commission that the petition has been filed.

ITEM 2. Amend rule 801—2.3(17A) as follows:

801—2.3(17A) Inquiries.

In lieu of the words “(designate official by full title and address)”, insert “the executive director at Camp Dodge, Building ~~A6A 3465, 7700 NW Beaver Drive~~ 7105 NW 70th Avenue, Johnston, Iowa 50131-~~4902~~ 1824. The telephone number is (515)~~242-5334~~ 252-4698”.

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

ITEM 3. Amend rule 801—3.1(17A) as follows:

801—3.1(17A) Petition for declaratory ruling.

In lieu of the words “(designate office)”, insert “the office of the executive director. This office is located at Camp Dodge, Building ~~A6A 3465, 7700 NW Beaver Drive~~ 7105 NW 70th Avenue, Johnston, Iowa 50131-~~1902~~ 1824”.

In lieu of the words “(agency name)”, insert “Iowa commission of veterans affairs”.

At the end of this rule, insert “The executive director shall notify the chairperson of the commission that the petition has been filed.”

ITEM 4. Amend rule 801—3.3(17A) as follows:

801—3.3(17A) Inquiries.

In lieu of the words “(designate official by full title and address)”, insert “the executive director at Camp Dodge, Building ~~A6A 3465, 7700 NW Beaver Drive~~ 7105 NW 70th Avenue, Johnston, Iowa 50131-~~1902~~ 1824. The telephone number is (515)~~242-5334~~ 252-4698”.

ITEM 5. Amend subrule 4.5(1) as follows:

4.5(1) In lieu of the words “(identify office and address)”, insert “the office of the executive director. This office is located in Building ~~A6A 3465~~ at Camp Dodge, ~~7700 NW Beaver Drive~~ 7105 NW 70th Avenue, Johnston, Iowa 50131-~~1902~~ 1824”.

ITEM 6. Amend subrule 4.6(3) as follows:

4.6(3) In lieu of the words “(designate office)”, insert “the office of the executive director. This office is located in Building ~~A6A 3465~~ at Camp Dodge, ~~7700 NW Beaver Drive~~ 7105 NW 70th Avenue, Johnston, Iowa 50131-~~1902~~ 1824”.

ITEM 7. Amend rule 801—4.11(17A) as follows:

801—4.11(17A) Concise statement of reasons.**4.11(1) General.**

In lieu of the words “(specify office and address)”, insert “the office of the executive director. This office is located in Building ~~A6A 3465~~ at Camp Dodge, ~~7700 NW Beaver Drive~~ 7105 NW 70th Avenue, Johnston, Iowa 50131-~~1902~~ 1824”.

ITEM 8. Amend subrule 6.3(1) as follows:

6.3(1) Location of record. A request for access to a record pertaining to the Iowa Veterans Home should be addressed to the Commandant, Iowa Veterans Home, 1301 Summit, Marshalltown, Iowa 50158-5485. For all other commission records, or if the location of the record is unknown by the requester, the request for access to a record shall be directed to the Executive Director, Camp Dodge, ~~7700 NW Beaver Drive~~ 7105 NW 70th Avenue, Johnston, Iowa 50131-~~1902~~ 1824. If the request for access to a record is misdirected, agency personnel will promptly forward the request to the appropriate person within the agency.

ITEM 9. Amend paragraph **11.4(1)“b”** as follows:

b. A veteran filing for the grant under retroactive eligibility must submit an injured veteran grant application form along with supporting documents. Supporting documents needed to verify eligibility shall include copies of the following:

- (1) Military ID card;
- (2) DD214 (if the veteran has been discharged) or military orders to document service in a combat zone;
- (3) Medical records or military orders to document date of medical evacuation and periods of continued medical treatment or rehabilitation; and
- (4) Any document to establish Iowa residency at the time of injury, such as Iowa income tax forms, or to establish that the veteran is or was a member of a national guard unit located in this state prior to

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

mobilization and was injured while serving in that national guard unit and is not eligible to receive a similar grant from another state for that injury.

A veteran may receive assistance in the application process by contacting the department office at (515)242-5331 ~~252-4698~~ or (800)838-4692 or by fax (515)242-5659 ~~727-3713~~.

ITEM 10. Amend rule 801—14.5(35A), introductory paragraph, as follows:

801—14.5(35A) Application procedure. Applications for benefits from the veterans trust fund may be obtained at any county veterans affairs office. The county director of veterans affairs shall date-stamp the application and submit it to the Iowa Department of Veterans Affairs, Camp Dodge, Bldg. ~~A6A 3465~~, 7105 NW 70th Avenue, Johnston, Iowa 50131-1824.

ITEM 11. Amend subrule 15.3(2) as follows:

15.3(2) Notification forms. Notification forms may be obtained from the Iowa Department of Veterans Affairs, Camp Dodge, Bldg. ~~A6A 3465~~, 7105 NW 70th Avenue, Johnston, Iowa 50131-1824, or from the department's Web site at ~~www.iowava.org~~ <https://va.iowa.gov>.

ITEM 12. Amend subrule 16.7(4) as follows:

16.7(4) Office address. Persons may contact the Iowa Department of Veterans Affairs, Camp Dodge, Bldg. ~~A6A 3465~~, 7105 NW 70th Avenue, Johnston, Iowa 50131-1824; telephone (515)242-5331 ~~252-4698~~ or 1-800-838-4692; fax (515)242-5659 ~~727-3713~~. The department's Web address is ~~www.iowava.org~~ <https://va.iowa.gov>.

[Filed 9/6/17, effective 11/1/17]

[Published 9/27/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/27/17.

ARC 3342C

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Adopted and Filed

Pursuant to the authority of Iowa Code section 96.11, the Director of the Department of Workforce Development hereby amends Chapter 23, "Employer's Contribution and Charges," Iowa Administrative Code.

These amendments update, clarify and simplify the procedures by which claimants and employers interact with Iowa Workforce Development.

Notice of Intended Action for these amendments was published in the August 2, 2017, Iowa Administrative Bulletin as **ARC 3226C**. No comments were received. The Notice was on the agenda at the Administrative Rules Review Committee (ARRC) meeting held on August 4, 2017. No questions or comments were received during this public meeting of the ARRC. The amendments are identical to those published under Notice.

These amendments do not have any fiscal impact on the State of Iowa.

Waiver provisions do not apply to this rule making.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 96.

These amendments will become effective November 1, 2017.

The following amendments are adopted.

ITEM 1. Amend subrule 23.2(2), introductory paragraph, as follows:

23.2(2) Wages paid. Wages for employment during a calendar quarter consist of wages paid during the calendar quarter. Wages earned but not paid during the calendar quarter shall be considered as wages for employment in the quarter paid. The ~~Employer's Contribution and Payroll Report, Form 65-5300, employer's contribution and payroll~~ shall be used as prima facie evidence of when the wages were paid. If the wages are not listed ~~on the 65-5300~~, they shall be considered as paid:

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

ITEM 2. Amend rule 871—23.8(96), catchwords, as follows:

871—23.8(96) Due date of quarterly reports and contributions contribution and payroll.

ITEM 3. Amend paragraph **23.8(1)“b”** as follows:

b. If any due date prescribed in this rule falls on a Saturday or Sunday, or a legal holiday, the due date shall be the next following business day. Quarterly ~~reports~~ wage detail, contributions, and payments in lieu of contributions, if mailed, shall be considered as received on the date shown on the postmark of the envelope in which they are received by the department.

ITEM 4. Amend subrule 23.8(2) as follows:

23.8(2) Regular due date. Each covered employer subject to Iowa Code section 96.7 shall file with the department quarterly ~~reports~~ contribution and payroll on or before the due date, and any employer failing to file a quarterly ~~report~~ when due shall be delinquent.

ITEM 5. Amend paragraph **23.8(6)“a”** as follows:

a. A quarterly ~~report~~ wage detail or contribution payment or payment in lieu of contributions which is not received on or before the due date is delinquent. An employer who fails to file quarterly contribution and payroll on or before the due date ~~a contribution and wage report~~ shall pay to the department for each such delinquent ~~report~~ quarter, subject to waiver for good cause shown, a penalty as provided in Iowa Code section 96.14(2). No penalty shall apply to delinquent ~~reports~~ quarters when the employer proves to the satisfaction of the department that no wages were paid.

ITEM 6. Amend subrule 23.8(8) as follows:

23.8(8) Extension of time. Upon written request filed with the department before the due date of any contribution ~~report and payroll~~, the department may, for good cause shown, grant an extension in writing of the time for filing ~~of the report~~ and the payment of the contributions, but no extension shall exceed 30 days and no extension shall postpone payment beyond the last day for filing tax returns under the Federal Unemployment Tax Act. If an employer who has been granted an extension fails to pay the contribution on or before the termination of the period of such extension, interest shall be payable from the original due date as if no extension had been granted.

ITEM 7. Amend rule 871—23.9(96) as follows:

871—23.9(96) Delinquency notice. Within 20 days from the delinquent date for filing ~~Form 65-5300, Employer's Quarterly Contribution & Payroll Report~~ employer's quarterly contribution and payroll, a ~~Delinquency Notice, Form 65-5313,~~ delinquency notice will be sent to all employers from whom no ~~report~~ information has been received. Such notice shall state the employer's name, account number, experience rate, and the quarter for which ~~the report needs~~ contribution and payroll need to be made. The notice will be sent or e-mailed to the employer's last-known address, e-mail address, or place of business. If the employer has sold or dissolved the business, the employer shall ~~fill out the information section on Form 65-5313, showing~~ show the date of the last wages paid and the date of last employment. If the business was sold or transferred, the employer shall ~~show~~ provide the name and address of the successor and the employer's future mailing address. ~~Such notice shall then be returned to the department for a change of status determination.~~

ITEM 8. Rescind subrule 23.10(2) and adopt the following **new** subrule in lieu thereof:

23.10(2) At the end of each calendar quarter, the department shall bill each reimbursable employer. This statement shall be sent to the employer within 30 days of the quarter for which the benefits are charged and shall set out the social security number, name and amount of benefits charged to the employer for each such claimant together with the amount of any previous charges remaining unpaid and interest to the end of the quarter for which the statement is rendered. Payment of each quarter's charges shall be due within 30 days of the date the statement is sent. If the employer fails to reimburse the department within the period prescribed by these rules, the department may attempt collection of the amount due including any of the following methods:

a. Issuance of Notice of Jeopardy Assessment and Demand for Payment.

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

- b. Issuance of Notice of Lien.
- c. Any other actions as prescribed by the law or these rules including collection by distress warrant. Interest on delinquent reimbursable benefits shall be charged at the rate of 1 percent per month or one-thirtieth of 1 percent per day from the date payment was due until the date of payment.

ITEM 9. Amend paragraph **23.13(3)“a,”** introductory paragraph, as follows:

- a. Any employing unit may file an election, ~~on Form 68-0599,~~ to cover under the law of a single participating jurisdiction all of the services performed for the employing unit by any individual who customarily works for the employing unit in more than one participating jurisdiction. Such an election may be filed, with respect to an individual, with any participating jurisdiction in which:

ITEM 10. Amend paragraph **23.13(5)“a”** as follows:

- a. The electing unit shall promptly notify each individual affected by its approved election ~~on Form 68-0601 supplied by the elected jurisdiction,~~ and shall furnish the elected agency a copy of such notice.

[Filed 9/6/17, effective 11/1/17]

[Published 9/27/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/27/17.

ARC 3343C

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Adopted and Filed

Pursuant to the authority of Iowa Code section 96.11, the Director of Workforce Development hereby amends Chapter 26, “Contested Case Proceedings,” Iowa Administrative Code.

These amendments update, clarify and simplify the procedures in preparing for and participating in unemployment appeal hearings.

Notice of Intended Action for these amendments was published in the August 2, 2017, Iowa Administrative Bulletin as **ARC 3227C**. One comment was received and considered. The Notice was on the agenda at the Administrative Rules Review Committee (ARRC) meeting held on August 4, 2017. No questions or comments were received during this public meeting of the ARRC. These amendments are identical in substance to those published under Notice and are substantially similar in form. A minor change was made to correct the agency name in subrule 26.4(1).

This rule making does not have a fiscal impact on the State of Iowa.

Waiver provisions pursuant to Iowa Code section 17A.4(2) are not applicable.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 96.

These amendments will become effective November 1, 2017.

The following amendments are adopted.

ITEM 1. Amend subrule 26.4(1) as follows:

26.4(1) An unemployment benefits contested case is commenced with the filing, by mail, facsimile, or e-mail, online, or in person, of a written appeal by a party with the appeals bureau of the department. The appeal shall be addressed or delivered to: Appeals Bureau, ~~Department of Iowa Workforce Development,~~ 1000 East Grand Avenue, Des Moines, Iowa 50319. An online appeal is filed by completing and submitting an online appeal form available on the Iowa workforce development Web site.

ITEM 2. Amend subrule 26.4(2), introductory paragraph, as follows:

26.4(2) An appeal from an initial decision concerning the allowance or denial of benefits shall be filed, by mail, facsimile, or e-mail, online, or in person, not later than ten calendar days, as determined by the postmark or the date stamp, after the decision was mailed to the party at its last-known address and shall state the following:

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

ITEM 3. Amend subrule 26.4(5) as follows:

26.4(5) Appeals transmitted by facsimile, by e-mail, or online which are received by the appeals bureau after 11:59 p.m. Central time shall be deemed filed as of the next regular business day.

ITEM 4. Rescind rule 871—26.5(17A,96) and adopt the following new rule in lieu thereof:

871—26.5(17A,96) Commencement of employer liability contested case.

26.5(1) An employer liability contested case is commenced with the filing of a written appeal with the tax bureau of the department by mail, facsimile, or e-mail, online, or in person. The appeal shall be addressed or delivered to: Tax Bureau, Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319.

26.5(2) An appeal from a decision of the tax bureau of the department concerning employer status and liability, assessments, contribution (tax) rate, successorship, workers' status, and all questions regarding coverage of a worker or group of workers shall be filed, by mail, facsimile, or e-mail, online, or in person, not later than 30 calendar days, as determined by the postmark or the date stamp, after the decision was mailed to the party at the party's last-known address and shall set forth the following:

- a. The name, address, and Iowa employer account number of the employer;
- b. The name and title of the person filing the appeal;
- c. A reference to the decision from which the appeal is taken; and
- d. The grounds upon which the appeal is based.

26.5(3) Appeals transmitted by facsimile, by e-mail, or online which are received by the tax bureau after 11:59 p.m. Central time shall be deemed filed as of the next regular business day.

ITEM 5. Amend paragraph **26.6(1)“a”** as follows:

a. The date, time and place of an in-person hearing, or the date and time of a telephone hearing, including instructions for ~~calling~~ contacting the appeals bureau in advance of the hearing to provide the names and telephone numbers of all participants and witnesses; and

ITEM 6. Amend paragraph **26.14(1)“b”** as follows:

b. ~~All contested~~ Contested case hearings in which the department of workforce development is a party ~~shall~~ may be heard and decided by ~~a presiding officer who is~~ an administrative law judge employed by the division of administrative hearings of the department of inspections and appeals.

ITEM 7. Amend paragraph **26.14(1)“c”** as follows:

c. The department of workforce development is a party to ~~all~~ contested case hearings in which it is the employer. ~~‡ The department of workforce development is a party to those~~ contested case hearings involving issues of employer liability, and employee/independent contractor status, fraudulent overpayment and administrative penalty in which it or any of its employees request the right to participate in the hearing by offering testimony and cross-examining witnesses for other parties that arise from decisions issued by the tax bureau.

[Filed 9/6/17, effective 11/1/17]

[Published 9/27/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/27/17.

AGENCY	RULE	DELAY
Administrative Services Department[11]	amendments to ch 116 [IAB 8/16/17, ARC 3262C]	Effective date of September 20, 2017, delayed until the adjournment of the 2018 General Assembly by the Administrative Rules Review Committee at its meeting held September 12, 2017. [Pursuant to §17A.8(9)]