



IOWA ADMINISTRATIVE BULLETIN

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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

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CITATION of Administrative Rules

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

441 IAC 79	(Chapter)
441 IAC 79.1	(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>
2	Wednesday, June 28, 2017	July 19, 2017
3	Friday, July 14, 2017	August 2, 2017
4	Friday, July 28, 2017	August 16, 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 Thursday, July 6, 2017, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Military leave, 63.9 Notice **ARC 3111C**, also Filed Emergency **ARC 3115C** 6/7/17
Terrace Hill endowment for the musical arts, amendments to ch 116 Notice **ARC 3113C** 6/7/17

AGING, DEPARTMENT ON[17]

Home-delivered meals—eligibility assessment, 7.21(2)“a” Filed **ARC 3139C** 6/21/17
Mandatory reporter training, amendments to ch 15 Filed **ARC 3140C** 6/21/17

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Licensure—egg handlers, milk haulers, milk graders, bulk milk tankers, can milk truck
bodies, pesticide dealers, amendments to chs 36, 45, 63, 66, 68 Notice **ARC 3091C** 6/7/17

ARCHITECTURAL EXAMINING BOARD[193B]

Professional Licensing and Regulation Bureau[193]

COMMERCE DEPARTMENT[181]“umbrella”

Rules of conduct, 4.1 Filed **ARC 3141C** 6/21/17
Civil penalties against nonregistrant—update of cross reference, 7.3 Filed **ARC 3142C** 6/21/17

COLLEGE STUDENT AID COMMISSION[283]

EDUCATION DEPARTMENT[281]“umbrella”

All Iowa opportunity scholarship program; all Iowa opportunity foster care grant program,
amend ch 8; rescind ch 9 Notice **ARC 3125C** 6/21/17
Iowa tuition grant program—for-profit institutions, ch 11 Notice **ARC 3126C** 6/21/17

DENTAL BOARD[650]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Dental assistant radiology qualification—examinations, 22.5 Filed **ARC 3143C** 6/21/17

EDUCATION DEPARTMENT[281]

School health services; special education, amendments to chs 14, 41 Notice **ARC 3088C** 6/7/17
Community colleges, 21.2(9), 21.32(1), 21.33 Notice **ARC 3087C** 6/7/17
Educating homeless children and youth, amendments to ch 33 Notice **ARC 3089C** 6/7/17

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605]

911 telephone systems, amendments to ch 10 Notice **ARC 3090C** 6/7/17
Community disaster grants, rescind ch 13 Notice **ARC 3129C** 6/21/17

HUMAN SERVICES DEPARTMENT[441]

Appeals and hearings, amendments to ch 7 Filed **ARC 3093C** 6/7/17
Medicaid for employed people with disabilities—premiums, 75.1(39)“b”(3) Filed **ARC 3094C** 6/7/17
Child care settings—federal block grant mandate, CPR, amendments to chs 109, 110, 120
Filed **ARC 3095C** 6/7/17
Child care settings—reporting of serious injuries, 109.10(10), 110.8(1)“s,” 120.8(1)“p”
Filed **ARC 3096C** 6/7/17
Child care assistance—fee schedule, job search, amendments to ch 170
Filed Emergency After Notice **ARC 3092C** 6/7/17

INSPECTIONS AND APPEALS DEPARTMENT[481]

Dependent adult abuse in facilities and programs—personal degradation, 52.1 Notice **ARC 3110C** 6/7/17
Federal interpretive guidelines for facilities for the intellectually disabled, ch 64 appendix
Filed Without Notice **ARC 3109C** 6/7/17

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]“umbrella”

Synthetic guaranteed investment contracts, 96.3, 96.4, 96.5(2)“a,” 96.10 Filed **ARC 3144C** 6/21/17
Internal audit function requirement, amendments to ch 98 Filed **ARC 3145C** 6/21/17

LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D]

Professional Licensing and Regulation Bureau[193]

COMMERCE DEPARTMENT[181]“umbrella”

Description of organization; examinations and licensing; rules of professional conduct,
amendments to chs 1, 2, 4 Filed **ARC 3097C** 6/7/17

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Deer hunting by residents, 106.6(6), 106.7, 106.10(5) Filed **ARC 3098C** 6/7/17**NURSING BOARD[655]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Nursing education programs, amendments to ch 2 Notice **ARC 3127C** 6/21/17**PAROLE BOARD[205]**

CORRECTIONS DEPARTMENT[201]"umbrella"

Review of rules—title of designated official; communication methods and interview proceedings; juveniles serving life sentences; hearings via videoconferencing; parole, amendments to chs 2 to 8, 11, 14 to 16 Notice **ARC 3117C** 6/21/17

PHARMACY BOARD[657]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Pharmacist licensure—reexamination waiting period, 2.6 Filed **ARC 3099C** 6/7/17
 Controlled substances, amend chs 7, 8, 21, 23, 100; adopt ch 10 Notice **ARC 3136C** 6/21/17
 Controlled substances; Iowa real-time electronic pseudoephedrine tracking system, amendments to chs 10, 100 Filed **ARC 3100C** 6/7/17
 Drugs in emergency medical service programs, amendments to ch 11 Filed **ARC 3101C** 6/7/17
 Updates—name and contact information for board, citations; pharmacy Internet sites, rescind ch 24; amend chs 25 to 27, 29, 31 Notice **ARC 3133C** 6/21/17
 Rules for waivers and variances, amendments to ch 34 Notice **ARC 3134C** 6/21/17
 Contested cases; discipline, chs 35, 36 Notice **ARC 3135C** 6/21/17
 Iowa prescription monitoring program, amendments to ch 37 Filed **ARC 3102C** 6/7/17

PUBLIC HEALTH DEPARTMENT[641]

Handheld x-ray equipment for intraoral radiography, 41.1 Filed **ARC 3103C** 6/7/17
 Lead-based paint activities, 70.2 to 70.7, 70.10(1) Filed **ARC 3104C** 6/7/17
 Board-certified behavior analyst and board-certified assistant behavior analyst (BCBA/BCaBA) grants program—contract length, 107.7(1) Filed **ARC 3105C** 6/7/17
 Trauma registry, amendments to ch 136 Filed **ARC 3106C** 6/7/17

PUBLIC SAFETY DEPARTMENT[661]

Consumer fireworks sales licensing and safety standards, ch 265

Notice **ARC 3123C**, also Filed Emergency **ARC 3124C** 6/21/17**REVENUE DEPARTMENT[701]**

Excise tax rate on motor fuels, 68.2(1) Filed **ARC 3146C** 6/21/17
 Valuation of commercial real estate, 71.5 Filed **ARC 3107C** 6/7/17

SOIL CONSERVATION AND WATER QUALITY DIVISION[27]

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]"umbrella"

State soil and water quality committee—change of committee name, definition of “edge-of-field practice,” mineral mining license renewal and fee, amendments to chs 1 to 3, 10 to 12, 20 to 22, 30, 40, 50, 60 Notice **ARC 3086C** 6/7/17
 Water protection practices funds, amendments to ch 12 Notice **ARC 3112C** 6/7/17

TRANSPORTATION DEPARTMENT[761]

Iowa scenic byway program, amendments to ch 132 Notice **ARC 3130C** 6/21/17
 RISE program, amendments to ch 163 Notice **ARC 3131C** 6/21/17
 Recreational trails program, amendments to ch 165 Notice **ARC 3132C** 6/21/17
 Salvage; motor vehicle equipment, amendments to chs 405, 450 Filed **ARC 3108C** 6/7/17
 Iowa airport registration; aircraft registration, amendments to chs 720, 750 Notice **ARC 3128C** 6/21/17

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]"umbrella"

Accounting, 16.6, 16.7 Notice **ARC 3121C** 6/21/17
 Renewable energy percentage verification, ch 30 Notice **ARC 3118C** 6/21/17
 Public utilities—reorganization, amendments to ch 32 Notice **ARC 3120C** 6/21/17
 Equipment distribution program, 37.1 to 37.6 Notice **ARC 3119C** 6/21/17
 Certificates of franchise authority for cable and video service, 44.7, 44.8 Notice **ARC 3122C** 6/21/17

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Procedures for department interaction with employers and claimants, amendments to chs 1,
 22, 24 Notice **ARC 3138C** 6/21/17
 Employer reports; claims; benefits; benefit payment control, amendments to chs 22, 24, 25
Notice **ARC 3114C** 6/7/17
 Employer records and reports; claims; benefits, amendments to chs 22, 24 Filed **ARC 3116C** 6/7/17
 Unemployment appeal hearings; updates related to technology, amendments to ch 26
Notice **ARC 3137C** 6/21/17

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
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Representative Megan Jones
 4470 Highway 71
 Sioux Rapids, Iowa 50585

Representative Rick Olson
 3012 East 31st Court
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Representative Dawn Pettengill
 P.O. Box A
 Mt. Auburn, Iowa 52313

Representative Art Staed
 2141 Coldstream Avenue NE
 Cedar Rapids, Iowa 52402

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

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Military leave, 63.9 IAB 6/7/17 ARC 3111C	Joint Forces Headquarters Bldg. 6100 NW 78th Ave. Johnston, Iowa	June 29, 2017 10 a.m. to 12 noon
Terrace Hill endowment for the musical arts, amendments to ch 116 IAB 6/7/17 ARC 3113C	Carriage House Visitors Center at Terrace Hill 2300 Grand Ave. Des Moines, Iowa	June 27, 2017 9 to 10 a.m.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Licensure—egg handlers, milk haulers, milk graders, bulk milk tankers, can milk truck bodies, pesticide dealers, amendments to chs 36, 45, 63, 66, 68 IAB 6/7/17 ARC 3091C	Second Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	June 27, 2017 2 p.m.
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EDUCATION DEPARTMENT[281]

School health services; special education, amendments to chs 14, 41 IAB 6/7/17 ARC 3088C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	June 27, 2017 10 to 11 a.m.
Community colleges, 21.2(9), 21.32(1), 21.33 IAB 6/7/17 ARC 3087C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	June 27, 2017 11 a.m. to 12 noon
Educating homeless children and youth, amendments to ch 33 IAB 6/7/17 ARC 3089C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	June 27, 2017 9 to 10 a.m.

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605]

911 telephone systems, amendments to ch 10 IAB 6/7/17 ARC 3090C	Cyclones Conference Room, Suite 500 7900 Hickman Rd. Windsor Heights, Iowa	June 27, 2017 11 a.m.
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NURSING BOARD[655]

Nursing education programs, amendments to ch 2 IAB 6/21/17 ARC 3127C	Board Office, Suite B 400 S.W. 8th St. Des Moines, Iowa	July 11, 2017 8:30 to 10:30 a.m.
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PAROLE BOARD[205]

Review of rules—title of designated official; communication methods and interview proceedings; juveniles serving life sentences; hearings via videoconferencing; parole, amendments to chs 2 to 8, 11, 14 to 16 IAB 6/21/17 ARC 3117C	Board Conference Room 510 E. 12th St. Des Moines, Iowa	July 11, 2017 11 a.m. to 1 p.m.
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PUBLIC SAFETY DEPARTMENT[661]

Consumer fireworks sales licensing and safety standards, ch 265 IAB 6/21/17 ARC 3123C (See also ARC 3124C herein)	Public Conference Room 125 Oran Pape State Office Bldg. Des Moines, Iowa	September 8, 2017 10 a.m.
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TRANSPORTATION DEPARTMENT[761]

Iowa scenic byway program, amendments to ch 132 IAB 6/21/17 ARC 3130C	North Conference Room, First Floor Administration Bldg. 800 Lincoln Way Ames, Iowa	July 13, 2017 10 a.m. (If requested)
RISE program, amendments to ch 163 IAB 6/21/17 ARC 3131C	North Conference Room, First Floor Administration Bldg. 800 Lincoln Way Ames, Iowa	July 13, 2017 11 a.m. (If requested)
Recreational trails program, amendments to ch 165 IAB 6/21/17 ARC 3132C	North Conference Room, First Floor Administration Bldg. 800 Lincoln Way Ames, Iowa	July 13, 2017 1 p.m. (If requested)
Iowa airport registration; aircraft registration, amendments to chs 720, 750 IAB 6/21/17 ARC 3128C	South Conference Room, First Floor Administration Bldg. 800 Lincoln Way Ames, Iowa	July 14, 2017 10 a.m. (If requested)

UTILITIES DIVISION[199]

Renewable energy percentage verification, ch 30 IAB 6/21/17 ARC 3118C	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	July 26, 2017 9 a.m.
Equipment distribution program, 37.1 to 37.6 IAB 6/21/17 ARC 3119C	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	August 16, 2017 10 a.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.

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ADMINISTRATIVE SERVICES DEPARTMENT**Public Notice****NOTICE OF OFFICIAL PUBLICATION RATE INCREASE FOR THE FISCAL YEAR
COMMENCING JULY 1, 2017, AND ENDING JUNE 30, 2018**

In accordance with Iowa Code section 618.11, the Iowa Department of Administrative Services Director hereby publishes the lineage rate* for newspaper publications of any order, citation, or other publication required or allowed by law (also known as official publications) for the period commencing on July 1, 2017, and ending on June 30, 2018, in the following amounts:

* Lineage rate: "...each line of eight point type two inches in length, or its equivalent." (Iowa Code section 618.11)

One insertion = 47.942 cents

Each subsequent insertion = 32.326 cents

The rate becomes effective on July 1, 2017. The rate was determined by applying the formula specified in the statute. According to the federal Department of Labor, Bureau of Labor Statistics, the consumer price index for all urban consumers increased 2.2% for the 12 months ended April 2017. The April index was the most recent index available as of May 24, 2017, the date on which this notice was submitted for publication.

Pursuant to Iowa Code section 618.11, this notice is exempt from the rule-making process in Iowa Code chapter 17A.

Questions with respect to this notice may be directed to:

Matthew Behrens, OCIO Deputy Chief Operating Officer
Office of the Chief Information Officer
1305 E. Walnut
Des Moines, Iowa 50319
Telephone: (515)281-5503
E-mail: Matt.Behrens@iowa.gov

ARC 3125C**COLLEGE STUDENT AID COMMISSION[283]****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 261.3, the Iowa College Student Aid Commission hereby gives Notice of Intended Action to amend Chapter 8, "All Iowa Opportunity Scholarship Program," and to rescind Chapter 9, "All Iowa Opportunity Foster Care Grant Program," Iowa Administrative Code.

The proposed amendments reflect changes to Iowa Code sections 261.6 and 261.87 enacted in 2017 Iowa Acts, House File 642, sections 43 and 47. Section 43 rescinded the All Iowa Opportunity Foster

COLLEGE STUDENT AID COMMISSION[283](cont'd)

Care Grant Program, and section 47 includes eligible foster care students as priority recipients under the All Iowa Opportunity Scholarship Program, eliminates the grade point average requirement, and increases the number of awards a student may receive.

Interested persons may submit comments orally or in writing by 4:30 p.m. on July 11, 2017, to the Executive Director, Iowa College Student Aid Commission, 430 East Grand Avenue, Third Floor, Des Moines, Iowa 50309-1920. Written comments also may be sent by fax to (515)725-3401, by e-mail to julie.leeper@iowa.gov, or via the Iowa administrative rules Web site at <https://rules.iowa.gov>.

The Commission does not intend to grant waivers under the provisions of these rules.

After analysis and review of this rule making, the Commission finds that there is no impact on jobs.

These amendments are intended to implement Iowa Code chapter 261 and 2017 Iowa Acts, House File 642, sections 43 and 47.

The following amendments are proposed.

ITEM 1. Amend rule 283—8.2(261) as follows:

283—8.2(261) Definitions. As used in this chapter:

“Eligible college or university” means an Iowa community college, an institution of higher education governed by the state board of regents, or an accredited private institution located in Iowa that meets all eligibility requirements set forth in Iowa Code section 261.9. All eligible colleges and universities must submit annual reports which include student and faculty information, enrollment and employment information, and other information required by the commission as described in Iowa Code section 261.9.

“Eligible foster care student” means a person who has a high school diploma or a high school equivalency diploma under Iowa Code chapter 259A and is described by any of the following:

1. Is age 17 and is in a court-ordered placement under Iowa Code chapter 232 under the care and custody of the department of human services or juvenile court services.

2. Is age 17 and has been placed in a state juvenile institution pursuant to a court order entered under Iowa Code chapter 232 under the care and custody of the department of human services.

3. Is age 18 through 23 and is described by any of the following:

- On the date the person reached age 18 or during the 30 calendar days preceding or succeeding that date, the person was in a licensed foster care placement pursuant to a court order entered under Iowa Code chapter 232 under the care and custody of the department of human services or juvenile court services.

- On the date the person reached age 18 or during the 30 calendar days preceding or succeeding that date, the person was under a court order under Iowa Code chapter 232 to live with a relative or other suitable person.

- The person was in a licensed foster care placement pursuant to an order entered under Iowa Code chapter 232 prior to being legally adopted after reaching age 16.

- On the date the person reached age 18 or during the 30 calendar days preceding or succeeding that date, the person was placed in a state juvenile institution pursuant to a court order entered under Iowa Code chapter 232 under the care and custody of the department of human services.

“Expected family contribution (EFC)” is the means by which the commission ranks the relative need of an applicant for financial assistance. Expected family contribution shall be evaluated annually on the basis of a confidential statement of family finances filed on a form designated by the commission. The commission has adopted the use of the Free Application for Federal Student Aid (FAFSA), a federal form used to calculate a formula developed by the U.S. Department of Education, the results of which are used to determine expected family contribution. Relative need will be ranked based on the applicant’s expected family contribution (EFC) provided by the U.S. Department of Education. The FAFSA must be received by the processing agent by the date specified in the application instructions by the commission.

“Full-time” means enrollment at an eligible college or university in a course of study including at least 12 semester hours or the trimester or quarter equivalent.

“Iowa resident” means a person who meets the residency requirements established in 283—Chapter 10.

COLLEGE STUDENT AID COMMISSION[283](cont'd)

“Part-time” means enrollment at an eligible college or university in a course of study including at least three semester hours or the trimester or quarter equivalent.

ITEM 2. Amend subrule 8.3(1) as follows:

8.3(1) Applicants for the all Iowa opportunity scholarship program must complete the Free Application for Federal Student Aid (FAFSA) by the date specified ~~in the application instructions by the commission~~ and any additional applications or documents required by the commission. In addition to completing the FAFSA, an applicant must be:

a. An Iowa resident who begins ~~his or her~~ the initial period of postsecondary enrollment within two academic years of graduation from high school or within two academic years of completion of a high school equivalency diploma under Iowa Code chapter 259A; and

~~*b.* An Iowa high school student with at least a 2.5 cumulative grade point average on a 4.0 scale or its equivalent; and~~

~~*c.*~~ *b.* Enrolled for at least three semester hours, or the trimester or quarter equivalent, in a program eligible for federal student aid under Title IV of the federal Higher Education Act leading to an undergraduate degree, diploma, or certificate from an eligible college or university.

ITEM 3. Amend subrule 8.3(3) as follows:

8.3(3) Individuals who have military obligations may delay the initial period of enrollment for up to four academic years beyond high school graduation ~~or and~~ must begin postsecondary enrollment within two academic years of discharge. Exceptions for health or other personal reasons for delaying the initial period of enrollment will be reviewed by commission staff on a case-by-case basis.

ITEM 4. Amend subrule 8.4(2) as follows:

8.4(2) *Priority for grants.* Only applicants with expected family contributions (EFCs) at or below the average tuition and fees for regent university students for the academic year for which awards are being made will be considered for awards.

a. All eligible new and renewal foster care students will receive first priority for funding. Awards to eligible foster care students will be made based on EFC levels within the parameters defined by the commission, with students in the lowest EFC levels awarded first and at increasing EFC levels until the maximum EFC level is reached. If all students in a given EFC level cannot be funded, students will be ranked according to the date the state application was filed.

~~*a. b.*~~ All eligible renewal applicants will ~~be funded prior to new applicants~~ receive second priority for funding. Awards to renewal applicants will be made based on EFC levels within the parameters defined by the commission, with students in the lowest EFC levels awarded first and at increasing EFC levels until the maximum EFC level is reached. If all students in a given EFC level cannot be funded, students will be ranked according to the date the state application was filed.

~~*b. c.*~~ If funding remains after all eligible foster care students and renewal students have been awarded, third priority will be given to students who participated in federal TRIO programs, participated in alternative programs in high school, or graduated from alternative high schools. Awards will be made to students in this category based on EFC levels within the parameters defined by the commission, with students in the lowest EFC levels awarded first and at increasing EFC levels until the maximum EFC level is reached. If all students in a given EFC level cannot be funded, students will be ranked according to the date the state application was filed.

~~*c. d.*~~ If funding remains after all priority applicants have been awarded, funding fourth priority will be given to students who participated in federal GEAR UP programs. Awards will be made to students in this category based on EFC levels within the parameters defined by the commission, with students in the lowest EFC levels awarded first, followed by awards to students at increasing EFC levels until the maximum EFC level is reached. If all students in a given EFC level cannot be funded, students will be ranked according to the date the state application was filed.

~~*d. e.*~~ If funding is available, awards to remaining eligible applicants will be made based on EFC levels within the parameters defined by the commission, with students in the lowest EFC levels awarded first, followed by awards to students at increasing EFC levels until the maximum EFC level is reached.

COLLEGE STUDENT AID COMMISSION[283](cont'd)

If all students in a given EFC level cannot be funded, students will be ranked according to the date the state application was filed.

ITEM 5. Amend subrule 8.4(3) as follows:

8.4(3) Maximum award. All Iowa opportunity scholarships are provided during the traditional nine-month academic year, which is generally defined as September through May. Students Effective in the fiscal year beginning July 1, 2017, new recipients attending eligible colleges and universities may receive no more than ~~four~~ 8 full-time or ~~eight~~ 16 part-time semesters of all Iowa opportunity scholarships.

a. The maximum award for full-time students will be the lesser of:

- (1) The amount of financial need demonstrated by the student as calculated by the commission, or
- (2) One-half of the average tuition and fees for regent university students for the award year, ~~or,~~
- (3) ~~The tuition and fees paid by the student.~~

b. ~~A student may request that the student's maximum four semesters of award eligibility be provided during the first two semesters of enrollment. A student making this request will be eligible for only two semesters and will be awarded no more than the lesser of:~~

- (1) ~~The amount of financial need demonstrated by the student as calculated by the commission,~~
- (2) ~~The annual average tuition and fees at regent universities, or~~
- (3) ~~An amount equal to double the tuition and fees paid by the student during the first year of eligibility.~~

e. b. The maximum award for a full-time student will not be affected by the ranking system used to prioritize grants. A part-time student will receive a prorated award, as defined by the commission, based on the number of hours for which the student is enrolled.

ITEM 6. Rescind and reserve **283—Chapter 9.**

ARC 3126C

COLLEGE STUDENT AID COMMISSION[283]

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 261.3, the Iowa College Student Aid Commission hereby gives Notice of Intended Action to adopt new Chapter 11, "Iowa Tuition Grant Program—For-Profit Institutions," Iowa Administrative Code.

The proposed chapter includes guidance for the administration of new Iowa Code section 261.16A enacted in 2017 Iowa Acts, House File 642, sections 15 and 17. Sections 15 and 17 provide eligibility requirements for student and institutional participation in the Iowa Tuition Grant Program for eligible students attending Iowa for-profit institutions.

Interested persons may submit comments orally or in writing by 4:30 p.m. on July 11, 2017, to the Executive Director, Iowa College Student Aid Commission, 430 East Grand Avenue, Third Floor, Des Moines, Iowa 50309-1920. Written comments also may be sent by fax to (515)725-3401, by e-mail to julie.leeper@iowa.gov, or via the Iowa administrative rules Web site at <https://rules.iowa.gov>.

The Commission does not intend to grant waivers under the provisions of these rules.

After analysis and review of this rule making, the Commission finds that there is no impact on jobs.

This amendment is intended to implement Iowa Code chapter 261 as amended by 2017 Iowa Acts, House File 642, sections 15 and 17.

The following amendment is proposed.

COLLEGE STUDENT AID COMMISSION[283](cont'd)

Adopt the following new 283—Chapter 11:

CHAPTER 11
IOWA TUITION GRANT PROGRAM—FOR-PROFIT INSTITUTIONS

283—11.1(261) Tuition grant based on financial need to Iowa residents enrolled at eligible private institutions of postsecondary education in Iowa.

11.1(1) *Financial need.* The need of an applicant for financial assistance under the Iowa tuition grant program—for-profit institutions shall be evaluated annually on the basis of a confidential statement of family finances filed on a form designated by the commission. For the purposes of determining financial need, the commission has adopted the use of the Free Application for Federal Student Aid (FAFSA), a federal form used to calculate a formula developed by the U.S. Department of Education, the results of which are used to determine relative need. The FAFSA must be received by the processing agent by the date specified in the application instructions.

11.1(2) *Tuition and mandatory fees.* Tuition and mandatory fees shall be defined as those college costs paid annually by all students enrolled in eligible institutions on a full-time basis as reported annually to the commission by each participating eligible institution. Each eligible institution also will provide annually its rates for part-time tuition and fees to the commission.

11.1(3) *Student eligibility.* A recipient must be an Iowa resident enrolled for at least three semester hours, or the quarter- or clock-hour equivalent, in a program of study eligible for federal student aid programs authorized under Title IV of the Higher Education Act of 1965, as amended. “Iowa resident” means an individual who meets the residency requirements established in 283—Chapter 10.

a. An eligible student attending a school defined in 11.2(1) “*a*” must be enrolled in a program of study that leads to a degree.

b. An eligible student attending a school defined in 11.2(1) “*b*” must be enrolled in a program of study that prepares the student for licensure as a barber in the state of Iowa as provided in Iowa Code chapter 158, or enrolled in a cosmetology arts and sciences program of study that prepares the student for licensure in the state of Iowa as provided in Iowa Code chapter 157.

11.1(4) *Extent of grant.* Iowa tuition grants are provided during the traditional nine-month academic year generally defined as September through May.

a. Students attending institutions defined in 11.2(1) “*a*” may receive no more than 8 semesters of full-time Iowa tuition grants or 16 part-time semesters.

b. Students attending institutions defined in 11.2(1) “*b*” may receive no more than 4 semesters, or the quarter- or clock-hour equivalent, of full-time Iowa tuition grants or 8 part-time semesters, or the quarter- or clock-hour equivalent.

c. Students may receive a combined total of no more than 8 full-time semesters or 16 part-time semesters under the Iowa tuition grant for-profit and not-for-profit programs.

d. A grant for summer enrollment may be provided if the recipient is enrolled in a commission-approved accelerated program that integrates summer attendance. The purpose of restricting summer Iowa tuition grants is to ensure that students who take classes during the summer do not exhaust Iowa tuition grant eligibility prior to completing four-year degree programs at eligible institutions, defined in 11.2(1) “*a*,” or prior to completing barber or cosmetology arts and sciences programs of study at eligible institutions, defined in 11.2(1) “*b*.”

11.1(5) *Priority for grants.* Applicants are ranked in order of the estimated amount which the family reasonably can be expected to contribute toward college expenses, and awards are granted to those who demonstrate need in order of expected family contribution, from lowest to highest, insofar as funds permit.

11.1(6) *Award notification.* A grant recipient is notified of the award by the eligible institution to which application is made. Each award notification must clearly indicate award amounts, the state programs from which funding will be received, and that funding is contingent upon the availability of state funds. Any award notification provided by an eligible institution on probation with the accrediting agency must be made contingent upon the eligible institution’s maintaining affiliation with

COLLEGE STUDENT AID COMMISSION[283](cont'd)

the accrediting agency. The eligible institution is responsible for completing necessary verification and for coordinating other aid to ensure compliance with student eligibility requirements and allowable award amounts. The eligible institution reports changes in student eligibility to the commission.

11.1(7) *Award transfers and adjustments.* Recipients are responsible for promptly notifying the appropriate eligible institution of any change in enrollment or financial situation. The eligible institution will make necessary changes and notify the commission.

11.1(8) *Restrictions.*

a. A student who is in default on a Stafford Loan, SLS Loan, or a Perkins/National Direct/National Defense Student Loan or who owes a repayment on any Title IV grant assistance shall be ineligible for assistance under the Iowa tuition grant program. The student regains eligibility under this rule by providing documentation to the institution that the student has regained eligibility under Title IV of the Higher Education Act of 1965, as amended.

b. A student who is in default on a state award or owes a repayment on any state award is ineligible for assistance under the Iowa tuition grant program. Eligibility for state aid may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in an appeal under the procedures set forth in 283—Chapters 4 and 5. Credits that a student receives through “life experience credit” and “credit by examination” are not eligible for tuition grant funding.

283—11.2(261) Tuition grant institutional eligibility requirements.

11.2(1) *Eligible institution.* An institution requesting participation in the Iowa tuition grant program must apply to the college student aid commission using the commission’s designated application.

a. A college or university participating in the Iowa tuition grant program under 2017 Iowa Acts, House File 642, section 15, must:

- (1) Be accredited by the Higher Learning Commission (HLC); and
- (2) Be an institution of higher learning located in Iowa which is operated privately and not controlled or administered by any state agency or any subdivision of the state, which is not exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, and which meets all of the criteria described in Iowa Code section 261.9(1) “d” through “i”; and
- (3) Annually provide matching aggregate institutional financial aid to Iowa tuition grant recipients equal to a required percentage of the amount received by its students as described under 2017 Iowa Acts, House File 642, section 15 (institutional financial aid qualifying as match includes only institutional financial aid provided to students in periods of enrollment during which students are also receiving Iowa tuition grants); and
- (4) Effective January 8, 2010, have purchased an accredited private institution that was exempt from taxation under Section 501(c) of the Internal Revenue Code, or have students who were eligible to receive tuition grants in the fiscal year beginning July 1, 2003; and
- (5) Be located in Iowa. “Located in Iowa” means a college or university that is accredited by the Higher Learning Commission, that has made a substantial investment in a permanent Iowa campus and staff, that offers a full range of courses leading to the degrees offered by the institution as well as a full range of student services, and that is not required to register under Iowa Code chapter 261B.

b. A school of cosmetology or barbering participating in the Iowa tuition grant program under 2017 Iowa Acts, House File 642, section 15, must:

- (1) Be a barber school licensed under Iowa Code section 158.7 or a school of cosmetology arts and sciences licensed under Iowa Code chapter 157 and be accredited by a national accrediting agency recognized by the United States Department of Education; and
- (2) Be an institution that is not exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and be operated privately and not controlled or administered by any state agency or any subdivision of the state and meet all of the criteria described in Iowa Code section 261.9(1) “d” through “i”; and
- (3) For the fiscal year beginning July 1, 2017, provide a matching aggregate amount of institutional financial aid equal to at least 75 percent of the amount received by the institution’s students for Iowa

COLLEGE STUDENT AID COMMISSION[283](cont'd)

tuition grant assistance under 2017 Iowa Acts, House File 642, section 17. For the fiscal year beginning July 1, 2018, provide a matching aggregate amount of institutional financial aid equal to at least 85 percent of the amount received in that fiscal year. Commencing with the fiscal year beginning July 1, 2019, and each succeeding fiscal year, the matching aggregate amount of institutional financial aid shall be at least equal to the match provided by eligible institutions under 2017 Iowa Acts, House File 642, section 15 (institutional financial aid qualifying as match includes only institutional financial aid provided to students in periods of enrollment during which students are also receiving Iowa tuition grants); and

(4) Be located in Iowa. “Located in Iowa” means a school that is accredited by a national accrediting agency recognized by the United States Department of Education, that has made a substantial investment in a permanent Iowa campus and staff, that offers a full range of courses preparing students for a professional license, and that is not required to register under Iowa Code chapter 261B.

11.2(2) *Processing institutional applications for participation.* Application forms will be provided by the commission.

a. Applicants are required to provide the commission with documentation establishing eligibility as described in 11.2(1).

b. Applicants seeking to participate in the Iowa tuition grant program must submit applications by October 1 of the year prior to the beginning of the academic year for which they are applying for participation.

c. Applicants must submit written plans outlining academic programs that integrate summer attendance in accelerated programs prior to making summer awards. If the summer program is approved by the commission, an applicant’s students may receive Iowa tuition grants beginning in the summer following approval.

d. Academic programs at eligible institutions defined in 11.2(1) “a” which allow full-time students to complete four-year baccalaureate programs in less than the normal prescribed time period while taking the same courses as students completing the same degree during a traditional four-year time period will be approved for summer Iowa tuition grants.

e. Academic programs at eligible institutions defined in 11.2(1) “b” which integrate summer attendance into the barber or cosmetology arts and sciences programs of study and allow full-time students to complete the program in less than the time period it would take to complete the same program of study without summer attendance will be approved for summer Iowa tuition grants.

f. A summer academic program may be defined for a group of students or may be a self-directed program in which a student has received approval from appropriate officials of the eligible institution.

11.2(3) *Notice of change of status.* Any eligible institution which fails to meet the criteria set forth in 11.2(1) must immediately notify the commission. Failure to comply with this notice of change requirement may result in the eligible institution’s being required to return Iowa tuition grant funds to the commission.

11.2(4) *Review of eligibility.*

a. The commission shall periodically, at least every three years, investigate and review compliance of institutions participating in the Iowa tuition grant program—for-profit institutions with criteria described in Iowa Code section 261.9 and this rule.

b. If the commission finds that an eligible institution fails to comply with the provisions of Iowa Code section 261.9 and this rule, participation in the Iowa tuition grant program—for-profit institutions shall be suspended.

11.2(5) *Reporting requirements.* Every eligible institution participating in the Iowa tuition grant program shall submit an annual report which includes student and faculty information, enrollment and employment information, the amount of institutional matching financial aid dollars, and other information required by the commission as described in Iowa Code section 261.9.

ARC 3129C**HOMELAND SECURITY AND EMERGENCY
MANAGEMENT DEPARTMENT[605]****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 17A.3, the Homeland Security and Emergency Management Department hereby gives Notice of Intended Action to rescind Chapter 13, “Community Disaster Grants,” Iowa Administrative Code.

In accordance with Iowa Code section 17A.7(2), the Department finds that Chapter 13 should be rescinded and reserved as the chapter is no longer utilized. The grant program created in the chapter operated for a defined term, all funds have been expended and all grant administration processes have been completed.

Consideration will be given to all written suggestions or comments on the proposed amendment received on or before July 11, 2017. Such written materials should be sent to the Administrative Rules Coordinator, Department of Homeland Security and Emergency Management, 7900 Hickman Road, Suite 500, Windsor Heights, Iowa 50324; fax (515)725-3260; or e-mail to john.benson@iowa.gov.

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

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

This amendment is intended to implement Iowa Code section 17A.7(2).

The following amendment is proposed.

Rescind and reserve **605—Chapter 13.**

ARC 3127C**NURSING BOARD[655]****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 147.76, the Iowa Board of Nursing hereby gives Notice of Intended Action to amend Chapter 2, “Nursing Education Programs,” Iowa Administrative Code.

The proposed amendments to Chapter 2:

- Clarify existing definitions in the chapter.
- Add definitions to the chapter.
- Streamline the provisional approval process.
- Add a process for denial and withdrawal of Board approval.
- Streamline the process for closure of an approved program.
- Clarify the role and expectation of the head of the program to have two years of teaching experience in a nursing education program.
- Clarify language regarding the nursing curriculum.

NURSING BOARD[655](cont'd)

- Add language regarding application of a standardized examination in a nursing education program.
- Add language on the use of simulation in a nursing education program based on National Council of State Boards of Nursing (NCSBN) model rules.
- Clarify the expectation of nursing education programs in regards to providing program-related information to prospective and current students (i.e., NCLEX® passing percentages).
- Clarify the nursing program's responsibility concerning changes to the program.
- Streamline the process for programs that fall below 95 percent of the national NCLEX® passing percentage.
- Clarify language concerning reports to the Board (i.e., annual reports).
- Clarify language concerning changes requiring Board notification and approval.

Any interested person may make written comments or suggestions on or before July 11, 2017. Such written materials should be directed to the Executive Director, Iowa Board of Nursing, RiverPoint Business Park, 400 S.W. 8th Street, Suite B, Des Moines, Iowa 50309-4685; or sent by e-mail to rules.comments@iowa.gov. Persons who wish to convey their views orally should contact the Executive Director at (515)281-3256 or in the Board office at 400 S.W. 8th Street, Des Moines, Iowa, by appointment.

Also, there will be a public hearing on July 11, 2017, from 8:30 a.m. to 10:30 a.m. at the Board of Nursing office, 400 S.W. 8th Street, Suite B, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

These amendments were approved by the Board on April 19, 2017.

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

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

These amendments are intended to implement Iowa Code chapters 17A, 147, 152, and 272C.

The following amendments are proposed.

ITEM 1. Amend rule 655—2.1(152) as follows:

655—2.1(152) Definitions.

“Approval” means recognition status given to nursing education programs based on the programs' compliance with the criteria specified in this chapter. Approval may be granted or continued ~~within~~ for any time ~~frame period~~ determined by the board for up to six years.

“Clinical facilities” means locations where students directly care for patients/clients under the supervision of a qualified faculty member ~~so that program outcomes are met~~.

“Clinical instruction” means hands-on learning situations in which students directly care for patients/clients within a relevant setting, under the supervision of a qualified faculty member, ~~so that program outcomes are met~~.

“Content” means the subject matter in a given area of study.

“Controlling institution” means the institution that has authority over and administrative accountability for the program(s).

“Curriculum” means content, lab/simulation, observation and clinical experiences developed, implemented and evaluated by faculty to facilitate achievement of program outcomes and to meet the learning needs of students.

“Debriefing” means an activity that follows a simulation experience and that is led by a faculty member, encourages a participant's reflective thinking, and provides feedback regarding the participant's performance.

“Faculty” means the teaching staff in a nursing education program. ~~“Faculty” also means individuals who teach nursing in a nursing education program or who are hired to teach in a program on the basis of education, licensure or practice as a registered nurse.~~ This definition includes anyone who provides didactic, simulation, laboratory, or clinical instruction in nursing when assigned by the program to provide this instruction for courses included in the nursing curriculum. The definition

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applies regardless of the amount of time spent teaching, the level of payment, the type of contract, the temporary nature of the position, or the location of the learner.

~~“First professional degree” means the title conferred by a college or university that signifies completion of the academic requirements for beginning practice in a given profession and a level of professional skill beyond that normally required for a baccalaureate degree.~~

~~“Head of program” means the dean, chairperson, director, or coordinator of the nursing education program(s) who is responsible for the administration of the program(s).~~

~~“Improvement status” means the status on which a program is placed after three consecutive years of NCLEX® results below the 95 percent of the national NCLEX® passing percentage.~~

~~“Interim approval” means approval granted to a new nursing program, at which time students may be admitted into the program.~~

~~“Lab/simulation” means activities that mimic the reality of a clinical environment and that are designed to demonstrate procedures, decision making and critical thinking through techniques such as role playing and through the use of devices such as interactive videos or mannequins. “Lab/simulation” shall not take the place of clinical experiences with actual patients interactive experiences.~~

~~“Learning experiences” means experiences that shall include content and clinical instruction and that may include components of lab/simulation, practicum, and observation.~~

~~“Located in Iowa” means a college or university that is accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools, that has made a substantial investment in a permanent Iowa campus and staff, and that offers a full range of courses leading to the degrees offered by the institution as well as a full range of student services.~~

~~“Master’s degree” means the title conferred by a college or university upon completion of a program of graduate study that requires a level of academic accomplishment and subject mastery substantially beyond that required for a baccalaureate degree.~~

~~“National NCLEX® passing percentage” means the percentage of first-time testers who achieve a passing score on the NCLEX® examination for licensed practical nurse or registered nurse licensure, calculated on a calendar year basis.~~

~~“NCLEX®” means the National Council Licensure Examination, the examination currently used for initial licensure as a registered nurse or licensed practical nurse.~~

~~“NCLEX® passing percentage” means the percentage of first-time testers who achieve a passing score on the NCLEX® examination for licensed practical nurse or registered nurse licensure within six months of graduation from a nursing program, calculated on a calendar year basis.~~

~~“Observation” means learning experiences in a relevant setting, that meet program outcomes but do not require on-site faculty supervision and where the student does not directly care for patients/clients, that meet program outcomes but do not require on-site faculty supervision.~~

~~“Out-of-state program” means an approved nursing program within U.S. United States jurisdiction that provides clinical experiences in Iowa.~~

~~“Practicum” means a course of study designed especially for the preparation of nurses that involves the supervised practical application of previously studied theory.~~

~~“Preceptor” means a licensed individual who meets Iowa board of nursing qualifications as specified in this chapter, is on staff at the facility where the experience occurs, is selected by the educational facility in collaboration with the clinical facility, and is responsible for the on-site direction of the student over a period of time.~~

~~“Preceptorship” means an optional experience between a preceptor and a nursing student over a period of time that is congruent with program outcomes.~~

~~“Program” means a course of study by any method of instruction or delivery that leads to a nursing diploma, degree or certificate. Multiple-site programs offered by one controlling institution shall be considered one program if the philosophy and curriculum of all the sites are the same. Programs eligible for board approval shall include all of the following:~~

~~1. At least a one academic year course of study or its equivalent in theory and practice as described by the board that leads to a diploma in practical nursing and to eligibility to apply for practical nurse licensure by examination as described in 655—Chapter 3.~~

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~~2. At least a two-academic-year course of study or its equivalent in theory and practice as described by the board that leads to a degree in nursing and to eligibility to apply for registered nurse licensure by examination as described in 655—Chapter 3.~~

~~3. A course of study designed for registered nurses that leads to a baccalaureate degree with a major in nursing.~~

~~4. A postbaccalaureate course of study that leads to a master's degree with a major in nursing.~~

~~5. A course of study designed for registered nurses that leads to a master's degree with a major in nursing.~~

~~6. A course of study designed for registered nurses who hold a master's degree in nursing that leads to a certificate in advanced practice nursing. When the certificate is in a clinical specialty area, the course of study shall lead to eligibility to apply for certification in the clinical specialty by a national professional nursing organization approved by the board and to eligibility for registration as an advanced registered nurse practitioner as described in 655—Chapter 7.~~

~~7. A post-master's course of study that leads to a doctoral degree with a major in nursing.~~

~~8. A course of study that leads to a doctorate in nursing practice.~~

“Qualified nursing faculty” means individuals who meet Iowa board of nursing faculty qualifications as specified in this chapter as well as and the qualifications of the parent institution.

ITEM 2. Renumber rules **655—2.2(152)** to **655—2.4(152)** as **655—2.3(152)** to **655—2.5(152)**, and renumber rules **655—2.5(152)** to **655—2.15(152)** as **655—2.7(152)** to **655—2.17(152)**.

ITEM 3. Adopt the following new rule 655—2.2(152):

655—2.2(152) Programs eligible for board approval. Programs eligible for board approval shall include all of the following:

1. At least a one-academic-year course of study or its equivalent in theory and practice as described by the board that leads to a diploma in practical nursing and to eligibility to apply for practical nurse licensure by examination as described in 655—Chapter 3.

2. At least a two-academic-year course of study or its equivalent in theory and practice as described by the board that leads to a degree in nursing and to eligibility to apply for registered nurse licensure by examination as described in 655—Chapter 3.

3. A course of study designed for registered nurses that leads to a baccalaureate degree with a major in nursing.

4. A course of study designed for registered nurses that leads to a master's degree with a major in nursing.

5. A course of study designed for registered nurses who hold a master's degree in nursing that leads to a certificate in advanced practice nursing and eligibility for licensure as an advanced registered nurse practitioner as described in 655—Chapter 7. When the certificate is in a population focus, the course of study shall lead to eligibility to apply for certification in the population focus by a national professional nursing organization recognized by the board.

6. A post-master's course of study that leads to a doctoral degree with a major in nursing.

7. A course of study that leads to a doctorate in nursing practice.

ITEM 4. Amend renumbered subrule 2.3(2) as follows:

2.3(2) The board shall approve or deny the program application to establish a nursing program. If the board approves the program application, the controlling institution shall then submit to the board a program proposal within one year of the application that includes, but is not limited to, the following:

a. Evidence of employment of the head of the program, including the individual's qualifications, at least six months prior to the beginning of the first nursing course.

b. Program philosophy, objectives and outcomes that reflect the proposed level of education.

c. Organizational chart of the educational institution documenting the relationship of the nursing program within the institution.

d. Curriculum plan that meets the criteria in rule ~~2.8(152)~~ 655—2.10(152).

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- e.* Letter of intent from clinical facilities securing clinical opportunities and documentation of the facility type, size, number of beds, and type of patients.
- f.* Evidence of provision of qualified faculty. Faculty shall be employed by the controlling institution prior to the beginning of teaching assignments. Faculty members who teach nursing shall meet the qualifications outlined in subrule ~~2.9(2)~~ 2.11(2).
- g.* Updated time schedule.
- h.* Proposed five-year budget for the nursing education program.

ITEM 5. Amend renumbered subrules 2.3(4) and 2.3(5) as follows:

2.3(4) Interim approval may be granted to the program based on the program proposal and a site visit.

- a.* The controlling institution shall publish the interim approval status of the program.
- b.* The head of the program shall submit ~~nine copies~~ one electronic copy and one hard copy of a program progress report ~~three~~ four weeks prior to each regularly scheduled board meeting until full approval as described in rule ~~2.3(152)~~ 655—2.4(152) is granted by the board. The progress report shall include the following:

- (1) Updated information in all areas identified in the initial proposal.
- (2) Current number of admissions and enrollments.
- (3) Current number of qualified faculty.
- (4) ~~Course~~ New course offerings, including descriptions, credit hours, outcomes/objectives, placement of course and curriculum submitted six months prior to the offering of courses.
- ~~(5) Detailed course syllabi submitted six months prior to the offering of courses.~~

- ~~(6)~~ (5) Changes requiring board notification and approval as outlined in subrule ~~2.15(3)~~ 2.17(3).

c. Interim approval shall continue until the board conducts a review of program materials, completes a site visit, and grants approval to the program following graduation of the first class and submission of results of the national examination for licensure or advanced practice certification, if applicable.

d. The board may at any time seek additional program information from the controlling institution and head of the program.

2.3(5) The board may deny interim approval based on the program proposal and a site visit.

a. In order to be reconsidered, the controlling institution shall resubmit a program proposal within six months from the time of program application.

b. One year from the initial application, the controlling institution ~~shall~~ may resubmit a program application to the board in order to be reconsidered.

ITEM 6. Amend renumbered subrule 2.4(2) as follows:

2.4(2) The program shall provide to the board the nursing education program report and requested materials addressing all aspects of the program outlined in rules ~~2.6(152)~~ 655—2.8(152) to ~~2.15(152)~~ 655—2.17(152) and documenting how the criteria for approval are met. Documentation may include current information submitted by the program to other approving and accrediting entities.

ITEM 7. Amend renumbered rule ~~655—2.5(152)~~ as follows:

655—2.5(152) Provisional approval.

2.5(1) Provisional approval may be granted at the board's discretion to a program if the board determines that the program does not meet the criteria for approval: during the full approval procedure or at any time during the progression of the program.

~~*a.* At any time during the progression of the program.~~

~~*b.* During the full approval procedure of the program.~~

2.5(2) At the time of provisional approval, the board:

a. Shall notify the president of the academic institution and head of the nursing program, in writing, of the program's provisional approval status;

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~~a. b.~~ Shall meet with representatives of the program and controlling institution to ~~determine~~ discuss the length of provisional approval, set conditions for achieving full approval, and identify expected outcomes. ~~The program shall notify students of provisional approval; and~~

~~b. c.~~ May require progress reports and a site visit.

~~c.~~ Shall meet with representatives of the program and controlling institution prior to the expiration of the program's provisional approval to determine if outcomes are met.

~~d.~~ Shall deny or withdraw approval if the board determines that the program failed to meet the conditions for full approval.

2.5(3) Throughout provisional approval:

a. The program shall notify all students and prospective students of the program's provisional approval status; and

b. The board may require progress reports, conduct site visits, and request board appearances.

2.5(4) Prior to the expiration of a program's provisional approval, the board shall meet with representatives of the program and controlling institution to determine if the outcomes are met. The board shall determine whether to grant the program full approval, extend provisional approval, or initiate proceedings to deny or withdraw approval.

ITEM 8. Adopt the following new rule 655—2.6(152):

655—2.6(152) Denial or withdrawal of board approval.

2.6(1) If a program does not meet the conditions imposed during provisional approval to return to full approval within the time period specified, the board may initiate proceedings to deny or withdraw approval of the program. To initiate proceedings, the board shall issue to the program a notice of intent to deny or withdraw approval. The notice of intent shall set forth the basis for the denial or withdrawal and describe the process for appealing the notice. If a program appeals, a contested case hearing shall be scheduled. The hearing shall be governed by the rules found in 655—Chapter 20.

2.6(2) If, after a contested case proceeding, the board denies or withdraws approval of a program, the program shall immediately notify all enrolled students of the denial or withdrawal of approval. Such notification must include the date of denial or withdrawal of approval and a statement that students must graduate from an approved program to be eligible for licensure. The program shall assist all enrolled students with transferring to an approved program.

ITEM 9. Amend renumbered rule 655—2.7(152) as follows:

655—2.7(152) Closure of an approved program.

2.7(1) Prior to program closure, the controlling institution shall submit a written plan for board approval. The plan shall include reasons for closure and the date of closure, which is defined as the date when the last student graduates. The plan shall also address a provision for the graduation of enrolled students, retention of adequate numbers of qualified faculty, retention of approved curriculum, maintenance of educational resources and student services, and a provision for student and graduate transcripts. When a program intends to close prior to the graduation of enrolled students who are actively taking nursing courses, the plan shall be submitted to the board at least 12 months prior to closure, except when closure is occurring as a result of an emergency or unforeseen circumstances. The board may shorten the 12-month time period if the board determines that the controlling institution has made adequate provisions for enrolled students.

~~2.7(1)~~ **2.7(2)** Voluntary closure. The program shall continue to meet the criteria for board approval until all enrolled students have graduated or the board has approved a plan for closure prior to graduation of the students. The board may require progress reports during the closure process. Prior to closure, the controlling institution shall notify the board regarding the location and maintenance of student and graduate transcripts and records to enable retrieval after the program closes.

~~2.7(2)~~ Closure as a result of denial or withdrawal of board approval. The controlling institution shall implement the time frame established by the board for transfer of enrolled students to an approved program and report to the board the date of transfer for each student by name. Program closure shall

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~~occur when the last student has transferred. The board may require progress reports during the closure process.~~

~~2.7(3) *Record storage.* Prior to closure, the controlling institution shall notify the board regarding the location and maintenance of student and graduate transcripts and records.~~

ITEM 10. Amend renumbered subrules 2.8(1) and 2.8(2) as follows:

2.8(1) The program shall meet the following criteria:

a. Authorization. Authorization for conducting a program is granted in accordance with Iowa Code chapter 261B. ~~Such authorization is provided by the Iowa secretary of state.~~

b. Authority and administrative responsibility. The authority and administrative responsibility of the program shall be vested in the head of the program, who is responsible to the controlling institution.

c. Organizational chart. The organizational chart(s) shall clearly indicate the lines of authority and communication within the program and with the central administration, other units within the controlling institution, cooperating agencies, and advisory committees.

d. Finances.

(1) The controlling institution shall allocate adequate funds to carry out the purposes of the program.

(2) The head of the program shall prepare the budget with the assistance of the faculty.

e. Ethical practices. Ethical practices and standards, including those for recruitment and advertising, shall be consistent with those of the controlling institution and shall be made available to students and prospective students.

f. Contractual agreements. Written contractual agreements shall exist between the program and the clinical facilities. The agreements shall include:

(1) Identification of responsibilities of both parties related to patient or client services.

(2) ~~Faculty~~ Provision for faculty control, selection and guidance of student learning experiences.

(3) Provision for termination of the agreement.

(4) Provision for annual review.

(5) ~~Documentation~~ Provision that the facility is in good standing with its regulatory agency.

g. Accrediting and approving agencies.

(1) The controlling institution or program shall be accredited by the Higher Learning Commission ~~of the North Central Association of Colleges and Schools.~~

(2) When the program is located at a community college, the controlling institution shall be approved by the Iowa department of education.

(3) When the program is offered under the auspices of the United States armed forces, it shall be accredited by the U.S. Department of the Army.

h. Philosophy/mission and program outcomes. The faculty shall develop a philosophy or mission statement and program outcomes that shall be:

(1) Consistent with the philosophy or mission of the controlling institution.

(2) Reflective of faculty beliefs about nursing, education and professional standards.

(3) A guide in the development, implementation and evaluation of the program.

(4) Available to students and prospective students.

i. Program evaluation. A written plan shall outline the evaluation process for all aspects of the program and shall identify the methodology, tools, responsible parties and time frame. Evidence of implementation shall reflect achievement of program outcomes.

2.8(2) The head of a program shall meet the following requirements:

a. Current licensure as a registered nurse in Iowa. An individual is currently licensed when licensed in another state and recognized for licensure in this state pursuant to the nurse licensure compact contained in Iowa Code chapter 152E.

b. Two years of experience in clinical nursing.

c. Two years of teaching experience in a nursing education program.

d. Academic qualifications:

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(1) The head of a program who was employed on or before July 1, 1992, shall be considered adequately prepared as long as that person remains in that position.

(2) The head of a program hired after July 1, 1992, shall have a master's or doctoral degree with a major in nursing at either level at the time of hire. ~~A first professional degree as defined in rule 2.1(152) does not meet this requirement.~~ The date of hire is the first day of employment as head of the program with compensation at a particular nursing education program.

(3) If a program offers a baccalaureate or higher degree in nursing, the head of the program shall have a doctoral degree at the time of hire.

e. Submission of qualifications to the board office within one month of appointment.

ITEM 11. Amend renumbered rule 655—2.9(152) as follows:

655—2.9(152) Resources of the controlling institution. The controlling institution is responsible for provision of resources adequate to meet program needs and outcomes.

2.9(1) Human resources. Human resources shall include the following:

a. Head of program.
b. Faculty.
c. Secretarial and other support and staff services to ensure appropriate use of faculty time and expertise.

d. Support staff for online or distance education or both.

2.9(2) Physical resources. Physical resources may include the following:

a. Classrooms, conference rooms, laboratories, simulation laboratories, offices, and equipment.
b. Student facilities.

2.9(3) Learning resources. Learning resources shall include the following:

a. Library.
b. Print media.
c. Computer-mediated resources.
d. Laboratory/simulation laboratory equipment.

2.9(4) Financial resources. Financial resources shall be adequate to support and carry out the mission of the controlling institution.

ITEM 12. Amend renumbered rule 655—2.10(152) as follows:

655—2.10(152) Curriculum.

2.10(1) The curriculum of a program shall:

a. Reflect the philosophy/mission and program outcomes supported by the nursing faculty.
b. Identify program outcomes and define how learning experiences support outcomes.
c. Reflect current standards of nursing practice and education.
d. Be consistent with laws governing the practice of nursing.
e. Ensure sufficient preparation for the safe and effective practice of nursing.
f. Include planned learning experiences and strategies that ~~meet~~ demonstrate integration of knowledge and attainment of the program outcomes.

g. Reflect the roles for which the student is being prepared.

h. Be evaluated on a regular basis by the faculty and reflect achievement of student outcomes as demonstrated in the program evaluation plan.

~~g.~~ i. When offered within a college or university:

(1) Be comparable in quality and requirements to other degree programs within the college or university.

(2) Be planned in accordance with the college or university calendar.

(3) Assign credit hours for learning experiences that are consistent with the college or university pattern.

(4) Provide a teaching/learning environment (classroom, clinical, laboratory, or simulation) that supports achievement of expected outcomes.

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2.10(2) Standardized examinations may be used to supplement a program's curriculum but shall not prevent a student's academic progression or graduation. At the time of enrollment, students shall be informed of the schedule and procedure for any standardized examinations utilized in the curriculum. The program shall have a process and procedure for remediation of students who do not pass the standardized examinations.

2.10(2) 2.10(3) Prelicensure programs.

a. The curriculum of a program leading to eligibility for initial licensure as a licensed practical nurse or registered nurse shall include:

- (1) Content that is consistent with the practice of nursing as defined in Iowa Code section 152.1.
- (2) Content in medical, surgical, gerontological, mental health, and nursing of childbearing families and children that reflects current nursing practice and that encompasses health needs throughout the life span.
- (3) Opportunities to participate in the nursing process and to develop competencies in direct patient care, problem-solving methodologies, clinical judgment, communication, and the use of current equipment and technology.
- (4) Content in nursing history and trends, including professional, legal, and ethical aspects.
- (5) Supporting content from the natural and social sciences.

b. In addition to the requirements identified in paragraph ~~"a" of this subrule~~, 2.10(3) "a," the curriculum of a program leading to a diploma in practical nursing and to eligibility to apply for practical nurse licensure by examination shall:

- (1) Be consistent with ~~the legal implications within~~ the scope of practice of a licensed practical nurse as outlined in rules 655—6.3(152) and 655—6.6(152).
- (2) Focus on supportive or restorative care provided under the supervision of a registered nurse or physician pursuant to Iowa Code section 152.1(4).
- (3) Provide learning experiences in medical, surgical and gerontological nursing.
- (4) Provide content in nursing of childbearing families and children and mental health that is supported by one or more of the following: clinical instruction, lab/simulation, or observation experiences adequate to meet program outcomes.

c. In addition to the requirements identified in paragraph ~~"a" of this subrule~~, 2.10(3) "a," the curriculum of a program leading to a degree in nursing and to eligibility to apply for registered nurse licensure by examination shall:

- (1) Be consistent with ~~the legal implications within~~ the scope of practice of a registered nurse as outlined in rules 655—6.2(152) and 655—6.7(152).
- (2) Focus on attaining, maintaining and regaining health and safety for individuals and groups by utilizing the principles of leadership, management, nursing informatics, and client education.
- (3) Provide learning experiences in medical, surgical, mental health and gerontological nursing.
- (4) Provide content in nursing of childbearing families and children that is supported by one or more of the following: clinical instruction, lab/simulation, or observation experiences adequate to meet program outcomes.
- (5) Provide content in nursing research when the program leads to a baccalaureate, master's or doctoral degree.
- (6) Provide learning experiences in community health nursing when the program leads to a baccalaureate, master's or doctoral degree.

2.10(3) 2.10(4) Postlicensure programs for registered nurses who do not hold a baccalaureate degree in nursing.

a. The curriculum of a program that leads to a baccalaureate degree in nursing shall include learning experiences in nursing that will enable the student to achieve competencies comparable to outcomes of the prelicensure baccalaureate education, including content in nursing research and learning experiences in community health nursing.

b. The curriculum of a program that leads to a master's degree in nursing shall include content and learning experiences in nursing that will enable the student to achieve competencies comparable

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to outcomes of the prelicensure baccalaureate education and master's education, including content in nursing research and learning experiences in community health nursing.

2.10(4) 2.10(5) Master's, post-master's, and doctoral programs for registered nurses who hold a baccalaureate degree in nursing.

a. The curriculum of a program leading to a master's or doctoral degree in nursing shall include in-depth study of:

- (1) Nursing science, which includes content, practicum experiences and research.
- (2) Advanced role areas in nursing.

b. The curriculum of a program leading to a master's degree or post-master's certificate in a nursing ~~clinical specialty area~~ population focus, eligibility to apply for certification in the ~~specialty area~~ population focus by a national professional nursing organization approved by the board, and ~~registration licensure~~ as an advanced registered nurse practitioner shall:

(1) Be consistent with ~~the legal implications within~~ the scope of practice of the advanced registered nurse practitioner as described in 655—Chapter 7.

(2) Include advanced learning experiences in a specialty area of nursing.

2.10(5) 2.10(6) Nursing courses with a clinical or practicum component or both. The nursing program shall notify students and prospective students in writing that nursing courses with a clinical or practicum component may not be taken by a person:

- a.* Who has been denied licensure by the board.
- b.* Whose license is currently suspended, surrendered or revoked in any United States jurisdiction.
- c.* Whose ~~license/registration~~ license is currently suspended, surrendered or revoked in another country due to disciplinary action.

2.10(7) Nursing programs with a simulation component shall:

a. Ensure that the simulation component does not exceed 50 percent of total clinical hours in a course.

b. Demonstrate that the simulation activities are linked to program outcomes.

c. Demonstrate that simulation activities are based on evidence-based practices.

d. Have written policies and procedures regarding the method of debriefing each simulated activity and a plan for orienting faculty to simulation.

e. Have short-term and long-term plans for integration and maintenance of simulation in the curriculum.

f. Have faculty educated in the use of simulation and who demonstrate ongoing expertise and competence.

g. Evaluate simulation activities based on faculty and student feedback.

ITEM 13. Amend renumbered rule 655—2.11(152) as follows:

655—2.11(152) Faculty.

2.11(1) *Program requirements.* The program shall provide:

- a.* A sufficient number of faculty who satisfy the requirements in subrule ~~2.9(2)~~ 2.11(2).
- b.* Written personnel policies and position descriptions.
- c.* A faculty development program that furthers the competence of individual faculty members and the faculty as a whole.
- d.* A written teaching-load policy.
- e.* A nursing faculty organization that operates according to written bylaws and that meets on a regular basis. Minutes shall be available for reference.
- f.* In a prelicensure program, a ratio of one faculty member to a maximum of eight students ~~in practice situations involving clinical instruction~~ for hands-on learning situations in which students directly care for clients in a relevant setting.

2.11(2) *Faculty member requirements.* A faculty member who teaches nursing shall meet the following requirements:

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a. Current licensure as a registered nurse in Iowa prior to teaching. An individual is currently licensed when licensed in another state and recognized for licensure in Iowa pursuant to the nurse licensure compact contained in Iowa Code chapter 152E.

b. Two years of experience in clinical nursing.

c. Academic qualifications:

(1) A faculty member who was employed on or before July 1, 1992, shall be considered adequately prepared as long as that faculty member remains in that position. A faculty member who was hired to teach in a prelicensure registered nurse program after July 1, 1992, shall have at least a baccalaureate degree with a major in nursing or an applicable field at the time of hire. This person shall make annual progress toward the attainment of a master's or doctoral degree with a major in nursing or an applicable field. ~~An individual who has earned a first professional degree as defined in rule 2.1(152) but who does not hold a master's degree as defined in rule 2.1(152) must meet the requirement for annual progress. One~~ At least one degree shall be in nursing.

1. Applicable fields include but are not limited to education, anthropology, gerontology, counseling, psychology, sociology, health education, health administration, and public health. A person who wishes to fulfill this requirement with education in an applicable field not listed may petition the board for a determination of applicability.

2. The date of hire is the first day of employment with compensation at a particular nursing education program.

3. "Annual progress" means a minimum of one course per year taken as part of an organized plan of study. A written plan of study shall be kept in the employee's file.

(2) A faculty member who was hired to teach after July 1, 1992, in a practical nursing program or at the first level of an associate degree nursing program with a ladder concept shall have a baccalaureate or higher degree in nursing or an applicable field at the time of hire.

(3) A registered nurse hired to teach in a master's program shall hold a master's or doctoral degree with a major in nursing at the time of hire. ~~A first professional degree as defined in rule 2.1(152) does not meet this requirement.~~ A registered nurse teaching in a clinical specialty area population focus shall hold a master's degree with a major in nursing, advanced level certification by a national professional nursing organization approved by the board in the clinical specialty population focus area in which the individual teaches, and current registration licensure as an advanced registered nurse practitioner according to the laws of the state(s) in which the individual teaches. Faculty preparation at the doctoral or terminal degree level shall be consistent with the mission of the program.

(4) A faculty member hired only to teach in the clinical setting shall be exempt from subparagraphs (1) and (2) if the faculty member is closely supervised to ensure proper integration of didactic content into the clinical setting. If hired after July 1, 1992, a faculty member hired to teach only in the clinical setting shall have a baccalaureate degree in nursing or an applicable field or shall make annual progress toward the attainment of such a degree.

~~(5) Pursuant to 655 Chapter 15, the head of a program may petition the board for a waiver of the requirements in subrules 2.6(2) and 2.9(2). Following a review of the circumstances and efforts by the program to meet the requirements, the board may issue a waiver for a specified period of time and indicate conditions that must be met.~~

2.11(3) Functions of faculty. Faculty members shall:

a. Develop, implement, and evaluate the purpose, philosophy/mission, and outcomes of the program.

b. Design, implement, evaluate, and revise the curriculum as demonstrated in the program evaluation plan.

c. Provide students with written policies as specified in subrule ~~2.10(4)~~ 2.12(1).

d. Participate in academic advisement and guidance of students.

e. Provide for admission, progression, and graduation of students.

f. Provide for student evaluation, self-evaluation, and peer evaluation of teaching effectiveness.

g. Participate in activities to ensure competency in area(s) of responsibility.

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ITEM 14. Amend renumbered rule 655—2.12(152) as follows:

655—2.12(152) Program responsibilities.

2.12(1) Policies affecting students. Programs shall provide for the development, implementation and communication of the following student policies on an annual basis:

- a. Admission/enrollment. Licensure if applicable according to 655—subrule 3.2(1).
- b. Transfer or readmission.
- c. Withdrawal.
- d. Progression.
- e. Grading system.
- f. Suspension or dismissal.
- g. Graduation.
- h. Health.
- i. Counseling.
- j. Grievance procedure.

2.12(2) Information about the program and controlling institution. The following information shall be published at least every two years and provided to prospective and current students on an annual basis:

- a. Philosophy/mission and outcomes of the program.
- b. General description of the program.
- c. Curriculum plan.
- d. Course descriptions.
- e. Resources.
- f. Faculty.
- g. Tuition, fees and refund policies.
- h. Ethical practices, including recruitment and advertising.
- i. Official dates.
- j. The program's NCLEX® passing percentage for the prior calendar year, as published by the

board of nursing.

2.12(3) Changes to program. A nursing program may not make a change to a program during a student's academic plan of study unless the change confers the benefit to the student.

2.12(4) Program records. The following records shall be dated and maintained according to the policies of the controlling institution:

- a. Course syllabi.
- b. Minutes.
- c. Faculty personnel records.
- d. Catalogs and program bulletins.
- e. Curriculum revisions and reports to the board.
- f. Graduate nursing file excluding the final transcript and summative performance statements.

2.12(5) Student and graduate records.

a. Policies shall specify methods for permanent maintenance and protection of records against loss, destruction and unauthorized use.

b. The final record shall include the official transcript and summative performance statement.

(1) The final official transcript shall include:

1. Legal name of student.
2. Dates of admission, completion of the program and graduation.
3. Courses that were accepted for transfer.
4. Evidence of authenticity.
5. Degree granted.

(2) The final official transcript shall be maintained permanently.

NURSING BOARD[655](cont'd)

(3) The summative performance statement shall relate the performance of the student at the time of graduation to the program outcomes and shall be maintained for three years.

ITEM 15. Amend renumbered subrule 2.15(2) as follows:

2.15(2) The qualifications of a preceptor shall be appropriate to support the philosophy/mission and outcomes of the program.

a. The preceptor shall be employed by or maintain a current written agreement with the clinical facility in which a preceptorship experience occurs.

b. The preceptor shall be currently licensed as a registered nurse, ~~or~~ licensed practical nurse, or advanced registered nurse practitioner according to the laws of the state in which the preceptor practices.

c. The preceptor shall function according to written policies for selection, evaluation and reappointment developed by the program. Written qualifications shall address educational preparation, experience, and clinical competence.

d. The program shall be responsible for informing the preceptor of the responsibilities of the preceptor, faculty and students. The program shall retain ultimate responsibility for student learning and evaluation.

ITEM 16. Amend renumbered rule 655—2.16(152) as follows:

655—2.16(152) Results of graduates who take the licensure examination for the first time. The program shall notify the board when the ~~program or district national licensure examination program's~~ NCLEX® passing percentage is lower than 95 percent of the national NCLEX® passing percentage for ~~two consecutive one~~ one calendar years ~~year~~. ~~The NCLEX® passing percentage shall be based on all first-time applicants for registered nurse or licensed practical nurse licensure in any jurisdiction who take the examination within six months of graduation. Upon notification by the program, the board shall implement the following process.~~

~~**2.16(1)** The program shall submit to the board within six months an institutional plan for assessment and improvement of NCLEX® results, including outcomes and time lines. The plan shall address administration, faculty, students, curriculum, resources, policies, and the nursing advisory committee.~~

~~**2.16(2)** The program shall submit annual progress reports to the board as long as the NCLEX® passing percentage remains below 95 percent of the national passing percentage.~~

~~**2.16(3)** The program shall provide a brief description including outcomes of all institutional plans submitted to the board in the nursing education program report during the reapproval process, if applicable.~~

2.16(1) A program whose NCLEX® passing percentage is lower than 95 percent of the national NCLEX® passing percentage shall submit an institutional plan using the board's template and appear before the board as directed.

2.16(2) After submission of the institutional plan, for each consecutive calendar year that a program's NCLEX® passing percentage is lower than 95 percent of the national NCLEX® passing percentage, the program shall submit an institutional plan evaluation using the board's template and appear before the board as directed.

2.16(3) Programs with a NCLEX® passing percentage that falls below 95 percent of the national NCLEX® passing percentage for three consecutive calendar years shall be placed on improvement status after the third year.

2.16(4) A program on improvement status shall:

a. Notify all current and prospective students of the program's improvement status.

b. Submit quarterly reports using the board's template and present the reports to the board as directed.

2.16(5) Board staff may conduct a site visit to the program at any time while the program is on improvement status.

2.16(6) Programs that remain on improvement status for two consecutive calendar years shall submit a revised institutional plan and appear before the board as directed. The board shall:

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a. Review the revised institutional plan and formulate an action plan for the program on improvement status.

b. Individualize the action plan for each program.

2.16(7) A program shall be removed from improvement status when the program's NCLEX® passing percentage is above 95 percent of the national NCLEX® passing percentage for one calendar year.

ITEM 17. Amend renumbered rule 655—2.17(152) as follows:

655—2.17(152) Reports to the board.

2.17(1) Annual reports. ~~The board shall provide information to the program about the requirements of the annual report.~~ The head of the program shall submit an annual report that includes:

- a. Progress toward achievement of goals identified by the program for the previous academic year.
- b. Qualifications and major responsibilities of the head of the program and each faculty member.
- c. Policies for admission, enrollment, progression and graduation of students.
- d. Policies for student health and welfare.
- e. Current enrollment by class/cohort.
- f. Number of admissions and graduations per year for the past five years.
- g. Attrition and retention data by class/cohort.
- ~~g.~~ h. Passing percentages of graduates on the national licensure examinations for the past five years.
- i. Passing percentages of graduates on the advanced registered nurse practitioner certification examinations for the past five years.

~~h.~~ j. Employment data for graduates.

~~i.~~ k. Curriculum plan.

~~j.~~ l. Descriptions of resources, clinical facilities, preceptorship experiences and contractual arrangements.

~~k.~~ m. Copy of audited fiscal reports, including a Audited statement of income and expenditures of the nursing program.

~~l.~~ n. Goals for the current academic year.

~~m.~~ o. Catalog or equivalent of the controlling institution or program.

2.17(2) Special reports. The program shall notify the board of the following:

a. Change of controlling institution. Information shall include official name of the program(s) and controlling institution, organizational chart of the controlling institution, and names of administrative officials.

b. Changes in administrative personnel in the program or controlling institution.

c. Opening of a new site or campus.

2.17(3) Changes requiring board notification and approval. The program shall submit ~~nine copies~~ one electronic copy and one hard copy of a proposed change for board approval at least ~~three~~ four weeks prior to the next scheduled board meeting when the outcome will:

a. Lengthen or shorten the course plan of study.

b. Add or delete academic credit in a course required for graduation.

c. ~~Add or delete a course required for graduation.~~ Delete a course required for graduation.

d. Add a new course. A program shall submit the following to be implemented within six months of an offering of a course:

(1) Course description.

(2) Outcomes/objectives.

(3) Placement of course.

(4) Curriculum plan.

~~d.~~ e. Alter graduation requirements.

~~e.~~ f. Reduce the human, physical or learning resources provided by the controlling institution to meet program needs as described in rule 2.7(152) 655—2.9(152).

~~f.~~ g. Substantively alter the philosophy/mission of the program.

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~~g.~~ h. Revise the predominant method of instruction or delivery, including transition from on-site to self-study or distance learning.

~~h.~~ i. Entail delivery of a cooperative program of study with an institution that does not provide a degree in nursing.

~~i.~~ j. Increase the number of student admissions by 20 percent or more.

2.17(4) If a program makes changes as part of a plan to improve the program's NCLEX® passing percentage, pursuant to rule 655—2.16(152), such changes must also be separately submitted to the board for approval pursuant to this rule.

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PAROLE BOARD[205]

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 906.3, the Board of Parole hereby gives Notice of Intended Action to amend Chapter 2, “Agency Procedure for Rule Making,” Chapter 3, “Petitions for Rule Making,” Chapter 4, “Declaratory Orders,” Chapter 5, “Fair Information Practices,” Chapter 6, “Public Communications and Records,” Chapter 7, “Victim Notification,” Chapter 8, “Parole and Work Release Considerations,” Chapter 11, “Parole Revocation,” Chapter 14, “Executive Clemency,” Chapter 15, “Appeal of Decisions,” and Chapter 16, “Waiver and Variance Rules,” Iowa Administrative Code.

All of the agency’s rules were reviewed as part of the comprehensive five-year review required under Iowa Code section 17A.7. These proposed amendments are designed to eliminate outdated or redundant rules, as well as eliminate any rules that are inconsistent or incompatible with statutes or other rules. The amendments also reflect changes to conform the rules to current, more efficient practices.

The proposed amendments to Chapters 2, 3, 4, and 16 are nonsubstantive corrections to change the title of the designated official from “Executive Director” to “Chairperson.”

The proposed amendments to Chapters 5, 6, and 7 reflect updated communication methods and changes to interview proceedings.

The proposed amendments to Chapters 8 and 14 are necessary to bring the rules into conformity with recent changes in the law regarding juveniles serving life sentences. The proposed amendments also update the rules to reflect that hearings are now conducted via videoconferencing and that neither the board, victims, nor spectators are present at the correctional institutions during the interviews.

The proposed amendments to Chapter 11 are designed to make the revocation hearing process more efficient while ensuring that parolees receive due process. The amendments reflect the Board’s current practice of utilizing the Iowa Corrections Offender Network (ICON) for submitting reports rather than using the mail. Many of the changes were proposed through a collaborative effort with the Department of Corrections, Community-Based Corrections, and the Iowa State Sheriffs’ and Deputies’ Association.

The proposed amendments to Chapter 15 are designed to clarify the appeals process, as well as to eliminate redundant rules.

Any interested person may make written suggestions or comments on the proposed amendments on or before July 11, 2017. Such written materials should be sent to Chairperson of the Parole Board, 510 East 12th Street, Des Moines, Iowa 50319.

There will be a public hearing on July 11, 2017, from 11 a.m. to 1 p.m. in the Board of Parole Conference Room, 510 East 12th Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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Any person who intends to attend the public hearing and has special requirements should contact the Board of Parole and notify of specific needs.

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

These amendments are intended to implement Iowa Code chapters 17A, 904A, 906, 908, and 915.

The following amendments are proposed.

ITEM 1. Amend **205—Chapter 2**, introductory paragraph, as follows:

The board of parole hereby adopts the agency procedure for rule making segment of the Uniform Rules on Agency Procedure which are ~~printed in the first volume of the Iowa Administrative Code with the following amendments published at~~ <https://www.legis.iowa.gov/docs/Rules/Current?UniformRules.pdf> on the General Assembly's Web site:

ITEM 2. Amend subrule 2.5(1) as follows:

2.5(1) Written comments. In lieu of the words “(identify office and address)”, insert “~~Executive Director~~ Chairperson of the Board of Parole, Jessie Parker Building, 510 East Twelfth Street, Des Moines, Iowa 50319”.

ITEM 3. Amend subrule 2.11(1) as follows:

2.11(1) General. In lieu of the words “(specify the office and address)”, insert “~~the executive director~~ Chairperson of the board Board of parole Parole, Jessie Parker Building, 510 East Twelfth Street, Des Moines, Iowa 50319”.

ITEM 4. Amend **205—Chapter 3**, introductory paragraph, as follows:

The board of parole hereby adopts the petitions for rule making segment of the Uniform Rules on Agency Procedure which are ~~printed in the first volume of the Iowa Administrative Code published at~~ <https://www.legis.iowa.gov/docs/Rules/Current?UniformRules.pdf> on the General Assembly's Web site with the following amendments:

ITEM 5. Amend rule 205—3.3(17A) as follows:

205—3.3(17A) Inquiries. In lieu of the words “(designate official by full title and address)”, the text should read “~~the Executive Director~~ Chairperson of the Board of Parole, Jessie Parker Building, 510 East Twelfth Street, Des Moines, Iowa 50319”.

ITEM 6. Amend **205—Chapter 4**, introductory paragraph, as follows:

The board of parole hereby adopts the declaratory orders segment of the Uniform Rules on Agency Procedure which are ~~printed in the first volume of the Iowa Administrative Code published at~~ <https://www.legis.iowa.gov/docs/Rules/Current?UniformRules.pdf> on the General Assembly's Web site with the following amendments:

ITEM 7. Amend rule 205—4.5(17A) as follows:

205—4.5(17A) Inquiries. In lieu of the words “(designate official by full title and address)”, the text should read “~~the Executive Director~~ Chairperson of the Board of Parole, Jessie Parker Building, 510 East Twelfth Street, Des Moines, Iowa 50319”.

ITEM 8. Amend **205—Chapter 5**, introductory paragraph, as follows:

The board of parole hereby adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure relating to fair information practices which are ~~printed in the first volume of the Iowa Administrative Code published at~~ <https://www.legis.iowa.gov/docs/Rules/Current?UniformRules.pdf> on the General Assembly's Web site.

ITEM 9. Amend subrule 5.3(3) as follows:

5.3(3) Request for access. Requests for access to records may be made in writing, in person, ~~or~~ by telephone, or by electronic means if the request is for open record information. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail

PAROLE BOARD[205](cont'd)

requests shall include the name, address and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

ITEM 10. Amend subrule 5.14(2) as follows:

5.14(2) Board meeting records. Agendas, minutes and materials presented to the board are available from the ~~office of the director~~ board's business office, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4) or which are otherwise confidential by law. Board meeting records contain information about people who participate in meetings. The information is collected pursuant to Iowa Code section 21.3. This information is not retrieved by individual identifier.

ITEM 11. Amend subrule 5.14(3) as follows:

5.14(3) Publications. News releases, annual reports, project reports, ~~board newsletters~~, and related documents are available from the board office. Board news releases, annual reports, and project reports, ~~and newsletters~~ may contain information about individuals, including board staff or members of the board councils or committees. This information is not retrieved by individual identifier.

ITEM 12. Amend subrule 5.14(5) as follows:

5.14(5) Grants. Records on persons receiving grants for various projects or programs are available through the ~~office of the executive director~~ board's business office. These records may contain information about employees or a grantee. This information is not retrieved by individual identifier and is not stored on an automated data processing system. The information is collected under the authority of Iowa Code chapter 904.

ITEM 13. Amend subrule 6.2(1) as follows:

6.2(1) Written communication preferred. ~~The board requests that all communications~~ Communications by a person other than a victim, as defined in rule 205—7.1(915), concerning an inmate, parolee, or work releasee shall be in writing so that the communication may readily be made a permanent part of the case file. Oral communications concerning an inmate, parolee, or work releasee by a person other than a victim will be heard only with the consent of the board.

ITEM 14. Amend rule **205—7.1(915)**, definition of “Notification,” as follows:

“*Notification*” means mailing by regular mail or providing for hand delivery of appropriate information or papers. However, this notification procedure does not prohibit the board from also providing appropriate information to a registered victim by telephone, electronic mail, or other means.

ITEM 15. Amend rule 205—7.5(915) as follows:

205—7.5(915) Written opinions concerning release. A registered victim may submit a written opinion concerning the release of the inmate ~~at any time by mailing the opinion~~ to the board's business office prior to the parole interview. The written opinion shall be made a permanent part of the inmate's file and shall be reviewed when the board considers the inmate's prospects for parole.

ITEM 16. Amend rule 205—7.6(915) as follows:

205—7.6(915) Appearances at parole interviews.

7.6(1) A registered victim of a violent crime may appear personally or by counsel at a parole interview to express an opinion concerning the release of the inmate.

7.6(2) If a registered victim of a violent crime intends to appear at a parole interview, the victim ~~must comply with the rules of the department of corrections that require a visitor to a state institution to give prior notice of the intended visit and to receive approval for the visit~~ should communicate such intent to the board's business office or victim liaison prior to the start of the parole interview.

7.6(3) ~~A~~ If intending to appear at a parole interview, a registered victim of a violent crime, or victim's counsel, shall appear at the ~~institution~~ board's business office, or other ICN location as previously arranged, at the time set forth in the notice of parole interview. ~~The victim or counsel shall inform institutional personnel of the purpose of the appearance. Institutional personnel shall coordinate the appearance of the victim or victim's counsel with the board. At the appearance~~ During the parole

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interview, the board shall permit the victim or victim's counsel to express an opinion concerning the release of the inmate.

7.6(4) Victims shall be properly attired and shall conduct themselves in a manner consistent with decorum appropriate for a public meeting of a governmental body. They shall be respectful of other victims, spectators, media personnel, board staff, and board members present. They shall also be mindful of noise and behavior that might impact other individuals working in the board's business office building or other ICN location where they may be while participating in the parole interview.

7.6(5) Any activity deemed inappropriate by the panel under the guidelines in the rules may result in a request by the panel for the offending party or parties to leave. Warnings for inadvertent or minor misconduct may or may not be given the first time it occurs, and any subsequent offending activity will result in a request to leave. Refusal to leave upon request may result in law enforcement's being called to remove the offending party or parties.

ITEM 17. Amend subrule 8.2(1) as follows:

8.2(1) Mandatory sentences. The board shall not grant parole to an inmate serving a mandatory minimum sentence. The board shall not grant work release to an inmate serving a mandatory minimum sentence unless the inmate is within six months of completing the mandatory minimum portion of the sentence. A parole or work release granted contrary to this rule shall be rescinded. Mandatory sentences are as follows:

- a. A life sentence imposed for conviction of a Class "A" felony pursuant to Iowa Code section 902.1, except for a life sentence that expressly includes parole eligibility;
- b. A mandatory minimum sentence imposed for use of a ~~firearm~~ dangerous weapon pursuant to Iowa Code section 902.7;
- c. A mandatory minimum sentence imposed for violation of uniform controlled substance provisions pursuant to Iowa Code section 124.406 or 124.413;
- d. A mandatory minimum sentence imposed for being ~~an~~ a habitual offender pursuant to Iowa Code section 902.8;
- e. A mandatory minimum sentence imposed for a prior forcible felony pursuant to Iowa Code section 902.11-;
- f. A mandatory minimum sentence imposed for conspiring to manufacture, or delivery of, amphetamine or methamphetamine to a minor pursuant to Iowa Code section 902.8A;
- g. A mandatory minimum sentence imposed for offenses specified in Iowa Code section 902.12;
- h. Any other mandatory minimum sentence prescribed by statute that is not specifically stated above.

ITEM 18. Rescind and reserve rule **205—8.4(906)**.

ITEM 19. Amend rule 205—8.6(906) as follows:

205—8.6(906) Parole and work release considerations.

8.6(1) Case reviews. The board may review the records of an inmate committed to the custody of the department of corrections and consider the inmate's prospects for parole or work release at any time. The board shall notify an inmate only if the inmate is granted parole or work release, except as provided in 8.16(3).

8.6(2) Interviews. The board may, in its discretion, interview an inmate committed to the custody of the department of corrections at any time.

8.6(3) The board shall review the status of each inmate as directed by the Iowa Code, and shall provide the inmate with notice of its parole or work release decision. After an inmate has been granted work release, the board shall review the inmate's status at least annually from the date of the decision to grant work release.

8.6(4) Class "A" felons, and Class "B" felons serving a sentence of more than 25 years, are excepted from the annual review requirement of 8.6(3). This exception does not apply to Class "A" felons whose life sentence expressly includes parole eligibility.

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8.6(5) Inmates serving a mandatory minimum sentence are excepted from the annual review requirements of 8.6(3) until such time as the mandatory minimum has expired.

8.6(6) Department initiated review. The department of corrections may recommend an inmate for parole or work release consideration at any time. ~~The board shall discuss such a recommendation with department staff during the next regularly scheduled board session involving the institution where the inmate in question is incarcerated. The board may, at its discretion, interview the inmate prior to acting upon the recommendation of the department of corrections staff.~~

ITEM 20. Amend rule 205—8.8(906) as follows:

205—8.8(906) Interview notice. The board or the board's designee shall notify an inmate to be interviewed for parole or work release consideration of the time and purpose of the interview. Notice given to the department of corrections shall be considered notice to the inmate. Not less than 20 days prior to the interview, the board shall also notify the department of corrections of the scheduling of the interview, and the department shall make the inmate available to the board ~~at the inmate's institutional residence as scheduled in the notice for the interview.~~ The interview may be conducted electronically by videoconference. However, if health, safety, or security conditions require moving the inmate to another institution or facility prior to the scheduled interview, the department of corrections shall so notify the board.

ITEM 21. Amend rule 205—8.12(906) as follows:

205—8.12(906) Interview procedure. The board may, in its discretion, or board panel ~~shall may, in its discretion,~~ interview the inmate and consider the inmate's records with respect to history, current situation, parole and work release prospects, and other pertinent matters. ~~The~~ If the inmate is interviewed, the board or board panel shall give the inmate ample opportunity to express views and present materials.

ITEM 22. Amend rule 205—8.14(906) as follows:

205—8.14(906) Conduct at parole proceedings.

8.14(1) Parole proceedings shall be open to the public except as otherwise necessary or proper.

8.14(2) Conduct of inmate.

a. Conduct of the inmate shall be in a manner consistent with decorum appropriate for a participant in a public meeting of a governmental body.

b. An inmate may not orally or otherwise communicate with spectators or others present at the parole proceeding except as permitted by the panel or board.

c. The inmate shall speak to the panel or board or counselor only when asked a question or directed otherwise to do so.

d. Each inmate will be given an opportunity to make an independent statement to the panel or board ~~at some point~~ during the parole proceeding. The panel or board may limit this statement in any manner as to topic or time. ~~Specifically subject to this limitation will be persons who have no realistic grounds to believe a parole will be granted, i.e., those with mandatory minimum sentences, those serving life terms, or those having served short times relative to the severity of their crimes and length of their sentences.~~

e. Failure to comply with the direction of the panel or board in limiting statements, in communicating with persons present at the parole proceeding, or any absence of decorum which could disrupt or delay the proceeding may, at the discretion of the board, result in a forfeiture of the right to an interview and a request by the board to have the institutional staff remove the inmate.

f. An inmate who forfeits the right to an interview for reasons under 8.14(2)“*e*” or for any other reason shall not be interviewed again until the inmate's next annual review, or until such earlier time as determined by the board, except that the inmate may make a request for an earlier interview. The request ~~is to~~ must be made in writing to the board through the board liaison officer, the counselor or other institutional staff member, or the ombudsman, together with assurance by the inmate that no repeat

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of the offending conduct or other offending conduct will occur. A reinterview is subject to the discretion of the panel or board.

8.14(3) Conduct of spectators.

a. Spectators may not participate in the parole proceedings. The number of spectators will be limited by the number of seats provided. Only board staff or institutional staff will be allowed to stand during the interviews or between interviews, except during breaks of the panel or board or as necessary to enter and leave during times designated by the panel or board. An exception will be made for television camera operators.

b. Spectators may not enter or leave the room during interviews or between interviews, except that the board or panel will designate times when persons may enter and leave. This will be done at reasonable intervals, and may be between interviews even though the board or panel does not take a break.

c. Entering and leaving the interview room before and after the interview sessions and during breaks in the interview sessions shall be subject to the restrictions imposed by ~~the board staff of the institution at which the session is being held.~~ the board staff of the institution at which the session is being held.

d. Spectators shall make no utterances which are intended to be or can be heard by the inmate or the panel. This includes any conversation among spectators.

e. Spectators shall be properly attired and shall conduct themselves in a manner consistent with decorum appropriate for a public meeting of a governmental body. They shall be respectful of other spectators, victims, media personnel, board staff, and board members present. They shall also be mindful of noise and behavior that might impact other individuals working in the board's business office building or other ICN location where they may be while observing the parole interview.

f. Any activity deemed inappropriate by the panel ~~or institutional staff~~ under the guidelines in the rules may result in a request by the panel ~~or institutional staff~~ for the offending party or parties to leave. Warnings for inadvertent or minor misconduct may or may not be given the first time it occurs, and any subsequent offending activity will result in a request to leave. Refusal to leave upon request ~~will~~ may result in a request by the panel to have the person or persons removed by the institutional staff law enforcement's being called to remove the offending party or parties.

All spectator places shall be on a first-come, first-served basis in accordance with the rules of the ~~institution or the department of corrections board.~~ institution or the department of corrections board.

g. A spectator who leaves during a time designated for entering or leaving or during a short break by the panel may retain a place if the person returns at the next time designated for that purpose. A person does not retain a place at the hearing over breaks taken for lunch or dinner or overnight.

8.14(4) Conduct of the media.

a. *General.* Broadcasting, televising, recording and photographing will be permitted in the interview room during open sessions of the board or panel, including recesses between sessions, under the following conditions:

(1) Permission first shall have been granted by the ~~institution or department of corrections, which board chairperson or chairperson's designee, who may prescribe conditions and restrictions for bringing equipment into areas of the institution the board's business office.~~ institution or department of corrections, which board chairperson or chairperson's designee, who may prescribe conditions and restrictions for bringing equipment into areas of the institution the board's business office.

(2) Media coverage of any proceeding which is held in closed session under Iowa law is prohibited.

(3) The quantity and types of equipment permitted in the interview room shall be subject to the discretion of the panel or board within the guidelines in these rules, ~~and subject to the permission of the institution or department of corrections.~~ and subject to the permission of the institution or department of corrections.

(4) Notwithstanding the provisions of any of these procedural or technical rules, the panel or board may permit the use of other equipment provided the application for variance is made in advance. Ruling upon the variance application shall be in the discretion of the panel or board, ~~subject to permission of the institution or department of corrections to bring in or move equipment.~~ subject to permission of the institution or department of corrections to bring in or move equipment.

(5) The panel or board may limit or terminate photographic or electronic media coverage by any or all media participants at any time during the proceedings in the event the panel or board finds that rules in this chapter or additional rules imposed by the ~~institution or department of corrections board or panel~~ institution or department of corrections board or panel have been violated.

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~~(6) The rights of motion picture and electronic coverage provided herein may be exercised only by persons or organizations which are part of the news media, except that individuals may use sound tape recorders.~~

b. Advance notice of coverage. All requests by representatives of the news media to use television cameras or electronic sound recording equipment in the interview room shall be made to the ~~institution board~~ in advance in accordance with ~~department of corrections~~ these rules.

c. Equipment specifications. Equipment to be used by the media or public in interview rooms or meeting rooms during interview proceedings or board meetings ~~held at the institutions~~ must be unobtrusive and must not produce distracting sound. In addition, the equipment must satisfy the following criteria, where applicable:

(1) Still cameras. Still cameras and lenses must be unobtrusive, without distracting light or sound.

(2) Television cameras and ~~related~~ other recording equipment. Television cameras are to be electronic and, together with any related equipment to be located in the interview room, must be unobtrusive in both size and appearance, without distracting sound or light. Television cameras, and other recording devices, are to be designed or modified so that participants in the parole interview being covered are unable to determine when recording is occurring.

(3) Audio equipment. Microphones, wiring and audio recording equipment shall be unobtrusive and shall be of adequate technical quality to prevent interference with the proceeding being covered. Any changes in existing audio systems must be approved by the panel or board. No modifications of existing systems shall be made at public expense.

(4) Advance approval. It shall be the duty of media personnel to demonstrate to the panel or board reasonably in advance of the proceeding that the equipment sought to be utilized meets the criteria set forth in this rule. Failure to obtain advance panel or board approval for equipment may preclude its use in the proceeding. All media equipment and personnel shall be in place at least 15 minutes prior to the scheduled time of commencement of the proceeding.

d. and e. No change.

f. Location of equipment and personnel. Equipment and operating personnel shall be located in, and coverage of the proceedings shall take place from, an area or areas within the interview room designated by the panel ~~or institutional staff~~. The area or areas designated shall provide reasonable access to the proceeding to be covered.

g. Movement during proceedings. Television cameras and audio equipment may be installed in or removed from the interview room only when the panel or board is not in session. In addition, the equipment shall at all times be operated from a fixed position. ~~Still photographers and broadcast media~~ Media personnel shall not move about the interview room while proceedings are in session, nor shall they engage in any movement which attracts undue attention. Still photographers shall not assume body positions inappropriate for spectators.

h. Decorum.

(1) ~~All still photographers and broadcast media personnel shall be properly attired and shall maintain conduct themselves in a manner consistent with decorum appropriate for a public meeting of a governmental body at all times while covering a parole proceeding. They shall be respectful of other media personnel, victims, spectators, board staff, and board members present. They shall also be mindful of noise and behavior that might impact other individuals working in the board's business office building or other ICN location where they may be while observing the parole interview.~~

(2) Any activity deemed inappropriate by the panel under the guidelines in the rules may result in a request by the panel for the offending party or parties to leave. Warnings for inadvertent or minor misconduct may or may not be given the first time it occurs, and any subsequent offending activity will result in a request to leave. Refusal to leave upon request may result in law enforcement being called to remove the offending party or parties.

ITEM 23. Amend rule 205—10.3(906) as follows:

205—10.3(906) Parole or work release agreement. A parole or work release agreement containing standard and special conditions of parole or work release shall be prepared without unreasonable delay

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following the board's issuance of the order for parole or work release. The board may change these standard conditions from time to time. Special conditions of parole may be imposed at any time in accordance with the needs of the parolee as determined by the board, the department of corrections, or the district department. The parole or work release agreement may provide for a search process and procedure of the parolee or work releasee. The parole or work release shall not commence until the inmate has signed the agreement, unless as otherwise prescribed by law. If the inmate is on work release status at the time parole is granted, the inmate shall remain on work release status until the parole agreement is signed by the parole officer and the inmate.

ITEM 24. Amend rule 205—11.1(906) as follows:

205—11.1(906) Voluntary termination of parole. Any voluntary termination of parole should be executed in writing by the parolee, reviewed by the parole officer, and approved by an administrative parole judge at a hearing. Upon the execution of the voluntary termination of parole, the parole officer shall file a preliminary parole violation information. If a parolee's parole is terminated and, the parolee shall be returned to the Iowa Medical and Classification Center at Oakdale or the Iowa Correctional Institute for Women at Mitchellville as soon as reasonably possible practicable. ~~The administrative parole judge shall, after consultation with the parole officer, determine if the parolee shall be incarcerated prior to the parolee's return to the Iowa Medical and Classification Center. The parole officer shall make arrangements accordingly.~~ The parolee shall receive credit for the time spent on parole prior to the voluntary termination of parole as determined by the administrative parole judge.

ITEM 25. Amend rule 205—11.5(908) as follows:

205—11.5(908) Parole violations.

11.5(1) The parole officer shall report to the board any parolee who is reasonably believed to have engaged in any of the following types of behavior:

a. Violation of any federal or state laws, ~~except simple misdemeanors~~ which would be a felony or aggravated misdemeanor in the state of Iowa.

b. Any violent, ~~or~~ assaultive, ~~or~~ threatening conduct.

c. Possession, control or use of any firearms, imitation firearms, explosives or dangerous weapons as defined in federal or state statutes.

d. ~~Sale, possession, continual or problem use, transportation or distribution of any narcotic or other controlled substance or excessive use of alcohol by the parolee.~~ Any unapproved contact with victims or victims' family or with minors.

e. A parolee whose whereabouts are unknown and who has been unavailable for contact for 30 days, or about whom reliable information has been received indicating that the parolee is taking flight or absconding.

f. ~~Any behavior indicating that the parolee may be suffering from a mental disorder which impairs the parolee's ability to maintain the parolee in the community or which makes the parolee a danger to the parolee or others when the mental disorder cannot be adequately treated while the parolee is in the community.~~

g. ~~Any other conduct or pattern of conduct in violation of the conditions of parole deemed sufficiently serious by the parole officer.~~

11.5(2) The parole officer or supervisor is authorized to ~~sanction~~ report any other parolee misconduct or pattern of misconduct not required to be reported above.

ITEM 26. Amend rule 205—11.6(908) as follows:

205—11.6(908) Parole violation report. The parole violation report is a document prepared by the parole officer on a form or medium provided by the board specifying the parole violation charges against a parolee and containing or referring to information known to the parole officer relevant to the charges.

11.6(1) ~~Supplemental parole violation~~ Violation report update. A ~~supplemental parole violation report update~~ may be submitted to report sufficient new information or evidence which proves or

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disproves violations previously charged; report new violations; note court action on charges which are being prosecuted in a criminal proceeding; expand, clarify, or correct information in an earlier report; provide the board with information not related to the violation but which may affect the board's decision regarding the appropriate disposition; provide additional requested information to the board at any time; or change the parole officer's recommendation. A supplemental violation report update shall be filed upon the apprehension of a parolee on absconder status. The violation report update shall be served in accordance with subrule 11.7(1).

11.6(2) Recommendations. The parole officer shall recomm~~end~~ review the information available and, upon consultation of policy and with the supervisor or designee, make evidence-based, informed recommendations as to the appropriate disposition action necessary to deal with the alleged violation. In a parole violation report, the parole officer may make one of the following recommendations:

a. —Continue on parole. This recommendation may be used ~~when a violation charge is not serious enough to warrant reincarceration.~~ A copy of the violation report containing a "continue on parole" recommendation shall be personally delivered and explained to the parolee by the parole officer, and the parolee shall be given an opportunity to admit the alleged violations. Admitted violations contained in the report may be used to adjust time calculations in a later revocation proceeding. In the event that a dispute arises as to alleged violations, the parolee may request a parole hearing. An administrative parole judge shall review the violation report and enter an order either affirming the recommendation to continue on parole or scheduling the matter for a parole revocation hearing.

~~A parolee shall be allowed only two violation reports containing a "continue on parole" recommendation in a 12-month period, after which a parole revocation hearing must be scheduled.~~

~~Generally, violations occurring more than 12 months prior to the request for a parole revocation hearing will not be used to adjust time calculations, except in absconder cases and related matters.~~

b. —Schedule for revocation proceedings. This recommendation may be used ~~whenever the violation(s) alleged is so serious that reincarceration is necessary.~~

c. —Delay action. This recommendation is used ~~when there is a lack of information at the time the report is submitted or because charges are still pending and final disposition is unknown or the whereabouts of the parolee are unknown.~~ The parole officer shall notify the board of the reason(s) for the recommendation to delay action.

d. —Issue a detainer. This recommendation is used to request that an Iowa detainer be placed against an Iowa parolee who is serving time in another jurisdiction for an offense committed while on parole which would constitute a felony or aggravated misdemeanor if committed in Iowa.

e. —Continue on parole and impose special condition 209A of the parole agreement, participation in the violator's program. This recommendation may be used when there has been a violation of parole, but treatment in the violator's program is seen as a reasonable alternative to revocation of parole.

f. —Automatic revocation. This recommendation may be used when a parolee has been convicted of and sentenced for a new felony committed while on parole or when the parolee is convicted and sentenced to incarceration in a state correctional institution for an aggravated misdemeanor committed while on parole.

11.6(3) No change.

ITEM 27. Amend rule 205—11.7(908) as follows:

205—11.7(908) Parole revocation hearing. Following ~~receipt~~ submission of a parole officer's request for a parole revocation hearing, the ~~administrative parole judge or board's designated~~ parole officer shall ~~set the date, time and place of~~ schedule the parole revocation hearing and shall cause a notice of parole revocation hearing to be completed. The parole revocation hearing shall be held in any county in the same judicial district as that in which the alleged parole violator had the initial appearance, or in the county from which the warrant for the arrest of the alleged parole violator was issued.

11.7(1) Parole revocation hearing notice. The parole officer or board's designated officer shall cause to be prepared a written notice to the parolee, and parolee's attorney, if applicable, of the date, time, and place of the parole revocation hearing, which shall:

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a. Include a complete copy of the report of violations, and updated report if applicable, including all documents referred to therein except confidential material defined in 205—subrule 6.4(2).

b. Be served upon the parolee by personal service. The notice may be served by any person 18 years of age or older at least seven days prior to the parole revocation hearing unless the parolee waives the right to seven days' advance notice.

c. Inform the parolee of the purpose of the hearing, the violations of parole conditions alleged, the circumstances of the alleged violations, the possible action which may be taken as a result of the revocation proceedings, and the following rights to which the parolee shall be entitled at the parole revocation hearing:

(1) To appear and speak ~~in~~ on the parolee's own behalf and to be aided by an interpreter if aid is determined to be necessary by the administrative parole judge.

(2) To be represented by an attorney or, if the parolee is indigent, the right to be represented by an attorney pursuant to Rule 2.28 of the Iowa Rules of Criminal Procedure and Iowa Code section 908.2A.

(3) To remain silent.

(4) To present witnesses to testify on the parolee's behalf as to matters relevant to the alleged violation of parole.

(5) To confront and cross-examine adverse witnesses unless the administrative parole judge determines that such witnesses would be subjected to risk of harm.

(6) To present documentary evidence and any relevant material or information.

11.7(2) to 11.7(5) No change.

11.7(6) *Witnesses.*

a. to c. No change.

d. *Fearful witnesses.* All witnesses who refuse to attend the hearing either because they would be subjected to risk of harm if their identities were disclosed or who, even if their identities were known, fear for their safety should they attend the hearing shall be interviewed by the parole officer prior to the hearing, and their information and the reasons for their fear shall be documented in writing or on ~~tape~~ the record. The officer must assess whether this testimony is necessary to proceed with prosecution of parole violations. If there are other alleged violations that merit a recommendation of revocation, this testimony may not be necessary. The administrative parole judge shall determine whether good cause exists to excuse a witness's attendance and shall document the decision including the reasons.

e. No change.

11.7(7) *Subpoenas—general.* Subpoenas may be issued by the board of parole to require the attendance of witnesses or the production of documents at parole revocation hearings.

a. Who may request. The parolee, the parolee's attorney, parole officer, or board staff may request that a subpoena be issued. The requested witness(es) should be contacted prior to issuance of the requested subpoena. If the parolee is pro se, the parole officer may need to make contact.

b. To whom made. Requests ~~shall~~ may be made directly to the administrative parole judge, ~~or~~ the board's designated officer, ~~or~~ the parole officer, as appropriate. The parole officer shall provide the necessary information to the board of parole in order to process the request.

c. When made. The request shall be made prior to the scheduled hearing.

d. Subpoena duces tecum. The request for a subpoena duces tecum shall be accompanied by a declaration in support of the request. The declaration must show good cause for production of documentary evidence and specify precisely the documentary evidence to be produced, the relevance and materiality of that evidence to the hearing, and verification that the requested witness has possession or control of the documentary evidence.

e. Costs. The board of parole shall not be required to pay subpoena service fees, witness fees, or witness transportation expenses.

11.7(8) *Continuances.*

a. A hearing may be continued by the presiding administrative parole judge for good cause shown, either upon the presiding judge's own motion or upon the request of a party. A party's request for continuance shall be made in writing to the ~~board's business office~~ administrative parole judge prior to the hearing. Each party shall be granted only one continuance ~~except that in the case of extreme~~

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~~emergency, determined by the presiding administrative parole judge, further.~~ Further continuance may be granted for good cause.

b. If, because of an emergency or other good cause, a party having received timely notice is unable to attend the hearing or to request continuance within the allotted time, the presiding administrative parole judge may continue the hearing and schedule another hearing with notice to all interested parties.

c. ~~A notice~~ Notice of continuance may be served upon the parolee's attorney of record for the parole revocation proceeding, in lieu of personal service upon the parolee.

d. ~~If a notice of continuance does not involve any new allegations of parole violation, it need not be served upon the parolee or the parolee's attorney of record at least seven days prior to the hearing date. However, if~~ If the notice of continuance includes allegations of violations beyond those contained in the original notice of hearing, it must be served upon the parolee or the parolee's attorney of record at least seven days prior to the hearing date in accordance with subrule 11.7(1).

11.7(9) Areas of responsibility. The following areas of responsibility will apply for a parole revocation hearing.

a. The parole officer shall be responsible for the following:

(1) Coordinating and scheduling location, security, and control of the parole revocation hearing ~~in a courtroom unless good cause is established prior to the hearing;~~

(2) to (8) No change.

b. The administrative parole judge shall be responsible for the following:

(1) Maintaining records on all hearings ~~in the field;~~

(2) ~~Advising the business office regarding progress of each case;~~

(3) ~~Forwarding to the business office all materials and forms when hearings are completed.~~

11.7(10) Parole revocation hearing—adjudication.

a. to d. No change.

11.7(11) Parole revocation—hearing summary and order. The administrative parole judge or the board's designated officer shall forward a summary of the parole revocation hearing to the parolee, the parolee's attorney, the parole officer, and the board office as soon as reasonably possible following the parole revocation hearing. The summary of the parole revocation shall consist of a summary of the proceeding and shall contain the judge's findings of fact, conclusions of law and disposition of the matter.

11.7(12) Parole revocation hearing—conduct of the media. The provisions governing the conduct of the media at parole interviews as set out in 205—subrule 8.14(4) shall also apply to parole revocation hearings, except that decisions committed to the discretion of the board or board panel in that rule shall be made by the presiding administrative parole judge.

11.7(13) Motions and requests. Any motion or request shall be submitted to the administrative parole judge or the board's designated officer, with copies to all parties, prior to the hearing. The parolee or parolee's attorney may submit any motion or request directly to the administrative parole judge, or designee, or through the parole officer. The board of parole does not utilize EDMS for submissions or notifications.

ITEM 28. Amend rule 205—11.8(908) as follows:

205—11.8(908) Appeal or review. The order of the administrative parole judge shall become the final decision of the board of parole unless, within ten days of the date of the decision, the parole violator appeals the decision or a panel of the board reviews the decision on its own motion. ~~On appeal or review of the judge's decision, the board panel has all the power which it would have in initially making the revocation hearing decision. The appeal or review shall be conducted pursuant to rules adopted by the board of parole. The record on appeal or review shall be the record made at the parole revocation hearing conducted by the administrative parole judge. Appeals must be received at the parole office or be postmarked by the applicable date or they will not be considered.~~

11.8(1) General. On appeal or review of the judge's decision, the chairperson or board panel's designee has all the power which the administrative parole judge would have in initially making the revocation hearing decision. The record on appeal or review shall be the record made at the parole revocation hearing conducted by the administrative parole judge. Appeals must be received at the

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parole business office or postmarked by the applicable date or they will not be considered. An order continuing disposition is not a final order and therefore is not appealable. The board shall give notice of its decision to the parolee.

11.8(2) Grounds. All grounds shall be included in the same appeal, and all necessary documents and information shall be attached to the appeal. The general grounds for an appeal include that the board action is:

- a. In violation of constitutional or statutory provisions;
- b. In excess of the statutory authority of the board;
- c. In violation of a board rule;
- d. Made upon unlawful procedure;
- e. Affected by other error of law;
- f. Unsupported by evidence or based on incorrect or incomplete information which, if correct or complete, might have resulted in a different action;
- g. Unreasonable, arbitrary, or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of decision.

11.8(3) Filing an appeal. An appeal shall be filed in writing and shall state:

- a. The particular action which is the subject of the appeal.
- b. The grounds on which relief is sought.
- c. The relief sought.

ITEM 29. Amend rule 205—11.11(908) as follows:

205—11.11(908) Waivers.

11.11(1) When the parole officer makes a ~~recommendation~~ request to the board of parole for a revocation of parole hearing, the parole officer shall inform the parolee of the parolee's rights and afford the parolee the opportunity to execute a waiver of parole revocation hearing.

11.11(2) The parole officer shall also inform the parolee of the opportunity to waive the parolee's right to personal appearance and consent to the parole revocation hearing's being conducted over the telephone.

11.11(1) Waiver of parole revocation hearing. A waiver of parole revocation hearing shall constitute an admission of the alleged violation(s) and shall include a waiver of any right to a personal appearance before the administrative parole judge to contest the violations.

11.11(2) Parole revocation hearing waiver procedures. If the parolee desires to execute a waiver of parole revocation hearing, the waiver shall be entered on the appropriate form provided by the board which shall be signed by the parolee in the presence of the administrative parole judge or by the parolee in the presence of the parole officer/supervisor if the waiver hearing is conducted electronically. The administrative parole judge shall make a verbatim record of the waiver proceeding and shall address the parolee personally and inform the parolee of and determine that the parolee understands the contents of the waiver form which shall include:

- a. The nature of the parole violation to which the waiver is addressed;
- b. The legal rights of the parolee;
- c. The fact that the execution of the waiver constitutes an admission of the alleged violation(s);
- d. The fact that the parolee may be committed to the custody of the Iowa department of corrections without further proceedings;
- e. The fact that the waiver is complete and final upon execution;
- f. The fact that the waiver may be appealed according to the parole board's parole revocation appeal process in rule 205—11.8(908).

11.11(3) Waiver of the right to personal appearance. In the event the parolee executes a waiver of the right to personal appearance and consent to parole revocation hearing to be conducted over the telephone, the parole revocation hearing shall be scheduled and conducted as a routine parole revocation hearing with the exception that it shall be conducted by telephone. In the event the parolee does not execute a waiver of the right to personal appearance and consent to parole revocation hearing to be conducted

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over the telephone, the hearing shall be scheduled and may, at the discretion of the administrative parole judge, be conducted electronically by videoconference.

ITEM 30. Amend rule 205—14.1(902) as follows:

205—14.1(902) Interviews of inmates serving life terms without the possibility of parole. The board shall not grant a parole or work release to a Class “A” felon serving a life term without the possibility of parole unless the governor commutes the sentence to a term of years. Administrative rules relating to the parole and work release consideration of an inmate sentenced to an indeterminate term shall not apply to an inmate sentenced to a life term without the possibility of parole. ~~The board shall interview a Class “A” felon serving a life term to determine whether to recommend that the governor commute the sentence to a term of years. The board shall recommend that the governor commute the sentence when the board concludes that the inmate should be considered for release on parole or work release. In making such a recommendation, the board shall also indicate the existence of any registered victims and communicate any opinions expressed by those victims regarding release of the inmate.~~

ITEM 31. Amend subrule 14.6(2) as follows:

14.6(2) Parole board commutation investigation process.

a. to c. No change.

d. The board shall attempt to provide notice of the commutation ~~investigation~~ interview to any individual who would qualify as a victim under Iowa’s victim notification law. Notice shall be by regular mail to the last-known address. The notice shall provide a specified amount of time for the victim to provide a statement to the board regarding the application for commutation.

e. and f. No change.

ITEM 32. Amend subrule 14.6(3) as follows:

14.6(3) Recommendation and report.

a. The board shall vote on a recommendation regarding the application. Any decision to recommend commutation shall be by unanimous vote. The board may continue the matter until such time as the board may determine by majority vote.

b. The board may consider any factor it deems appropriate when considering commutation including, but not limited to, the nature and circumstances of the crime, the number of years the applicant has served, the applicant’s previous criminal record, the applicant’s conduct while confined, the impact on the victim, and the public interest.

c. The board shall prepare a written report of its findings and recommendations and forward its report to the governor.

d. In making such a recommendation, the board shall also indicate the existence of any registered victims and communicate any opinions expressed by those victims regarding release of the inmate.

ITEM 33. Amend rule 205—15.1(17A) as follows:

205—15.1(17A) General. An inmate, parolee, or work releasee may appeal any action of the board staff or board that affects that person except a decision to schedule a hearing or a work release transfer hearing decision, ~~the denial of an appeal decision, or the decision to conduct an appearance by electronic means, or the revocation of parole which shall be appealed according to the procedure indicated in rule 205—11.8(908).~~

ITEM 34. Rescind and reserve rules **205—15.5(17A)** and **205—15.6(21)**.

ITEM 35. Amend subrule 16.5(2) as follows:

16.5(2) Other. If the petition does not relate to a pending contested case, the petition may be submitted to the board’s ~~executive director~~ chairperson.

ITEM 36. Amend rule 205—16.7(17A) as follows:

205—16.7(17A) Additional information. Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding

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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, electronic, or in-person meeting between the petitioner and the board's ~~executive director~~ chairperson, a committee of the board, or a quorum of the board.

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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 sections 124.201 and 124.301, the Board of Pharmacy hereby gives Notice of Intended Action to amend 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 to rescind Chapter 10, "Controlled Substances," Iowa Administrative Code, and to adopt a new chapter with the same title.

These amendments were approved at the May 10, 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 controlled substances. The proposed 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 proposed rule making provides that a pharmacy technician can be involved in the sale of a pseudoephedrine-containing product.

The proposed 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 proposed 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 proposed 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

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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 disciplinary sanctions or criminal convictions as well as to summarize the Board's authority to sanction registrations. Finally, the proposed amendments update references to provisions in Chapter 10 that are found in other chapters of the Board's rules.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on July 11, 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 124.201, 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.

The following amendments are proposed.

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.

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“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 or nonresident manufacturers, distributors, importers, and exporters distributing controlled substances into Iowa.
2. Reverse distributors located in Iowa or 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 and 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 and 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, 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

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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.

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

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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.

b. Such individual practitioner is acting only in the scope of employment or practice in the hospital, institution, internship program, or residency program.

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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 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.

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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:

- a.* Maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels.

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- 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 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.

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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://deادiversion.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.

k. The procedures for handling business guests, visitors, maintenance personnel, and nonemployee service personnel.

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- 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.
- d.* The date of delivery.

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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 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.

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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."

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

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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.

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.

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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.

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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.dea diversion.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.

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.

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(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.

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.

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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 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.

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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.

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

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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 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.

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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.
- d. The prescribing practitioner must execute a new and separate prescription for any additional quantities beyond the five-refill, six-month limitation.

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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.

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

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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 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.

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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.

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,

PHARMACY BOARD[657](cont'd)

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 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."

PHARMACY BOARD[657](cont'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.

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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 17A.7(2), the Board of Pharmacy hereby gives Notice of Intended Action to rescind Chapter 24, “Pharmacy Internet Sites,” and to amend 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.

These amendments were approved at the May 10, 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. The proposed 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 Notice proposes to rescind 657—Chapter 24.

PHARMACY BOARD[657](cont'd)

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

Any interested person may present written comments, data, views, and arguments on this proposed rule making not later than 4:30 p.m. on July 11, 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.

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.

The following amendments are proposed.

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.
6. Any request by petitioner for a meeting provided for by rule 657—26.4(17A).

PHARMACY BOARD[657](cont'd)

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 ~~lloyd.jessen@ibpe.state-ia.us~~ 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.

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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 sections 17A.22 and 147.76, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 34, “Rules for Waivers and Variances,” Iowa Administrative Code.

PHARMACY BOARD[657](cont'd)

These amendments were approved at the May 10, 2017, regular meeting of the Board of Pharmacy.

The proposed 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 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 these rules will not be considered, as these rules establish the minimum requirements for submitting a request for waiver or variance of rules of the Board.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on July 11, 2017. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by e-mail to terry.witkowski@iowa.gov.

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.

The following amendments are proposed.

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

PHARMACY BOARD[657](cont'd)

attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.

~~5. A history of any prior contacts between the board and the petitioner relating to the 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)**.

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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 sections 17A.3, 17A.22, and 147.76, the Board of Pharmacy hereby gives Notice of Intended Action to rescind Chapter 35, “Contested Cases,” and Chapter 36, “Discipline,” Iowa Administrative Code, and to adopt new Chapters 35 and 36 with the same titles.

These amendments were approved at the May 10, 2017, regular meeting of the Board of Pharmacy.

The proposed 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.

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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 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 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 Board rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed rules not later than 4:30 p.m. on July 11, 2017. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by e-mail to terry.witkowski@iowa.gov.

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

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.

The following amendments are proposed.

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.

“*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.

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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;
- 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;

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- 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.

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.

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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 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.

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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 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:

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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.

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.

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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;
- 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

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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 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

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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;

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.

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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.

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;

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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 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.

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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.

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.

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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.

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

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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 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.

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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.

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

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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.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the 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
- (3) Signed acknowledgment accepting service.

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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.

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

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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 relating 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).

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

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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
- 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;

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- 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 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

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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.

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.

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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.

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.

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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.

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

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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.

“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.

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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 license. 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.

ARC 3123C**PUBLIC SAFETY DEPARTMENT[661]****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 2017 Iowa Acts, Senate File 489, the State Fire Marshal hereby gives Notice of Intended Action to adopt new Chapter 265, “Consumer Fireworks Sales Licensing and Safety Standards,” Iowa Administrative Code.

2017 Iowa Acts, Senate File 489, relating to the purchase, use, and regulation of consumer and display fireworks, was enacted by the Iowa General Assembly during its regular session this year. The legislation requires the State Fire Marshal to promulgate administrative rules for the regulation of the storage, transportation, handling, and use of fireworks and for the sale of fireworks and the licensing of fireworks retailers and registration of wholesalers. The legislation also authorizes the licensing fees that are collected to be used to pay for the costs of administration and enforcement of the legislation and also establishes a Local Fire Protection and Emergency Medical Service Providers Grant Program to provide fireworks safety education and to purchase equipment related to the sale and use of consumer fireworks.

Any person may comment on the proposed new chapter by e-mail at admrule@dps.state.ia.us; or by mail to Rules Coordinator, Iowa Department of Public Safety, Oran Pape State Office Building, 215 East 7th Street, Des Moines, Iowa 50319. Comments must be received by 4:30 p.m. on September 8, 2017.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

A public hearing on the proposed chapter will be held on Friday, September 8, 2017, at 10 a.m. in the Public Conference Room (Room 125), Oran Pape State Office Building, 215 East 7th Street, Des Moines, Iowa. Persons may present their comments orally or in writing, or both, at the public hearing.

The fiscal impact for the licensing and inspections is expected to be less than \$100,000, which includes the costs of administering the licensing program and the costs associated with inspections and enforcement of the laws and regulations.

Pursuant to the provisions of rule 661—10.222(17A), the State Fire Marshal does not have authority to waive requirements established by statute.

These rules were also Adopted and Filed Emergency and are published herein as **ARC 3124C**. The content of that submission is incorporated by reference.

It is expected that there will be a positive impact on jobs and the economy, as there will be new opportunities for persons to be employed in the sale of fireworks. There will be a positive impact on the state economy from these new jobs and new business opportunities resulting from the sale of consumer fireworks.

These rules are intended to implement 2017 Iowa Acts, Senate File 489, sections 3 and 4.

ARC 3130C**TRANSPORTATION DEPARTMENT[761]****Notice of Intended Action**

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

Pursuant to the authority of Iowa Code sections 307.12, 307A.2 and 306D.4, the Iowa Department of Transportation hereby gives Notice of Intended Action to amend Chapter 132, “Iowa Scenic Byway Program,” Iowa Administrative Code.

The proposed amendments to this chapter:

- Eliminate the emphasis on “scenic,” which is consistent with the rebranding of the program as Iowa Byways.
- Correct contact information.
- Remove or revise outdated, unnecessary language.
- Add definitions and update the definition of “advisory council.”
- Clarify the eligibility requirements of proposed routes exhibiting heritage or scenic qualities.
- Provide for clarity of responsibilities between the Department and the byway jurisdictions for the design, fabrication, installation and maintenance of byway signage along designated routes.
- Provide additional detail about the qualities desired regarding the proposed byways. The qualities form the basis for the criteria upon which proposed byways are assessed when considered for designation.
- Remove the mandatory periodic review of designated byways by the Department and replace it with a discretionary review as conditions warrant or if signage is not being properly maintained.
- Change the application cycle for proposed byways from two years to four years to allow sufficient time to complete review, designation, and signage of a previous cycle before accepting new applications.
- Simplify the review process for proposed byways.
- Clarify that the Iowa Byways Advisory Council will review and make recommendations for new byway designations for the Department’s consideration.

These amendments do not provide for waivers. Any person who believes that the person’s circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Any person or agency may submit written comments concerning these proposed amendments or may submit a written request to make an oral presentation. The comments or request shall:

TRANSPORTATION DEPARTMENT[761](cont'd)

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to Tracy George, Rules Administrator, Iowa Department of Transportation, Operations and Finance Division, 800 Lincoln Way, Ames, Iowa 50010; e-mail: tracy.george@iowadot.us.
5. Be received by the Department's rules administrator no later than July 11, 2017.

A meeting to hear requested oral presentations is scheduled for Thursday, July 13, 2017, at 10 a.m. in the Administration Building, First Floor, North Conference Room, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

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

These amendments are intended to implement Iowa Code chapter 306D.

The following amendments are proposed.

ITEM 1. Amend **761—Chapter 132**, title, as follows:

IOWA SCENIC BYWAY BYWAYS PROGRAM

ITEM 2. Amend rule 761—132.1(306D) as follows:

761—132.1(306D) Purpose, overview and information.

132.1(1) Purpose. The purpose of the Iowa ~~scenic-byway~~ Byways program is to designate qualifying Iowa roads as ~~scenic~~ byways on the basis of scenic byway, heritage byway, or a combination of scenic and heritage byway qualities. These designations are intended both to preserve the state's scenic, natural, and historic resources and to support economic development through travel and tourism.

132.1(2) Overview. Under the Iowa ~~scenic-byway~~ Byways program, proposed routes are identified via an application process. The department inventories and evaluates the proposed routes. The advisory council ~~selects~~ recommends the routes to be designated by the department. The department provides identifying signs for the designated routes. Routes designated as an Iowa Byway are part of Iowa's scenic byway program and are therefore subject to the prohibition set forth in 23 U.S.C. Section 131(s).

132.1(3) Information and forms. Information, instructions and application forms may be obtained from the Office of ~~Location and Environment~~ Systems Planning, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1664; or through the department's Web site at www.iowadot.gov.

ITEM 3. Amend rule **761—132.2(306D)**, definition of "Advisory council," as follows:

"*Advisory council*" means the ~~scenic-byway~~ Iowa Byways advisory council. This group is responsible for ~~selecting~~ recommending routes for ~~scenic-byway~~ Iowa Byways designation. It is comprised of representatives from the ~~department of transportation, the department of economic development, the department of cultural affairs, and the department of natural resources~~ state agencies with jurisdiction over transportation, tourism, cultural resources, historic resources and natural resources.

ITEM 4. Adopt the following new definitions of "Department," "Designation," "Heritage byway," and "Scenic byway" in rule **761—132.2(306D)**:

"*Department*" means the Iowa department of transportation.

"*Designation*" means department approval of a route as an Iowa Byway.

"*Heritage byway*" means a route that has historic or cultural significance along its length or connects various areas or sites of historic or cultural significance along its length.

"*Scenic byway*" means a route that has naturally scenic features visible along its length.

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 5. Rescind rule **761—132.3(306D)**.

ITEM 6. Renumber rules **761—132.4(306D)** to **761—132.7(306D)** as **761—132.3(306D)** to **761—132.6(306D)**.

ITEM 7. Amend renumbered rule 761—132.3(306D) as follows:

761—132.3(306D) General requirements.

132.3(1) A route eligible for designation as an Iowa Byway must meet the definition of either a heritage byway or a scenic byway. A route may also be eligible for designation if segments of the route meet a combination of either a heritage byway or a scenic byway along its entire length.

132.3(1) 132.3(2) Primary roads, secondary roads and city streets are eligible for designation as scenic byways Iowa Byways.

132.3(2) 132.3(3) A scenic byway route eligible for designation as an Iowa Byway should be continuous and at least 20 miles in length. Scenic or heritage features in one form or another should exist along the entire route.

132.3(3) 132.3(4) Each city and county through which a route passes must approve the scenic byway designation. The governing body of each city and county through which a route passes must pass a formal resolution endorsing the application for Iowa Byway designation and agreeing to the responsibilities of having jurisdiction over a portion of a designated route.

132.3(4) 132.3(5) Signs designating scenic byways shall be paid for and furnished by the department. Each roadway jurisdiction is responsible for installing scenic byway signs on roads under its jurisdiction in accordance with a signing plan provided by the department. The initial installation of signs identifying an Iowa Byway including the accompanying posts and hardware necessary for installation shall be paid for and furnished by the department. Each roadway jurisdiction is responsible for the inventory, maintenance, and reinstallation of signs provided by the department following the initial installation.

ITEM 8. Amend renumbered rule 761—132.4(306D) as follows:

761—132.4(306D) Application and approval process.

132.4(1) Program cycle. The scenic byway Iowa Byways program shall operate on a two-year four-year cycle, with the following steps and timetable: applications due by October 1, 2020, and every fourth year thereafter. Field inventories, evaluation, and rating of proposed routes will follow with designation of any new routes completed by the next application deadline.

<u>Step</u>	<u>Timetable</u>
Deadline for submission of applications	October 1 of even-numbered years
Field inventories of proposed routes	April to October of odd-numbered years
Evaluation and rating of proposed routes	November to February following field inventories
Designation and signing of routes	March to August of even-numbered years

Subrules 132.5(2) to 132.5(7) further explain each step of the program cycle.

132.4(2) Application. Application to designate a route as a scenic byway an Iowa Byway or to propose an extension or loop to an existing route shall be on a form provided by the department and shall be submitted to the office of location and environment received by the department by the stated application deadline. The application must be accompanied by a document indicating approval of the designation from the city council of each city and the board of supervisors of each county through which the proposed route passes formal resolution described in subrule 132.3(4). Applications must provide some discussion of the planned administration and governance of the proposed Iowa Byway as well as how the byway will be marketed to visitors.

132.4(3) Initial review. Applications shall be reviewed by the advisory council to acquaint the council members with the proposed routes, and to allow the members time an opportunity to provide any the department with information from their areas of expertise regarding the routes, and to provide

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~~guidance to the program.~~ Such input may provide details related to the existence and quality of scenic, archaeological, cultural, historic, natural, and recreational resources along a proposed route.

132.4(4) *Field inventory.* ~~The department shall collect the following information for each proposed route which will address the following qualities:~~

~~a. *Scenic value.* Types and qualities of views along the proposed route, including panoramas, scenes and focal points contributing to the scenic quality of the route shall be identified as well as views that distract from or negatively affect the scenic quality of the route. Several elements or items related to material or color are also pinpointed. The field inventory will provide an assessment of the visual character of the proposed route along its length.~~

~~b. *Cultural and historic resources.* Quality of the various views along the route, from outstanding to poor or distracting. Known cultural and historic resources will be identified along the length of the proposed route. Such resources may include archaeological, architectural, historical or other cultural sites of national or state significance and may also include interesting or unique local cultures or architecture that may appeal to visitors.~~

~~c. *Natural resources.* How long one sees a particular view or element. Resources including but not limited to agricultural lands, forests, river basins, and other distinctive landforms will be identified.~~

~~d. *Recreational resources.* Relative ease of seeing the various views and elements as the road is driven. Public lands and facilities providing opportunities for organized sport, outdoor recreation, or other recreation will be identified.~~

~~e. *Transportation.* Visual character of the roadway alignment. An assessment will be made of existing and future traffic conditions, planned improvements to the proposed route, and any safety concerns whether existing or anticipated. If the route is being considered for heritage byway designation, historic elements specific to transportation will be identified.~~

~~f. Types of scenic areas or historic sites along the route.~~

~~g. Variety of views as the route is driven.~~

132.4(5) *Evaluation and rating.* The department shall compile and evaluate the field inventory data for each proposed route, calculate an overall quality rating for each proposed route, and prepare a written report documenting these findings. ~~A potential quality rating ranges from “excellent” to “very poor.” The midpoint is “average.”~~ The written report shall also consider the sustainability of the proposed route based on the information provided in the application for planned governance and marketing plans as well as how the proposed route will complement the existing Iowa Byways.

132.4(6) *Selection.* The advisory council shall review the evaluations and ratings and select the ~~recommend~~ routes to be designated as Iowa Byways based on this information and any other information the council may have obtained regarding the routes. ~~For a route to be designated, it must have an overall quality rating that is above “average.”~~ Also, at least 50 percent of the length of the route must be rated above “average.”

132.4(7) *Designation.* The department will consider designating routes recommended by the advisory council as Iowa Byways.

~~**132.4(7) 132.4(8) *Signing.*** The department shall provide the necessary state scenic byway signs and accompanying posts and hardware for the newly designated scenic byways. Upon the designation of Iowa Byways, the department will proceed with the initial design and installation of signage identifying new Iowa Byways.~~

ITEM 9. Amend renumbered rule 761—132.5(306D) as follows:

761—132.5(306D) *Reevaluation.* ~~Every four years from the date of designation~~ At its discretion, the department ~~shall~~ may inventory and evaluate the scenic byway designated Iowa Byways or portions of byways to determine ~~its~~ their continued eligibility ~~in~~ for the program. The department reserves the right to remove a route or portion of a route from the scenic byway program if the route no longer meets the designating criteria or if the route signage has not been maintained. The department may modify an existing route if an alternative route would better benefit the traveling public in cases of poor road conditions, closures or changes in available amenities.

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ITEM 10. Amend renumbered rule 761—132.6(306D) as follows:

761—132.6(306D) Promotional and tourism efforts. The department is not responsible for economic development, promotional and, or other tourism efforts for ~~scenic byways~~ Iowa Byways.

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Notice of Intended Action

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

Pursuant to the authority of Iowa Code sections 307.12, 307A.2 and 315.10, the Iowa Department of Transportation hereby gives Notice of Intended Action to amend Chapter 163, “RISE Program,” Iowa Administrative Code.

The proposed amendments to this chapter:

- Remove or revise outdated, unnecessary language.
- Update definitions.
- Clarify the purpose of the program and the types of development activities that the program is intended to assist by adding a definition for “value-adding activities” and by further defining that tourism must also have a state impact rather than just a local impact.
- Correct contact information.
- Provide more detail on the responsibility of the Iowa Transportation Commission to monitor RISE fund cash flow and, if necessary, take action to ensure availability of funds.
- Add that all projects require a public letting to be completed by the public project sponsor in accordance with all laws and rules.
- Include further explanation of eligible project costs for right-of-way, design, utilities and permit costs. As a result, complementary changes were also made to the ineligible activities.
- Make changes to the ability to incur eligible right-of-way costs prior to a funding commitment to include the ability to incur certain design costs.
- Clarify that matching funds to RISE funds may include funds from other state agencies, programs or in-kind costs.
- Clarify that applications must include a formal resolution from the jurisdiction to more clearly communicate the requirement that the roadway project be dedicated to public use and be properly maintained.
- Add a new subrule stating that project costs may be subject to audit by the Department.

These amendments do not provide for waivers. Any person who believes that the person’s circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Any person or agency may submit written comments concerning these proposed amendments or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to Tracy George, Rules Administrator, Iowa Department of Transportation, Operations and Finance Division, 800 Lincoln Way, Ames, Iowa 50010; e-mail: tracy.george@iowadot.us.
5. Be received by the Department’s rules administrator no later than July 11, 2017.

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A meeting to hear requested oral presentations is scheduled for Thursday, July 13, 2017, at 11 a.m. in the Administration Building, First Floor, North Conference Room, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

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

These amendments are intended to implement Iowa Code chapter 315.

The following amendments are proposed.

ITEM 1. Amend rule **761—163.1(315)**, definitions of “Direct jobs created,” “Direct jobs retained,” “Economic development,” and “Immediate opportunity project,” as follows:

“*Direct jobs created*” refers to ~~new jobs~~ new to the state in firms, developments, or sites specifically assisted by a RISE project.

“*Direct jobs retained*” refers to existing Iowa jobs that would otherwise be lost in firms, developments, or sites specifically assisted by a RISE project.

“*Economic development*” means private investment involving the creation of new jobs and income or the retention of existing jobs and income that would otherwise be lost. For the purposes of this program, economic development shall be viewed from a statewide perspective rather than a local or substate, regional perspective and shall result in a net gain to the state.

“*Immediate opportunity project*,” one of the two types of RISE projects, is a roadway project that needs a funding commitment within a short time period and meets the threshold criteria in subrule ~~163.8(6)~~ 163.10(6). The project primarily provides improved access to ~~either~~ a single economic unit, such as a county, a city, an industrial park, a plant or other business, a development site or a tourist attraction, ~~or to a portion of a metropolitan area.~~

ITEM 2. Rescind the definition of “Metropolitan area” in rule **761—163.1(315)**.

ITEM 3. Adopt the following **new** definition of “Value-adding activities” in rule **761—163.1(315)**:

“*Value-adding activities*” means activities which, through the employment of knowledge or labor, add value to a product, process or service that results in the creation of new wealth to the state.

ITEM 4. Renumber rules **761—163.2(315)** to **761—163.7(315)** as **761—163.3(315)** to **761—163.8(315)**; rules **761—163.8(315)** and **761—163.9(315)** as **761—163.10(315)** and **761—163.11(315)**; and rule **761—163.11(315)** as **761—163.12(315)**.

ITEM 5. Adopt the following **new** rule 761—163.2(315):

761—163.2(315) Information and forms. Information, instructions and application forms may be obtained from the Office of Systems Planning, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1664; or through the department’s Web site at www.iowadot.gov.

ITEM 6. Amend renumbered rule 761—163.3(315) as follows:

761—163.3(315) Purpose of RISE program. The purpose of the RISE program is to promote economic development in Iowa through the establishment, construction, improvement, and maintenance of roads and streets. The RISE program shall be targeted toward value-adding activities to provide maximum economic impact to the state. Value-adding activities feed new dollars into the economy. As these dollars are circulated, the state experiences economic growth. Tourism activities that result in the attraction of out-of-state dollars to the state economy may also be targeted by the program. Residential development, local government facilities, local public schools, locally oriented business services and personal services are generally not value-adding activities and will rarely meet the intent of the program.

The RISE program shall also be administered to encourage economic diversification, new business opportunities, small business development, exporting, import substitution and tourism in Iowa.

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ITEM 7. Amend renumbered rule 761—163.4(315) as follows:

761—163.4(315) Administration of RISE program.

163.4(1) and **163.4(2)** No change.

~~**163.4(3)** The department's office of systems planning shall be responsible for administering the RISE project selection process. RISE application instructions and forms are available upon request to the Office of Systems Planning, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1664. Application forms and instructions are also available on the Internet at www.dot.state.ia.us/forms.~~

163.4(4) ~~**163.4(3)**~~ The department shall annually prepare a written report indicating the amount and percentage of funds expended during the previous year on primary roads, secondary roads, city streets, state park roads and county conservation parkways.

ITEM 8. Amend renumbered rule 761—163.5(315) as follows:

761—163.5(315) Source, allocation, and use of RISE funds.

163.5(1) No change.

163.5(2) *Allocation and use.*

a. to c. No change.

d. Type of projects. The two types of projects which may be funded under the RISE program are immediate opportunity projects and local development projects. The requirements and procedures specifically applicable to the two project types are located in the following rules of this chapter:

(1) Immediate opportunity projects: Rule ~~163.8(315)~~ 761—163.10(315).

(2) Local development projects: Rule ~~163.9(315)~~ 761—163.11(315).

e. No change.

f. Use of repaid funds. RISE funds repaid to the department for any reason may be used for other projects or carried over to the next programming cycle ~~at the discretion of the commission~~. RISE funds repaid shall be credited to the share of the fund from which the project was originally funded.

g. No change.

h. Reserve for future needs and contingencies. The commission shall ~~hold back from funding commitment an amount of RISE funds sufficient to meet~~ monitor RISE fund commitments and expected RISE fund cash flow and take actions necessary to ensure that funds remain available for anticipated present and future immediate opportunity project needs and other contingencies. Such actions may include placing a moratorium on the receipt and award of local development RISE applications, placing a limit on RISE dollars awarded to each project, or taking other actions at the discretion of the commission.

ITEM 9. Amend renumbered subrule 163.7(1) as follows:

163.7(1) *Applicant eligibility.* All incorporated cities and all counties in the state of Iowa are eligible to apply for and receive funds under the RISE program. The department is also eligible to initiate projects and receive funds under this program; but need not formally apply for funds. Private firms or developers or other agencies may not apply directly for funds; but are encouraged to work with county or city governments in seeking funding for projects. In any case, all projects must be let by the applicant or through the department's office of contracts and in accordance with all applicable laws and rules.

ITEM 10. Amend renumbered rule 761—163.8(315) as follows:

761—163.8(315) Project activities eligible and ineligible for RISE funds.

163.8(1) *Eligible activities.* Project activities or costs eligible for RISE funding, and which may be counted as part of the non-RISE participation in immediate opportunity and local development roadway projects, include only the following:

a. to c. No change.

d. Public transportation system improvements, including but not limited to bus shelters, bus turnouts, and passenger information signage, when they are integral to the roadway improvement.

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e. Bicycle and pedestrian infrastructure improvements, including but not limited to sidewalks, at-grade pedestrian crossings, bike lanes, and separated bike lanes, when they are integral to the roadway improvement.

d. f. Right-of-way purchase acquisition costs, including but not limited to appraisals, negotiation, compensation, and cultural resources surveys necessary to comply with applicable local, state and federal laws, rules and regulations.

e. g. Construction or improvement of motorist rest areas, welcome centers, and information centers.

f. h. Design engineering costs leading to construction plan development and construction inspection costs associated with RISE-financed projects.

g. i. County and city bond principal and interest payments associated with RISE projects. No financing expenses incurred prior to funding commitment shall be eligible.

h. j. Storm drainage and storm sewer costs to the extent needed for draining the roadway.

k. Reconstruction or adjustment of utilities, including but not limited to water, sanitary sewer, electric, telephone, and natural gas, when utilities are located on private property and require replacement or relocation due to project construction; or said utilities are located in the public right-of-way and the utility is not required to relocate at its own expense.

l. Costs associated with the acquisition of local, state and federal permits required for roadway construction.

163.8(2) Ineligible activities. Activities or costs ineligible for RISE funding, and which may not be counted as part of the non-RISE participation in immediate opportunity or local development roadway projects, include but are not limited to the following:

a. Any and all costs incurred prior to a funding commitment by the commission except for advance right-of-way acquisition costs necessary to protect or preserve a project corridor. If there is an extreme urgency involving right-of-way acquisition, a potential applicant may formally request from the department written approval to acquire the right-of-way immediately without jeopardizing the eligibility of the acquisition costs for future RISE funding. Granting of this approval does not imply or guarantee that a subsequent application which includes the acquisition costs will be funded. The request must include justification regarding the urgency of the acquisition, a description of the land to be acquired, and a map showing its location. Approval to acquire right-of-way immediately must be requested from and granted by the department prior to the applicant's acquisition of the land in question. The RISE application which includes the acquisition costs must be received by the department within two years following the granting of this approval, or the approval is not valid notwithstanding rule 761—163.9(315).

b. Routine roadway, bridge and culvert maintenance, including but not limited to pothole filling, crack sealing, seal coating, patching, shoulder maintenance, gravel or earth roadway maintenance, and bridge painting.

c. Winter roadway and bridge maintenance, including but not limited to snow plowing, sanding, and salting.

d. No change.

e. Expenses associated with the preparation and submission of applications for RISE funding.

f. Predesign engineering, feasibility or alignment studies, and other planning expenses.

g. and h. No change.

i. Electric, water, natural gas, telephone and other utility Utility construction, reconstruction or adjustment except when utilities located on private property are replaced or relocated for project construction for those activities or costs described in subrule 163.8(1).

j. to m. No change.

n. Parking expenditures, including those for structures, lots, meters, paving, and marking whether for on-street or off-street parking.

o. to q. No change.

r. Sanitary sewers.

s. Water mains.

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~~4. r.~~ Donated right-of-way.

ITEM 11. Adopt the following new rule 761—163.9(315):

761—163.9(315) Advance eligibility of land acquisition and preliminary design costs incurred prior to funding commitment by commission.

163.9(1) *Need for advance eligibility.* If there is extreme urgency involving land acquisition or preliminary design and a necessity to protect or preserve a project corridor or to proceed with the preparation of project construction plans prior to a RISE funding commitment, a potential applicant may submit a written request to the department for a determination of advance eligibility to incur costs for land acquisition or preliminary design immediately. A determination of advance eligibility by the department will allow specified costs incurred prior to a funding commitment by the commission to be eligible for reimbursement with RISE funding without jeopardizing the project's eligibility for funding approval, but does not imply or guarantee that the commission will commit RISE funding to a subsequent application.

163.9(2) *Request, justification and review.* The request must be received by the department prior to the expenditure and must include justification regarding the extreme urgency and necessity to incur costs prior to a RISE funding commitment. A request for land acquisition must also include a description of the land to be acquired, a summary of the estimated costs, and a map showing the parcels to be acquired. Preliminary design requests must include a description of the project scope, location map, and proposed cross section. If the request will include consultant design costs, a draft agreement between the jurisdiction and the consultant must be submitted which includes the scope of services to be rendered. Costs for RISE application preparation and submission or project feasibility, route alignment studies or other planning expenses as cited in paragraphs 163.8(2) "e" and "f" remain ineligible for RISE funding and shall not be included in a request for determination of advance eligibility. The department will review the submittal. If the requirements of this rule are met, the department will provide written confirmation of the determination of advance eligibility.

163.9(3) *Requirements.* Any cost incurred before the request is received by the department will be ineligible for reimbursement. Costs receiving a determination of advance eligibility must be noted in the subsequent RISE funding application submitted to the department. Land acquired or design work completed following a determination of advance eligibility will not be eligible for reimbursement with RISE funds if the property acquired or design work completed is not necessary to construct the proposed RISE project included in the subsequent application. Design costs receiving a determination of advance eligibility may not exceed 10 percent of the total construction costs for the project. An application for funding which includes the expenditure must be received by the department within two years following the determination of advance eligibility, or the costs may become ineligible for RISE funding.

ITEM 12. Amend renumbered rule 761—163.10(315) as follows:

761—163.10(315) Immediate opportunity projects.

163.10(1) No change.

163.10(2) *Contents of applications.* Each application for an immediate opportunity project must contain the following:

a. to e. No change.

~~f. —For a road or street which is not currently dedicated to public use, written assurance of future dedication from the jurisdiction responsible or to be responsible for the road or street to be constructed or improved.~~

~~g. f. —An official endorsement~~ A formal resolution passed by the governing body of the project proposal from the jurisdiction responsible or to be responsible for the road or street to be constructed or improved. ~~The jurisdiction must also provide written assurance~~ The resolution shall state that it the project will be adequately maintain the new or improved road or street. maintained and dedicated to public use for a minimum of 20 years after completion of the project. The resolution must also certify that the project meets the threshold criteria cited in paragraph 163.10(6) "a."

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~~h. g.~~ Documentation showing that the threshold criteria of subrule ~~163.8(6)~~ 163.10(6) have been met.

~~i. — Rescinded IAB 8/8/01, effective 7/20/01.~~

163.10(3) *Submission of applications.* ~~Application instructions and forms for immediate opportunity projects are available from the office of systems planning or on the Internet at www.dot.state.ia.us/forms.~~ An original and one copy of each completed application shall be submitted to the ~~office of systems planning department~~. Applications may be submitted at any time.

Once an application has been submitted, no further information concerning that application shall be accepted by the department from the applicant unless specifically requested by the department. Applications may be withdrawn by the applicant and resubmitted at any time. Resubmitted applications shall be dated accordingly.

163.10(4) *Incomplete applications.* An applicant must satisfy the application requirements outlined in this chapter ~~of rules~~ and must fully complete the official application form before ~~its applications the application will be reviewed~~ considered by the commission. ~~An applicant shall be notified if an application is incomplete. An incomplete application shall be reviewed when it is resubmitted in a complete form by the applicant.~~

163.10(5) No change.

163.10(6) *Threshold criteria.* Funding commitment decisions for immediate opportunity projects shall be made on an individual basis. There is no competitive ranking of project applications. In order to gain a funding commitment, an application must meet all of the following threshold criteria:

a. The project must be related to an immediate, nonspeculative opportunity for permanent job creation or retention. The applicant county or city (or its agent) should be in the process of negotiating a location or retention decision with a developer or firm. ~~This criterion may be satisfied by a resolution from the applicant county or city stating that it is involved in negotiations with a developer or firm.~~

b. and *c.* No change.

d. There must be at least 20 percent non-RISE financial participation in the roadway project, ~~except as indicated in subparagraph (2) of this paragraph~~ the commission may approve a participation amount that is less than 20 percent if it determines that the applicant city or county is economically distressed.

~~(1) This participation shall include only those items listed as eligible for RISE funding, and may be in the form of cash, the value of design engineering and construction inspection services, or the cost of eligible advance right-of-way acquisitions pursuant to paragraph 163.7(2)“a.” The applicant shall provide documentation to the department supporting the value of any noncash contribution to the project.~~

~~(2) The commission may approve a participation amount that is less than 20 percent if it determines that the applicant city or county is economically distressed.~~

e. There must be a strong likelihood that the total development, including the roadway project, can be completed in a timely manner. It is up to the applicant to identify a time schedule and maintain it. This time schedule may be adjusted ~~when agreed to by the commission if for such reasons~~ including but not limited to the project involves unusually complex engineering studies, extensive real estate negotiations, extensive analysis for environmental clearances, or unusually complex planning for associated development. The commission may withdraw funding if time schedules have been misrepresented or have not been maintained.

163.10(7) *Review and funding of applications.*

a. The staff of the department shall review complete immediate opportunity project applications and may consult with other organizations with economic development responsibilities. As part of the review, the staff shall evaluate the effect of the proposed project on the state economy using the following factors: consistency with the state economic development plan; diversification of the state economy; the impact on in-state suppliers, competitors, and import substitution; percentage of out-of-state sales; the quality of employment positions; and the record of law violations. This review shall be performed within a reasonable period of time after receipt of the application. Following this review, complete applications meeting the threshold criteria of subrule ~~163.8(6)~~ 163.10(6) shall be forwarded to the commission for action at their next meeting.

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b. and *c.* No change.

d. Immediate opportunity project applications may, at the discretion of the commission, be considered as applications for local development projects. These applications shall be included in the current round of local development project programming, regardless of the deadlines stated in subrule ~~163.9(3)~~ 163.11(3). However, immediate opportunity project applications submitted solely to circumvent the deadlines for local development project applications shall not be considered in this manner.

ITEM 13. Amend renumbered rule 761—163.11(315) as follows:

761—163.11(315) Local development projects.

163.11(1) No change.

163.11(2) *Contents of applications.* Each application for a local development project must contain the following:

a. to *e.* No change.

~~*f.* For a road or street which is not currently dedicated to public use, written assurance of future dedication from the jurisdiction responsible or to be responsible for the road or street to be constructed or improved.~~

~~*g.* An official endorsement of the project proposal from~~ A formal resolution passed by the governing body of the jurisdiction responsible or to be responsible for the road or street to be constructed or improved. The jurisdiction must also provide written assurance that it The resolution shall state that the project will be adequately maintain the new or improved road or street maintained and dedicated to public use for a minimum of 20 years after completion of the project.

~~*h.* Rescinded IAB 8/8/01, effective 7/20/01.~~

163.11(3) *Submission of applications.* ~~Application instructions and forms for local development projects are available from the office of systems planning or on the Internet at www.dot.state.ia.us/forms.~~ An original and one copy of each completed application shall be submitted to the ~~office of systems planning department~~.

a. Applications may be submitted at any time. However, in order to be considered in the current round of programming, complete applications must be received by the department or postmarked no later than February 1 or September 1.

b. No change.

163.11(4) *Incomplete applications.* An applicant must satisfy the application requirements outlined in this chapter ~~of rules~~ and must fully complete the official application form before ~~its~~ the application will be ~~reviewed~~ considered by the commission. An applicant shall be notified if an application is incomplete. ~~An incomplete application shall be reviewed when it is resubmitted in a complete form by the applicant.~~

163.11(5) No change.

163.11(6) *Rating factors.* The following factors and potential rating points shall be used in assessing applications for local development projects; ~~assessment~~ Assessment of these factors shall be the responsibility of the department.

a. to *e.* No change.

163.11(7) No change.

ITEM 14. Amend renumbered rule 761—163.12(315) as follows:

761—163.12(315) Project administration.

~~**163.12(1)** *Projects located on primary roads or state park roads.* RISE projects located on primary roads or state park roads shall be administered by the department in conformance with the requirements of Iowa Code chapter 315. The department may delegate part or all of this responsibility to another participating jurisdiction.~~

~~**163.12(2)** *Projects located on secondary roads, city streets or county conservation parkways.*~~

~~*a.* **163.12(1)** *Agreement.* After a funding commitment has been made for a project located on secondary roads, city streets or county conservation parkways, the department shall enter into a project~~

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agreement with ~~those local jurisdictions whose roads, streets or parkways are a part of the project the~~ applicant. The agreement shall delineate responsibilities for project planning, design, right-of-way, contracting, construction and materials inspection, and documentation. The agreement shall require that a business assisted by the project which acquires or merges with an Iowa corporation within three years following the RISE application shall make a good-faith effort to hire the workers of the merged or acquired company. The agreement shall require the applicant to comply with all local, state, and federal laws, rules and regulations that may apply to the project.

~~b. 163.12(2) Project payments.~~ Payments from the RISE fund to counties or cities shall be made on a cost reimbursement basis, and financial participation shall be limited to the maximum percentage allowed by the funding commitment. ~~All known required environmental permits must be granted and regulations met before moneys are released.~~ The non-RISE financial participation shall include only those items listed as eligible for RISE funding and may be in the form of cash, the value of design engineering and construction inspection services, or the cost of eligible advance right-of-way acquisitions or preliminary design pursuant to rule 761—163.9(315). Grants from other state agencies or programs may also contribute to the non-RISE financial participation if their laws and rules allow. The applicant shall provide documentation to the department supporting the value of any noncash contribution to the project. The department has the sole authority to determine the value of noncash contributions. Contributions made by a third party may be allowed.

~~c. 163.12(3) Project expenditures incurred prior to agreement.~~ Project expenditures incurred after the commission has made a funding commitment, but before execution of the agreement, ~~may be~~ are eligible for reimbursement if ~~prior written authorization is obtained from the department and an a project agreement is subsequently executed.~~ However, under no circumstances shall any reimbursement be paid until the agreement has been executed.

~~d. 163.12(4) Remedies for noncompliance with project agreement.~~ The commission may revoke funding commitments, require repayment of RISE funds loaned or granted, or take both actions when the county or city has not fulfilled the terms of the project agreement.

~~163.12(3) 163.12(5) Cost overruns.~~ RISE funds committed for projects are for a maximum dollar amount. Cost overruns shall be the responsibility of the administering jurisdiction.

163.12(6) Audit. The department may audit all project costs incurred for compliance with the agreement, including costs that are part of the matching contribution. All force account work performed by a county or city on the project shall be audited.

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TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

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

Pursuant to the authority of Iowa Code sections 307.12, 307A.2 and 465B.2, the Iowa Department of Transportation hereby gives Notice of Intended Action to amend Chapter 165, "Recreational Trails Program," Iowa Administrative Code.

The proposed amendments to this chapter:

- Add new definitions and update the definition of "recreational trails fund."
- Correct contact information.
- Update implementation statutes and the chapter's implementation sentence.
- Remove or revise outdated, unnecessary language.
- Clarify that matching funds to state recreational trail funds may include funds from other state agencies, programs or in-kind costs.
- Include additional explanation of eligible project costs to include costs of right-of-way, design and utility costs. As a result, complementary changes were also made to the ineligible activities. The

TRANSPORTATION DEPARTMENT[761](cont'd)

advance eligibility waiver process has been rewritten and now includes the ability to incur certain design costs.

- Rewrite the requirement that applications include a formal resolution from the jurisdiction to more clearly communicate requirements that a project be dedicated to public use and be properly maintained.
- Provide extra points in scoring for shovel-ready projects.

These amendments do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Any person or agency may submit written comments concerning these proposed amendments or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to Tracy George, Rules Administrator, Iowa Department of Transportation, Operations and Finance Division, 800 Lincoln Way, Ames, Iowa 50010; e-mail: tracy.george@iowadot.us.

5. Be received by the Department's rules administrator no later than July 11, 2017.

A meeting to hear requested oral presentations is scheduled for Thursday, July 13, 2017, at 1 p.m. in the Administration Building, First Floor, North Conference Room, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

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

These amendments are intended to implement Iowa Code chapter 465B.

The following amendments are proposed.

ITEM 1. Strike "(312)" wherever it appears in **761—Chapter 165** and insert "(465B)" in lieu thereof.

ITEM 2. Adopt the following new definitions of "Commission," "Department," and "Recreational trail" in rule **761—165.1(312)**:

"*Commission*" means the state transportation commission.

"*Department*" means the Iowa department of transportation.

"*Recreational trail*" means a thoroughfare or track across land or snow, used for recreational purposes such as pedestrian activities including wheelchair use; skating or skateboarding; equestrian activities, including carriage driving; nonmotorized snow trail activities, including skiing; bicycling or use of other human-powered vehicles; providing access to aquatic or water activities; and motorized vehicular activities, including all-terrain vehicle riding, motorcycling, snowmobiling, use of off-road light trucks, or use of other off-road motorized vehicles.

ITEM 3. Amend rule **761—165.1(312)**, definition of "Recreational trails fund," as follows:

"*Recreational trails fund funds*" means ~~the fund created~~ funds appropriated for the acquisition, construction, and improvement of recreational trails ~~pursuant to Iowa Code section 312.2~~.

ITEM 4. Amend rule 761—165.2(312) as follows:

761—165.2(312) Information and forms. Information, instructions and application forms may be obtained from: the Office of Project Systems Planning, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone ~~(515)239-1225~~ (515)239-1664; or through the department's Web site at www.iowadot.gov. ~~All inquiries regarding the recreational trails program should be directed to this office.~~

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 5. Amend paragraph **165.5(2)“a”** as follows:

a. The ~~transportation~~ commission is solely responsible for all funding commitments and shall determine the projects to be funded, subject to the availability of recreational trails funds. The commission may approve, modify, or deny an application. The commission may fund all or part of a project and may make funding conditional upon adherence to a time schedule or to fulfillment of an agreement.

ITEM 6. Amend subrule 165.12(2) as follows:

165.12(2) Criteria. A proposed recreational trails project shall meet all of the following requirements:

a. and b. No change.

c. The project shall include a contribution of at least 25 percent matching funds. ~~Notwithstanding, at the discretion of the department, funds may be granted up to a maximum of 80 percent. Except as provided in subrule 165.22(3), matching funds shall be from sources other than the recreational trails program.~~

d. Matching funds ~~shall not may~~ include other grants from other state agencies or the provision programs if their laws and rules allow and the donation of in-kind labor, materials, equipment, and services from a third party. The department has the sole authority to determine the value of noncash contributions. The value of donated land may be an eligible matching contribution if:

(1) and (2) No change.

ITEM 7. Amend rule 761—165.15(312) as follows:

761—165.15(312) Eligible project costs.

165.15(1) Land. Land acquisition costs including, but not limited to, ~~appraisal costs appraisals, negotiation costs, compensation and the required cultural resources survey pursuant to Iowa Code chapter 305A~~ surveys necessary to comply with applicable local, state and federal laws, rules and regulations are eligible project costs. Land may be acquired by lease, easement or fee simple. ~~Except for primary road projects, the~~ The performance of land negotiation and acquisition activities shall not be the responsibility of the department although the department may provide advisory services.

165.15(2) Other eligible costs. Other project costs that are eligible for funding are limited to the following:

a. to d. No change.

e. Design engineering costs leading to construction plan development and construction inspection costs directly associated with the project.

f. No change.

g. ~~Utility relocation costs necessary for trail construction or improvement if the utility is not located on public right-of-way.~~ Reconstruction or adjustment of utilities including but not limited to water, sanitary sewer, electric, telephone, and natural gas when utilities are located on private property and require replacement or relocation due to project construction; or said utilities are located in the public right-of-way and the utility is not required to relocate at its own expense.

h. No change.

ITEM 8. Amend rule 761—165.17(312) as follows:

761—165.17(312) Ineligible project costs.

165.17(1) Before commission approval. Any and all costs incurred prior to a funding commitment ~~by the commission approval of funding for a project are ineligible for funding under the recreational trails program notwithstanding rule 761—165.19(465B).~~

165.17(2) Other ineligible costs. Other project costs that are ineligible for funding include, but are not limited to, the following:

a. Routine maintenance of a trail, bridge, culvert, fence or sign; winter maintenance of a trail or bridge, including but not limited to snow plowing, sanding, and salting.

b. No change.

TRANSPORTATION DEPARTMENT[761](cont'd)

- c. Expenses associated with the preparation and submission of a project application.
- d. Predesign engineering, feasibility, or alignment studies and other planning expenses.
- e. Utility costs other than those listed in rule 165.15(312) construction, reconstruction or adjustment except for those activities or costs described in subrule 165.15(2).
- f. No change.
- g. Purchases of office furnishings or equipment, construction or maintenance equipment, or personal property.
- ~~h. Sanitary sewers or water mains except as necessary for rest room construction.~~
- i. h. General government expenses and expenses associated with the provision of any public service that are not otherwise eligible for project funding.

ITEM 9. Rescind rule 761—165.19(312) and adopt the following **new** rule in lieu thereof:

761—165.19(465B) Advance eligibility of land acquisition and preliminary design costs incurred prior to funding commitment by commission.

165.19(1) *Need for advance eligibility.* If there is extreme urgency involving land acquisition or preliminary design and a necessity to protect or preserve a project corridor or to proceed with the preparation of project construction plans prior to a recreational trails program funding commitment, a potential applicant may submit a written request to the department for a determination of advance eligibility to incur costs for land acquisition or preliminary design immediately. A determination of advance eligibility by the department will allow specified costs incurred prior to a funding commitment by the commission to be eligible for reimbursement with recreational trails program funding without jeopardizing the project's eligibility for funding approval, but does not imply or guarantee that the commission will commit recreational trails program funding to a subsequent application.

165.19(2) *Request, justification and review.* The request must be received by the department prior to the expenditure and must include justification regarding the extreme urgency and necessity to incur costs prior to a recreational trails program funding commitment. A request for land acquisition must also include a description of the land to be acquired, a summary of the estimated costs, and a map showing the parcels to be acquired. Preliminary design requests must include a description of the project scope, location map, and proposed cross section. If the request will include consultant design costs, a draft agreement between the jurisdiction and the consultant must be submitted which includes the scope of services to be rendered. Costs for recreational trails program application preparation and submission or project feasibility, route alignment studies or other planning expenses as cited in paragraphs 165.17(2)“c” and “d” remain ineligible for recreational trails program funding and shall not be included in a request for determination of advance eligibility. The department will review the submittal. If the requirements of this rule are met, the department will provide written confirmation of the determination of advance eligibility.

165.19(3) *Requirements.* Any cost incurred before the request is received by the department will be ineligible for reimbursement. Costs receiving a determination of advance eligibility must be noted in the subsequent recreational trails program funding application submitted to the department. Land acquired or design work completed following a determination of advance eligibility will not be eligible for reimbursement with recreational trails program funds if the property acquired or design work completed is not necessary to construct the proposed recreational trails program project included in the subsequent application. Design costs receiving a determination of advance eligibility may not exceed 10 percent of the total construction costs for the project. An application for funding which includes the expenditure must be received by the department within two years following the determination of advance eligibility, or the costs may become ineligible for recreational trails program funding.

ITEM 10. Amend rule 761—165.22(312) as follows:

761—165.22(312) Application.

165.22(1) *Submission.* An eligible applicant shall complete and submit an ~~original and four copies of a project application on a form~~ and in the quantity prescribed by the department.

TRANSPORTATION DEPARTMENT[761](cont'd)

a. and b. No change.

c. ~~The deadlines are January 2 and July 1 or the first workdays following those dates. The application deadline shall be on the first day of the fiscal year for which funding has been provided to the program and any additional stated deadline as deemed necessary by the department to fully award program funding.~~

d. ~~Applications shall be submitted to the office of project planning. To be considered in the current funding cycle, an application must be received by project planning by 4:30 p.m. on the day of the deadline received by the department or postmarked by the stated application deadline.~~

165.22(2) Contents of application. Each application shall contain the following:

a. No change.

b. A project concept statement including a location map, a cross section and a sketch of the project intended to be constructed with program funds. The proposed project need not be designed before applying, but the concept must be reasonable from a transportation engineering standpoint and detailed enough to generate project cost estimates.

c. An itemized cost estimate for the total project to be constructed showing for each item the cost and funding source. When a project is part of a larger multiphase project, the application shall differentiate the costs and scope of the proposed construction project from the costs and scope of the overall multiphase project.

d. ~~A time schedule for the total trail project with the applicant's written assurance of project completion as scheduled. A time schedule adjustment may be approved by the department if the project involves unusually complex studies, extensive real estate negotiations, extensive analyses for environmental clearances, complex planning for associated developments, or another compelling reason.~~

e. No change.

f. ~~An official endorsement of the application from the responsible authority and written assurance from that authority that the total trail used to justify the project. A formal resolution passed by the governing body of the responsible authority endorsing the application and the timeline for project completion provided therein. The resolution shall also state that the proposed trail project will be adequately maintained and made available for the intended public use for a minimum of 20 years after completion of the project except as approved by the commission.~~

165.22(3) Funding requests.

~~a.~~ An applicant shall specify in the application the amount of the grant funding ~~grant~~ requested from the recreational trails fund program and may offer a matching fund contribution larger than is required.

~~b.~~ In lieu of a grant request, an applicant may request alternative funding, such as a loan at below market interest rate, a no-interest loan, or a partial repayment of principal.

~~c.~~ If recreational trails funds are loaned as matching funds, the value of the loan repayments for matching fund purposes shall be based on net present value.

ITEM 11. Amend rule 761—165.23(312) as follows:

761—165.23(312) Application procedure.

~~165.23(1)~~ An application may be submitted at any time and shall be dated when received in the office of project planning. Once an application has been submitted, no further information shall be accepted from the applicant unless specifically requested by the department.

~~165.23(2)~~ 165.23(1) If an application is incomplete, the All applications for funding shall be complete. The department shall reserves the right to return the an incomplete application to the applicant to be resubmitted when complete without further consideration for funding. A resubmitted application shall be dated when it is received in the office of project planning. An applicant may then submit a completed application for the next available funding cycle.

~~165.23(3)~~ 165.23(2) An application that is considered but not funded in one funding cycle may be resubmitted by the applicant for consideration in the next cycle.

~~165.23(4)~~ 165.23(3) An applicant may withdraw an application at any time.

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 12. Amend rule 761—165.26(312) as follows:

761—165.26(312) Evaluation and approval.

165.26(1) No change.

165.26(2) The department shall evaluate each complete application primarily on the basis of whether the predicted use of the trail justifies the construction and maintenance costs including, but not limited to, the following criteria:

a. to e. No change.

f. Special facilities for ~~the handicapped~~ persons with disabilities (5 points).

g. Project is shovel-ready and planned to be completed within three years of award of funding (25 points).

165.26(3) Completed applications shall be reviewed by a committee composed of one representative from ~~each of these departments: natural resources, economic development, cultural affairs, and transportation~~ state agencies with jurisdiction over transportation, tourism, cultural resources and natural resources. The committee shall recommend applications to the department by ranking them in order of funding priority.

165.26(4) The department shall prepare a list of applications and funding recommendations and present it to the commission for final approval and award of funding.

ITEM 13. Amend rule 761—165.30(312) as follows:

761—165.30(312) Project agreement.

165.30(1) After the commission has approved funding for a recreational trails project, the department and the applicant shall execute a project agreement.

~~*a.* The department shall administer a project located on a primary road; however, the department by agreement may delegate part or all of this responsibility.~~

~~*b. a.* For all other projects, the~~ The agreement shall specify the responsibilities for project planning, design, land acquisition, contracting, construction and materials inspection, and documentation and the criteria for each. The agreement shall also specify the overall funding level approved and contain an estimated budget for eligible work items.

~~*b.* The agreement shall require the applicant to comply with all local, state and federal laws, rules and regulations that may apply to the project.~~

165.30(2) No change.

165.30(3) Project expenditures incurred after the commission has made a funding commitment, but before execution of the agreement, ~~may be~~ are eligible for reimbursement if ~~prior written authorization is obtained from the department and~~ a project agreement is subsequently executed. However, under no circumstances shall any reimbursement be paid until the project agreement has been executed.

165.30(4) No change.

ITEM 14. Amend rule 761—165.33(312), introductory paragraph, as follows:

761—165.33(312) Noncompliance. The ~~commission~~ department may revoke funding commitments, seek repayment of funds ~~loaned or granted~~ already reimbursed, or take both actions if:

ITEM 15. Amend **761—Chapter 165**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter ~~342~~ 465B.

ARC 3128C**TRANSPORTATION DEPARTMENT[761]****Notice of Intended Action**

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

Pursuant to the authority of Iowa Code sections 307.12, 307A.2, 328.12, 328.19 and 2016 Iowa Acts, chapter 1131, section 3, the Iowa Department of Transportation hereby gives Notice of Intended Action to amend Chapter 720, “Iowa Airport Registration,” and Chapter 750, “Aircraft Registration,” Iowa Administrative Code.

The proposed amendments to Chapter 720:

- Update a phone number, Web site address and the chapter’s implementation sentence.
- Update references to the Federal Aviation Administration’s circular concerning standards for airport markings.
- Add a new subrule, in compliance with 2016 Iowa Acts, chapter 1131, section 3, which concerns the process used by the Department to review contractual obligations when an airport closes.

The proposed amendments to Chapter 750 update a Web site address and remove reference to issuing a certificate for an aircraft that is not airworthy since the certificate is already addressed in Iowa Code section 328.21.

These rules do not provide for waivers. Any person who believes that the person’s circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Any person or agency may submit written comments concerning these proposed amendments or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to Tracy George, Rules Administrator, Iowa Department of Transportation, Operations and Finance Division, 800 Lincoln Way, Ames, Iowa 50010; e-mail: tracy.george@iowadot.us.
5. Be received by the Department’s rules administrator no later than July 11, 2017.

A meeting to hear requested oral presentations is scheduled for Friday, July 14, 2017, at 10 a.m. in the Administration Building, First Floor, South Conference Room, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

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

These amendments are intended to implement Iowa Code sections 328.12 and 328.19 and 2016 Iowa Acts, chapter 1131, section 3.

The following amendments are proposed.

ITEM 1. Amend subrule 720.4(1) as follows:

720.4(1) Application for site approval. The sponsor shall complete Iowa Department of Transportation Form 300025, “Airport Site Approval and New Registration Application,” and submit it to the office of aviation. This form is available from the Office of Aviation, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1691 (515)239-1468; or through the Internet department’s Web site at <http://www.iawings.com> www.iowadot.gov.

~~a. and b. Rescinded IAB 7/4/07, effective 8/8/07.~~

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 2. Amend subparagraph **720.10(2)“b”(1)** as follows:

(1) Paved runways. Paved runways shall be marked in accordance with FAA Circular ~~150/5340-1J~~ 150/5340-1L (Standards for Airport Markings) as amended through ~~April 29, 2005~~ September 27, 2013.

ITEM 3. Amend paragraph **720.10(3)“a”** as follows:

a. Approaches shall be clear of obstructions above a glide path of 20:1 from the ends of each usable runway. If an obstruction exists in an approach zone, the runway threshold on a paved runway shall be displaced in accordance with FAA Advisory Circular ~~150/5340-1J~~ 150/5340-1L (Standards for Airport Markings) as amended through ~~April 29, 2005~~ September 27, 2013. On a nonpaved runway, the runway end markers shall be relocated to provide the prescribed obstruction clearance. The runway length remaining between the displaced threshold and the departure end of the runway is the landing distance available.

ITEM 4. Amend rule 761—720.15(328) as follows:

761—720.15(328) Airport closing.

720.15(1) No change.

720.15(2) Marking. All marking indicating a usable runway shall be obliterated. The sponsor shall place at a central location a yellow X in accordance with FAA Advisory Circular ~~150/5340-1J~~ 150/5340-1L (Standards for Airport Markings) as amended through ~~April 29, 2005~~ September 27, 2013.

720.15(3) Temporary closing. When conditions require the temporary closing of a runway, it shall be marked on both ends with a yellow X in accordance with FAA Advisory Circular ~~150/5340-1J~~ 150/5340-1L (Standards for Airport Markings) as amended through ~~April 29, 2005~~ September 27, 2013.

720.15(4) Repayment of financial assistance.

a. *Review of closure on or after [insert effective date of this subrule].* Within 30 days of closing an airport (other than temporary closing), the sponsor shall request from the department a review of contractual obligations that require repayment of financial assistance. The department will provide a determination detailing grant obligations that must be repaid. Any repayment of grants must be made to the department in no more than five equal annual installments, beginning one year from the airport's closure date. If an alternative future use of the airport facility is planned for a project that creates jobs and expands the economy, the sponsor may, within 30 days of the department's determination, request forgiveness of repayment. The request must include a plan detailing the alternative future use of the airport facility, an explanation of how the alternative future use creates jobs and expands the economy, a cost-benefit analysis from the sponsor, a commitment of private investment in the project equal to at least two times the amount of repayment due to the state, and a commitment from the sponsor, or associated political subdivision(s), to complete the alternative use project within five years. The department will review the request for forgiveness of repayment and approve or deny the request within 60 days of receipt.

b. *Review of closure after July 1, 2015, and before [insert effective date of this subrule].* An airport that closed after July 1, 2015 (other than temporary closing), but before [insert effective date of this subrule], is eligible to request forgiveness for repayment of financial assistance from the department. By [insert effective date of this subrule, plus 30 days], the sponsor shall request from the department a review of contractual obligations that require repayment of financial assistance. The department will provide a determination detailing grant obligations that must be repaid. Any repayment of grants must be made to the department in no more than two equal annual installments, beginning one year from [insert effective date of this subrule]. If an alternative future use of the airport facility is planned for a project that creates jobs and expands the economy, the sponsor may, within 30 days of the department's determination, request forgiveness of repayment. The request must include a plan detailing the alternative future use of the airport facility, an explanation of how the alternative future use creates jobs and expands the economy, a cost-benefit analysis from the sponsor, a commitment of private investment in the project equal to at least two times the amount of repayment due to the state, and a commitment from the sponsor, or associated political subdivision(s), to complete the alternative

TRANSPORTATION DEPARTMENT[761](cont'd)

use project within five years. The department will review the request for forgiveness of repayment and approve or deny the request within 60 days of receipt.

ITEM 5. Amend **761—Chapter 720**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 328.1, 328.12, 328.19 and 328.35 and 2016 Iowa Acts, chapter 1131, section 3.

ITEM 6. Amend rule 761—750.3(17A) as follows:

761—750.3(17A) Information and forms. Information, instructions and forms are available from the office of aviation or on the department's Web site at <http://www.iawings.com> www.iowadot.gov. Application forms may also be obtained from aircraft dealers. The mailing address for aircraft registration is: Iowa Department of Transportation, Office of Aviation, Aircraft Registration, 800 Lincoln Way, Ames, Iowa 50010.

This rule is intended to implement Iowa Code section 17A.3.

ITEM 7. Amend rule 761—750.15(328) as follows:

761—750.15(328) Aircraft not airworthy. An aircraft that is not airworthy is not subject to registration fees if the owner submits with the registration application a written, signed explanation of the aircraft's condition and an estimate of the date when the aircraft will be airworthy. The department shall ~~issue a certificate and shall~~ mark the record of the aircraft until the owner notifies the department that the aircraft is airworthy or until the aircraft is no longer subject to registration in Iowa.

This rule is intended to implement Iowa Code section 328.21.

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

TREASURER OF STATE(cont'd)

TIME DEPOSITS

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

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.

ARC 3121C

UTILITIES DIVISION[199]

Notice of Intended Action

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

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

Pursuant to Iowa Code sections 17A.4, 476.2, 476.8, 476.9 and 476.18, the Utilities Board (Board) gives notice that on May 26, 2017, the Board issued an order in Docket No. RMU-2016-0024, In re: Review of Accounting Rules in 199 IAC Chapter 16, “Order Commencing Rule Making” proposing to amend the Board’s Chapter 16 accounting rules.

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 changes is to promote ease of access for those interacting with the Board.

The specific amendments proposed by the Board would remove outdated language related to telegraph utilities and language related to initial filing requirements at the time rule 199—16.7(476) was first implemented.

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-2016-0024.

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 July 11, 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-2016-0024. 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 July 11, 2017, in Docket No. RMU-2016-0024.

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 jobs in Iowa.

UTILITIES DIVISION[199](cont'd)

These amendments are intended to implement Iowa Code sections 476.1, 476.2, 476.8, 476.9, 476.17, 476.18, and 546.7.

The following amendments are proposed.

ITEM 1. Rescind and reserve rule **199—16.6(476)**.

ITEM 2. Amend rule 199—16.7(476) as follows:

199—16.7(476) Filing of ~~present~~ promotional practices.

16.7(1) Each public utility subject to rate regulation shall file with the board ~~within 60 days of the effective date of this rule a schedule setting forth each of the promotional practices in which engaged as defined in the board's uniform systems of accounts~~ written documentation describing any proposed new promotional practice as defined in the board's uniform system of accounts no less than 30 days prior to the practice's expected implementation. All practices for which the costs are to be charged to account 424 (electric and gas) ~~or 31.324 (telephone)~~ shall be set forth. The accounts currently being charged with these practices shall be so listed. The company shall show the following data for each promotional practice.

- ~~1. a.~~ The name, number, or letter designation of each such promotional practice.
- ~~2. b.~~ The class of persons to which such promotional practice is being offered or granted.
- ~~3. c.~~ Whether such promotional practice is being uniformly offered or granted to the persons within such class.
- ~~4. d.~~ A description of such promotional practice, which shall include a statement of the terms and conditions governing same.
- ~~5. e.~~ A description of the advertising or publicity employed with respect to such promotional practice.
- ~~6. f.~~ If such promotional practice is offered or granted, in whole or in part, by an affiliate or other person, the identity of such affiliate or person and the nature of such party's participation shall be disclosed.
- ~~7. g.~~ The expiration date of the practice, if known, or an estimated date.
- ~~8. h.~~ Other information relevant to a complete understanding of such promotional practice.
- ~~9. i.~~ The date or estimated date of the beginning of such promotional practices.

~~Any promotional practice proposed subsequent to the initial listing outlined above shall be described in writing by the utility and such documentation provided the board no less than 30 days prior to its expected implementation.~~

~~**16.7(1) Annual report.** Rescinded IAB 11/6/96, effective 12/11/96.~~

16.7(2) Any promotional practice, or program which includes a promotional practice, designed to develop or implement programs that promote energy efficiency and are part of the utility's energy efficiency plan developed pursuant to ~~199 IAC 35~~ 199—Chapter 35 shall be deemed not to be a promotional practice for purposes of this rule and shall be exempt from the requirements of this rule.

ARC 3118C

UTILITIES DIVISION[199]

Notice of Intended Action

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

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

Pursuant to Iowa Code sections 17A.4 and 476.2, the Utilities Board (Board) gives notice that on May 19, 2017, the Board issued an order in Docket No. RMU-2017-0002, In re: Rule Making for Renewable

UTILITIES DIVISION[199](cont'd)

Energy Percentage Verification [199 IAC 30], “Order Commencing Rule Making,” proposing to establish rules for renewable energy percentage verification as Chapter 30 of the Board’s rules.

The Board is noticing for public comment on proposed Chapter 30. On March 31, 2017, MidAmerican Energy Company (MidAmerican) filed in Docket No. DRU-2017-0001 with the Board a “Petition for Declaratory Order” requesting that the Board establish an Iowa Renewable Energy Verification (I-REV) program to verify the amount of renewable energy that certain Iowa utilities provide to their retail customers.

The language proposed by the Board would establish an optional verification process for all rate-regulated utilities that file the annual fuel report pursuant to 199 IAC 15.17. The rule outlines the procedures and information needed to receive a verification of a utility’s retail load that was served using renewable generation.

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-2017-0002.

Pursuant to Iowa Code section 17A.4(1)“a” and “b,” any interested person may file a written statement of position pertaining to proposed Chapter 30. The statement must be filed on or before July 11, 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-2017-0002. Paper comments may only be filed with approval of the Board.

An opportunity for interested persons to present oral comments on proposed Chapter 30 will be held at 9 a.m. on July 26, 2017, in the Board’s hearing room at 1375 E. Court Avenue, Des Moines, Iowa. Persons with disabilities who require assistive services or devices to observe or participate should contact the Board at (515)725-7300 at least five days in advance of the scheduled date to request that appropriate arrangements be made.

After analysis and review of this rule making, the Board concludes that proposed Chapter 30, if adopted, may have the beneficial effect of encouraging renewable energy development in Iowa.

This amendment is intended to implement Iowa Code chapter 476.

The following amendment is proposed.

Adopt the following new 199—Chapter 30:

CHAPTER 30 RENEWABLE ENERGY PERCENTAGE VERIFICATION

199—30.1(476) Renewable energy percentage verification process. Upon request of a utility which files the annual fuel report identified in 199—paragraph 15.17(5) “a,” the board will verify the percentage of the utility’s retail load that was served using renewable generation during the prior period.

30.1(1) The formula for calculating the percentage of renewable energy used to serve retail load in a given calendar year is: renewable energy credits (RECs) generated and retired on behalf of all retail customers in a calendar year divided by total retail load in that calendar year, both quantified in MWh at the generator level.

30.1(2) The electing utility shall file the following information to support the request:

a. Evidence of RECs retired on behalf of retail customers. Qualifying renewable energy must be generated by the utility’s own facilities or be purchased by the utility from a renewable facility along with the associated RECs in the calendar year. Purchased RECs that are not bundled with the associated energy will not be counted as part of the renewable energy percentage.

b. Evidence that the RECs cannot be double counted, i.e., claimed for more than one purpose. REC retirements must be verifiable through the midwest renewable energy tracking system (M-RETS) or similar tracking system.

c. An affidavit signed by a corporate officer verifying the accuracy of the renewable percentage claim and the data filed in support of it.

UTILITIES DIVISION[199](cont'd)

30.1(3) The board may evaluate the reasonableness and prudence of the retirement of the renewable energy credits as a part of the verification process, or it may defer the issue to another proceeding.

This rule is intended to implement Iowa Code chapter 476.

ARC 3120C**UTILITIES DIVISION[199]****Notice of Intended Action**

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

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

Pursuant to Iowa Code sections 17A.4, 474.5, and 476.2, the Utilities Board (Board) gives notice that on May 26, 2017, the Board issued an order in Docket No. RMU-2016-0017, In re: Review of Reorganization Rules [199 IAC Chapter 32], “Order Commencing Rule Making,” proposing to amend the Board’s Chapter 32 reorganization rules. 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-2016-0017.

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 clarify the rules to promote ease of access for those interacting with the Board.

The proposed amendments to Chapter 32 clarify the revenue limits for utilities operating in more than one regulated line of business, such as both natural gas and electricity. The proposed amendments also clarify that multiple corporate officers’ time may be accounted for and allocated rather than a single officer’s time, and eliminate the provision that parties who fail to file testimony and exhibits within the required time frame may still be allowed to present testimony and exhibits at a subsequent hearing.

The Board is also proposing to implement a rule that would require water, sanitary sewage, and storm water drainage utilities to provide notice to the Board of any purchase, sale, lease, or other acquisition or disposition directly or indirectly of the whole or any substantial part of a public utility’s assets. The proposed rule would also have such utilities maintain separate books and records for any purchase or acquisition until the utility’s next general rate case.

To develop the proposed amendments, the Board sought early input from stakeholders. Stakeholder comments were filed by the Office of Consumer Advocate, a division of the Iowa Department of Justice, and Interstate Power and Light Company. The Office of Consumer Advocate stated it did not have any objections to the proposed amendments, and Interstate Power and Light Company stated it did not have any comments on the proposed amendments.

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 July 11, 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–2016–0017. 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 July 11, 2017, in Docket No. RMU-2016-0017.

UTILITIES DIVISION[199](cont'd)

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.4, 476.2, 476.6, 476.76, and 476.77.

The following amendments are proposed.

ITEM 1. Amend subrule 32.2(1) as follows:

32.2(1) Unless an application pursuant to Iowa Code section 476.77 and this chapter has been filed or a waiver obtained pursuant to ~~199—IAC 1.3(17A,474,476,78GA,HF2206)~~ 199—1.3(17A,474,476,78GA,HF2206), no public utility shall acquire or lease assets, directly or indirectly, with a value in excess of 3 percent of the utility's Iowa jurisdictional utility revenue during the immediately preceding calendar year or \$5 million, whichever is greater. For purposes of this subrule and subrule 32.2(2), "value" means the greater of market value or book value. For utilities with more than one regulated line of business, the utility revenue limit shall be calculated using the revenue of the specific line of utility business involved in the transaction, not the combined utility revenues.

ITEM 2. Amend subrule 32.2(2) as follows:

32.2(2) Unless an application pursuant to Iowa Code section 476.77 and this chapter has been filed or a waiver obtained pursuant to rule ~~32.8(476)~~ 199—32.8(476), no public utility shall sell or otherwise dispose of assets, directly or indirectly, with a value in excess of 3 percent of the utility's Iowa jurisdictional utility revenue during the immediately preceding calendar year or \$5 million, whichever is greater. However, for utilities for which the 3 percent limit is greater than \$5 million, if the assets being sold or otherwise disposed of are used in the generation or delivery of utility services to Iowa consumers, an application or a waiver is required if the assets have a value in excess of \$10 million. For utilities with more than one regulated line of business, the utility revenue limit shall be calculated using the revenue of the specific line of utility business involved in the transaction, not the combined utility revenues.

ITEM 3. Amend rule 199—32.3(476) as follows:

199—32.3(476) Declaratory ~~rulings~~ orders. Any person may request a determination as to whether the proposed action ~~it proposes~~ would constitute a reorganization or whether the assets involved would constitute a substantial part of a public utility's assets, as defined in Iowa Code section 476.72 and these rules, by filing a petition for declaratory ~~ruling order~~, as set out in 199—Chapter 4.

ITEM 4. Amend subparagraph **32.4(2)"e"(1)** as follows:

(1) Accounting for and allocating ~~officer's~~ officers' time between the public utility and any affiliates, and

ITEM 5. Amend subrule 32.9(1) as follows:

32.9(1) Within 40 days after a proposal for reorganization and supporting testimony is filed, the consumer advocate and any intervenors shall file any written testimony and exhibits. This will allow the board an opportunity to consider the testimony and exhibits prior to the 50-day deadline for issuing a notice of hearing. ~~However, failure to file written testimony and exhibits within 40 days shall not preclude the consumer advocate and any intervenors from presenting witness testimony and exhibits at any hearing ordered by the board to be held with respect to the proposed reorganization.~~

ITEM 6. Adopt the following new rule 199—32.10(476):

199—32.10(476) Water, sanitary sewage, and storm water drainage utilities.

32.10(1) Water, sanitary sewage, and storm water drainage utilities shall provide the board with advance notice of any purchase, sale, lease, or other acquisition or disposition directly or indirectly of the whole or any substantial part of a public utility's assets as defined by rule 199—32.2(476).

32.10(2) Water, sanitary sewage, and storm water drainage utilities shall maintain separate books and records for any acquisition or purchase until the utility's next general rate case.

ARC 3119C**UTILITIES DIVISION[199]****Notice of Intended Action**

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

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

Pursuant to Iowa Code sections 17A.4 and 477C.4, the Utilities Board (Board) gives notice that on May 31, 2017, the Board issued an order in Docket No. RMU-2016-0040, In re: Review of Equipment Distribution Program Rules [199 IAC 37], “Order Commencing Rule Making,” proposing to update and streamline Chapter 37 of the Board’s rules. 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-2016-0040.

To develop the proposed amendments to Chapter 37, the Board sought input from the Dual Party Relay Council (Council), which advises the Board on matters related to the Iowa equipment distribution program, including possible changes to the Board’s rules. Together with the Board’s staff, the Council has been reviewing Chapter 37 since 2015. At its November 2, 2016, meeting, the Council recommended that the Board adopt certain amendments to Chapter 37.

In this Notice, the Board proposes to adopt many of the amendments recommended by the Council. The Board invites comments on the proposed amendments.

Other proposed amendments to Chapter 37 are intended to streamline and reorganize the rules for greater clarity.

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 to Chapter 37. The statement must be filed on or before July 11, 2017. The statement should be filed electronically through the Board’s electronic filing system (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-2016-0040. Paper comments may be filed with approval of the Board.

An opportunity for interested persons to present oral comments on the proposed amendments to Chapter 37 will be held at 10 a.m. on August 16, 2017, in the Board’s hearing room at 1375 E. Court Avenue, Room 69, Des Moines, Iowa. Persons with disabilities who require assistive services or devices to observe or participate should contact the Board at (515)725-7300 at least five days in advance of the scheduled date to request that appropriate arrangements be made.

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 jobs in Iowa and will have a beneficial effect by updating and streamlining the rules.

These rules are intended to implement Iowa Code section 17A.4 and chapter 477C.

The following amendment is proposed.

Amend 199—Chapter 37 as follows:

CHAPTER 37
EQUIPMENT DISTRIBUTION PROGRAM

199—37.1(477C) Policy and purpose Purpose. ~~The board has authority under Iowa Code section 477C.4 to plan, establish, administer, and promote a~~ This chapter describes the board’s program established pursuant to Iowa Code section 477C.4 to secure, finance, and distribute telecommunications devices for the deaf. ~~The needs for equipment to allow persons with communication impairments to~~

UTILITIES DIVISION[199](cont'd)

~~use the telephone are not being satisfied in Iowa at this time. A reasonable distribution program is desirable. All customers will benefit when access to the telephone system is available to more persons. The existing dual party relay service will be more fully utilized when more persons have the equipment necessary to gain access to the relay service.~~

The equipment distribution program will be limited by ~~periodic~~ annual budget amounts set by the board. When the budgeted amounts for a period are committed or expended, no further vouchers for equipment will be issued until the next period when the board budgets additional amounts.

199—37.2(477C) Program structure. The equipment distribution program will be conducted by a program administrator chosen by the board. Distribution of equipment will be made through a voucher system utilizing private vendors for equipment purchases. Vouchers to pay part or, depending upon the price, all of the cost of equipment will be issued by the program administrator to eligible recipients. After purchase using a voucher, the recipient will be the permanent owner of the equipment and responsible for enforcement of any warranties and for any repairs.

37.2(1) Amount. ~~The voucher will state a standard amount for a particular piece of equipment.~~

~~a. The standard amount shall be determined and updated periodically by the program administrator.~~

~~b. The standard amount shall be 95 percent of the average retail market price for the piece of equipment, unless the retail market price is more than \$1,000, in which case the standard amount shall be 99 percent of the average retail market price. The standard amount may be increased to 100 percent if a person demonstrates to the program administrator that the person is unable to pay the matching amount.~~

37.2(2) Voucher use. ~~The recipient of a voucher may purchase equipment from any vendor who will accept the voucher and may apply the voucher amount toward purchase of the brand and model of indicated equipment as the recipient chooses. A bill of sale for equipment purchased prior to the issuance of a voucher shall not be reimbursed.~~

37.2(3) Term. ~~The vouchers shall provide for a 40-day period to present the voucher to the vendor. The vendor, upon presentation of the voucher, shall have 60 days to complete the sale and delivery of the equipment and to return the voucher to the program administrator. The program administrator shall have 20 days to process and return the voucher to the board for payment. The program administrator, for good cause shown, may extend either the 40- or 60-day deadline, provided the voucher is returned to the board for payment within 120 days from the issuance of the voucher. Except for good cause shown, the vendor will not be reimbursed for a voucher issued more than 120 days before the voucher is returned to the board for payment.~~

37.2(4) Payment. ~~The voucher is not a negotiable instrument. Upon presentation of documentation by the vendor as required by the board, including but not limited to a bill of sale showing an amount due no greater than the voucher amount, the vendor will be issued a state warrant for the amount due.~~

199—37.3(477C) Equipment. The board will authorize and maintain a list of the types of equipment to be distributed through the program.

199—37.3 199—37.4(477C) Eligibility Application process and eligibility. To be eligible to receive a voucher for equipment under the program, a person must satisfy the following standards. Applications will be processed in queue as determined by the program administrator. No person will be entitled to equipment at a particular time merely because that person meets the eligibility requirements. Additional vouchers will not be issued during a period if unpaid vouchers are outstanding for the remaining funds budgeted for the period. To be eligible to receive a voucher for equipment under the program, a person must satisfy the following requirements.

37.3(1) 37.4(1) Verification of need with initial application. The An applicant's initial application shall include verification of the applicant's need for the equipment must be verified. The verification shall be made by an appropriate professional, including but not limited to a licensed physician; certified teacher in the fields of hearing, speech, or visual impairment; licensed and certified sign language interpreter; speech pathologist; audiologist or hearing aid specialist; or an appropriate state or federal

UTILITIES DIVISION[199](cont'd)

agency representative, as part of the initial application. At the time of reapplication for equipment, the applicant must submit a statement certifying the applicant's condition has not changed to the extent that a different type of equipment is needed. If an applicant's condition has changed to the extent that a different type of equipment is needed from that originally received, the applicant's need must be verified by an appropriate professional.

~~37.3(2)~~ 37.4(2) The applicant must have access to the service which the requested equipment will allow the applicant to use. The following noninclusive examples illustrate the application of this requirement:

a. If the applicant is applying for telephone equipment, the applicant must have telephone service available to the applicant's Iowa residence or must have applied for telephone service to the Iowa residence.

b. If the applicant is applying for a device that requires Internet access, the applicant must have access to Internet service. Access to Internet service may be provided through a public Wi-Fi connection.

~~37.3(3)~~ 37.4(3) The applicant must be an individual and an Iowa resident.

~~37.3(4)~~ 37.4(4) The applicant must be at least five years of age or demonstrate an ability to use the equipment requested. No demonstration is required for those five years of age and older.

~~37.3(5)~~ The applicant will be limited to a voucher for one type of equipment or equipment package. If there are individuals in the same household who have different communication impairments that require different types of assistive telecommunications equipment, the individuals may make a joint or separate request to the equipment distribution program administrator. The administrator may grant those portions of the requests that satisfy the eligibility requirements in this rule.

~~37.3(6)~~ Equipment may be replaced under the program by reapplication as appropriate. Reapplication will be limited by a five-year waiting period. The reapplication period may be shortened by the program administrator for good cause shown.

~~37.3(7)~~ An applicant must agree to cooperate with studies to evaluate the effectiveness of the program.

~~37.3(8)~~ An applicant's gross household income must be less than \$70,000 for a family of four. Household numbers above or below four will increase or decrease that amount in \$8,000 increments.

37.4(5) An applicant must agree to cooperate with studies to evaluate the effectiveness of the program.

37.4(6) An applicant's gross annual family income must be equal to or less than 100 percent of the Iowa median income level for the applicant's family size set annually by the U.S. Bureau of the Census.

37.4(7) The applicant will be limited to a voucher for one type of equipment or equipment package. If there are individuals in the same household who have different communication impairments that require different types of equipment, the individuals may make a joint request or separate requests to the program administrator. The program administrator may grant those portions of the requests that satisfy the eligibility requirements in this rule.

37.4(8) Reapplication. Prior voucher recipients may reapply through the program to replace existing equipment or to obtain new equipment, as appropriate. Reapplication will be limited by a five-year waiting period. The reapplication period may be shortened by the program administrator for good cause shown. At the time of reapplication for equipment, it is not necessary for the applicant's need for the equipment to be reverified by an appropriate professional. The program administrator shall verify that the applicant reapplying for equipment previously qualified for a voucher.

199—37.4(477C) Equipment. The board will authorize the types of equipment to be distributed through the program, including but not limited to telecommunications devices for the deaf with printers, signalers, amplifiers, computer software, and a limited number of telecommunications devices for the deaf/blind.

199—37.5(477C) Voucher system.

37.5(1) Amount. The voucher will state a standard amount for a particular piece of equipment.

a. The standard amount shall be determined and updated periodically by the program administrator.

UTILITIES DIVISION[199](cont'd)

b. The standard amount shall be 95 percent of the average retail market price for the piece of equipment, unless the retail market price is more than \$1,000, in which case the standard amount shall be 99 percent of the average retail market price. The standard amount may be increased to 100 percent if a person demonstrates to the program administrator that the person is unable to pay the matching amount.

37.5(2) *Voucher use.* The recipient of a voucher may purchase equipment from any vendor that will accept the voucher and may apply the voucher amount toward purchase of the brand and model of indicated equipment as the recipient chooses. An invoice for equipment purchased prior to the issuance of a voucher shall not be reimbursed.

37.5(3) *Term.* The voucher shall provide for a 40-day period for the voucher recipient to present the voucher to the vendor. The vendor, upon presentation of the voucher, shall have 60 days to complete the sale and delivery of the equipment and to return the voucher to the program administrator. The program administrator shall have 20 days to process and return the voucher to the board for payment. The program administrator, for good cause shown, may extend either the 40- or 60-day deadline, provided the voucher is returned to the board for payment within 120 days from the issuance of the voucher. The program administrator may authorize reimbursement for a voucher issued more than 120 days before the voucher is sent to the board for payment if the program administrator determines good cause exists for extending the 120-day deadline and provides supporting documentation to the board.

37.5(4) *Payment.* The voucher is not a negotiable instrument. Upon presentation of documentation by the vendor as required by the board, including but not limited to an invoice showing an amount due no greater than the voucher amount, the vendor will be issued a state warrant for the amount due.

199—37.5 199—37.6(477C) Complaints. All complaints concerning the equipment distribution program will be resolved pursuant to the following:

37.5(1) 37.6(1) The program administrator will make determinations concerning matters such as eligibility, type of equipment for particular applicants, or reimbursement of vendors.

a. **37.6(2)** The program administrator, after requiring interested persons to state verbally or in writing any complaint or dispute arising under the equipment distribution program, shall attempt to settle the matter informally within 45 days.

b. **37.6(3)** Should the informal dispute resolution process fail, the complaint complainant may be submitted submit the complaint to the board by the complainant and will be processed by the project manager as provided for utility customers in 199 IAC 6 for processing by the board's equipment distribution program project manager as provided in 199—Chapter 6. The project manager will provide a copy of the complaint to the program administrator and the consumer advocate. The complaint will be directed to the program administrator with a copy to the consumer advocate. The board staff assigned to the equipment distribution program will then The project manager will issue a proposed resolution as defined in 199 IAC 6.4(476) that describes the facts involved in the dispute, clearly states the proposed resolution, and gives notice that any interested person dissatisfied with the proposed resolution has 14 days after the proposed resolution is issued to file a written request for formal complaint proceedings before the board.

c. **37.6(4)** The proposed resolution shall include a description of the facts involved in the dispute and a clear statement of the proposed resolution. If no timely request for formal complaint proceedings is filed, the proposed resolution shall be deemed binding on all interested persons served with the proposed resolution.

d. **37.6(5)** The proposed resolution shall also give notice that any interested person dissatisfied with the proposed resolution has 14 days after the issuance of the proposed resolution to file a written request for formal complaint proceedings before the Iowa Utilities Board, 1375 E. Court Avenue, Room 69, Des Moines, Iowa 50319-0069. If no timely request for formal complaint proceedings is filed, the proposed resolution shall be deemed binding on all interested persons served with the proposed resolution. The request for formal complaint proceedings shall be considered as filed on the date of the United States Postal Service postmark or the date personal service is made. The board will process requests for formal complaint proceedings as provided in rule 199—6.5(476).

UTILITIES DIVISION[199](cont'd)

~~37.5(2) The request for formal complaint proceedings shall explain why the proposed resolution should be modified or rejected and propose an alternate resolution, including any temporary relief desired. Copies of the request shall be mailed to any other persons served with the proposed resolution.~~

~~37.5(3) Upon receipt of a request for formal complaint proceedings, the board shall consider whether formal complaint proceedings should be initiated and issue an order. The request shall be granted if the board determines there is any reasonable ground for investigating the complaint. If the board denies formal complaint proceedings, a party may file a petition for judicial review either in the Polk County district court or in the district court for the county in which the party resides or has its principal place of business.~~

~~37.5(4) When a complaint is docketed as a formal proceeding, the procedures set forth in 199—Chapter 7 will apply.~~

These rules are intended to implement Iowa Code section 477C.4.

ARC 3122C

UTILITIES DIVISION[199]

Notice of Intended Action

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

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

Pursuant to Iowa Code sections 17A.4, 476.2, and 477A.12, the Utilities Board (Board) gives notice that on May 26, 2017, the Board issued an order in Docket No. RMU-2016-0041, In re: Review of Certificates of Franchise Authority for Cable and Video Service Rules 199 IAC Chapter 44, “Order Commencing Rule Making,” proposing to amend the Board’s Chapter 44 rules governing the Board’s issuance of certificates of franchise authority to cable and video service providers. 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-2016-0041.

The Board is undertaking a comprehensive review of its rules to ensure the rules are current and consistent with statute. Iowa Code section 477A.3(5)“d” specifies the content of a certificate of franchise authority and provides that a certificate issued by the Board is for a term of ten years and is renewable. The Board has been issuing certificates of franchise authority since 2008. The current rules do not include a renewal process. The Board recognizes the need to have a renewal process in Chapter 44 in place before the first certificates of franchise authority issued by the Board reach the end of their initial ten-year term.

To develop the proposed amendments, the Board sought early input from stakeholders on a potential renewal process. On February 1, 2017, the Board issued an “Order Seeking Stakeholder Comment on Potential Rule Changes.” Generally, the stakeholder responses supported the potential renewal process identified by the Board.

Rule 199—44.7(17A,476,477A) proposed in this Notice outlines a process for renewing certificates of franchise authority issued by the Board.

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 July 11, 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-2016-0041. 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 of the Board on its own motion after reviewing the comments may

UTILITIES DIVISION[199](cont'd)

determine an oral presentation should be scheduled. Requests for an oral presentation should be filed in EFS by July 11, 2017, in Docket No. RMU-2016-0041.

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 jobs in Iowa and will have a beneficial effect by updating the rules in time to be consistent with the applicable statutory provisions.

These amendments are intended to implement Iowa Code sections 17A.4, 476.2, and 477A.12.

The following amendments are proposed.

ITEM 1. Renumber rule **199—44.7(17A,476,477A)** as **199—44.8(17A,476,477A)**.

ITEM 2. Adopt the following new rule 199—44.7(17A,476,477A):

199—44.7(17A,476,477A) Renewal of certificate of franchise authority.

44.7(1) Thirty days prior to the tenth anniversary of the issuance of the original certificate and every ten years thereafter, the certificate holder shall file with the board a notice of renewal containing the following:

- a. An acknowledgment that the certificate holder continues to hold the certificate;
- b. A statement that the certificate holder continues to provide cable service or video service or both in all or a portion of its approved service territory;
- c. Any necessary updates to the address of the principal place of business, the telephone number for customer service, and the names and titles of the principal executive officers with direct authority over and responsibility for the cable or video operations;
- d. A list of the approved areas the certificate holder currently is serving; and
- e. A list of the areas in which the certificate holder was previously authorized to offer service but where service has ceased or never commenced.

44.7(2) The notice of renewal shall be filed using the VCA docket number in which the initial certificate was issued. The board will acknowledge the renewal by letter.

ARC 3138C

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 the Department of Workforce Development hereby gives Notice of Intended Action to amend Chapter 1, “Administration,” Chapter 22, “Employer Records and Reports,” and Chapter 24, “Claims and Benefits,” 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 July 11, 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.

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The following amendments are proposed.

ITEM 1. Amend subrule 1.1(10) as follows:

1.1(10) *Division of workforce development center administration.* The division is under the direction of a division administrator who reports to the director. ~~The budget and rules relating to workforce development must be approved by the Iowa workforce development board.~~ The division's function is to administer, inform, regulate and enforce workforce development issues and services such as employment, training and placement as provided in Iowa Code chapters 7B, 84A and 96. A specific description of ~~board duties and~~ division responsibilities is contained in ~~877—Chapters 2 and 3~~ 877—Chapter 2.

ITEM 2. Amend rule **871—22.3(96)**, catchwords, as follows:

871—22.3(96) Filing of Employer's Contribution and Payroll Report, 65-5300, and Employer's Payroll Continuation Sheet, 60-0103.

ITEM 3. Amend subrule 22.3(4) as follows:

22.3(4) Employer to file report even when no payroll. Every qualified or subject employer is required to ~~send in an Employer's Contribution and Payroll Report, Form 65-5300, file contribution and payroll~~ each quarter. Even though an employer finds that for some particular quarter no contributions are due, or ~~they have~~ the employer has no employees during the period covered, a report must be filed with the department.

ITEM 4. Amend subrule 22.3(6) as follows:

22.3(6) Each Form 65-5300, Employer's Contribution & and Payroll Report, shall include:

a. The social security number, name (last name first), and total wages paid to each employee during the calendar quarter. All corrections to previous reports must be submitted ~~on Form 68-0061, Employer's Wage Adjustment Report~~ electronically. All employees' wages will be reported by the reporting unit under which the work was performed. See rules 871—23.3(96) through 871—23.6(96).

b. The sum of the total and taxable wages paid to all employees during the calendar quarter. ~~If reported electronically, the~~ The sum of the total and taxable wages will be computed for the employer. The electronic system will compute the taxable wages for each employee. If the employer is claiming taxable wages reported to another state, the amount claimed and the state that the wages were reported to will be listed.

c. The amount of contribution due for the calendar quarter. ~~If the report is filed electronically, the~~ The system will compute and enter the contribution due.

d. The amount of interest due, if any, for the calendar quarter. ~~If the report is filed electronically, the~~ The system will compute and enter the interest due.

e. The amount of penalty due, if any, for the calendar quarter. ~~If the report is filed electronically, the~~ The system will compute and enter any penalty due.

f. The total amount of contribution, interest and penalty due for the calendar quarter. ~~If the report is filed electronically, the~~ The system will compute and enter the total amount due.

g. Rescinded IAB 5/5/10, effective 6/9/10.

h. The amount of net remittance due for the calendar quarter; however, if the amount of net remittance due is less than \$1, the employer need not submit payment. ~~If the report is filed electronically, the~~ The system will compute and enter the net remittance due.

i. The total number of employees listed on the report. ~~If the report is filed electronically, the~~ The system will compute and enter the total number of employees on the report.

j. The amount of extraordinary pay which was paid to the employees during the calendar quarter for each reporting unit.

k. The total number of employees paid wages during the pay periods which include the twelfth day of each month of the calendar quarter for each reporting unit.

l. The number of the county in which the reporting unit is located if only one business activity is conducted at only one worksite during the calendar quarter; however, if the same business activity is conducted at more than one worksite or if different business activities are conducted at one or more

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worksites, the employer shall also be required to complete and return the Form 65-5519, Multiple Worksite Report, which shall include for each worksite the total number of employees paid wages during the pay periods which include the twelfth day of each month of the calendar quarter and the total wages paid during the calendar quarter. The system will compute and enter taxable wages if the report is filed electronically.

(1) The total number of employees paid wages during the pay periods which include the twelfth day of each month of the calendar quarter for all worksites as reported on the Form 65-5519, Multiple Worksite Report, should equal the total number of employees reported for that month on the Form 65-5300, Employer's Contribution & Payroll Report.

(2) The total wages paid to all employees at all worksites as reported on the Form 65-5519, Multiple Worksite Report, should equal the total wages reported on the Form 65-5300, Employer's Contribution & Payroll Report.

(3) It could be possible for wages to be reported for a worksite without corresponding employment being reported in any of the months during the quarter because wages paid are reportable for the full 13-week period in the calendar quarter, while employment. Employment is reportable on the Form 65-5300, Employer's Contribution & Payroll Report, when such employment occurs during the pay periods which include the twelfth day of any month in the calendar quarter.

m. The reason (seasonal change, labor dispute, layoff, recall, worksite opening, or worksite closing) for the increase or decrease in total employment during the calendar quarter.

n. Rescinded IAB 3/5/03, effective 4/9/03.

o. The electronic signature, ~~written or electronic~~, of the owner, responsible officer, or authorized agent of the employer certifying that the information given is true and correct to the best of the signer's knowledge and belief, the date the report was submitted and the telephone number of the signer.

p. Such other schedules or reports as may be required, duly completed in all substantial respects on such forms and in accordance with such instructions as the department may provide or approve.

ITEM 5. Rescind and reserve subparagraph **24.1(25)“b”(13)**.

ITEM 6. Rescind and reserve subrule **24.1(68)**.

ITEM 7. Rescind and reserve subrule **24.1(72)**.

ITEM 8. Amend subrule 24.2(2) as follows:

24.2(2) Filing a claim for unemployment insurance benefits (not applicable to interstate claims).

a. A notice of claim filing, which includes the name and social security number of the individual claiming benefits, shall be sent to each base period employer on record and the last employer if different than the base period employer unless the separation issue has previously been adjudicated.

b. Even though the claims taker may believe that the claimant cannot meet the eligibility conditions required by statute, the claims taker shall in no instance refuse to accept a claim from any unemployed individual. If the claimant elects to file a claim, even though the claimant's eligibility may be questionable, the claim shall be accepted without hesitance. The claimant ~~must~~ may be required to provide adequate proof of identification such as a driver's license, proof of citizenship, car registration, or union membership card or supply personally identifying information.

c. If a claim was filed in a previous quarter and was determined not eligible because of no wage records, or lack of qualifying earnings, a benefit year has not been established and a new claim will be taken. A new claim should not be taken if the claimant previously has filed an ineligible claim in the same quarter unless the claimant insists on filing after being advised of ineligibility. The claims taker shall explain or send notice to the claimant that another claim filed in the same quarter would also be determined as ineligible because additional wage credits (if any) would not be available until a subsequent quarter. The claimant should be advised to file a new claim during the first full week of the next calendar quarter.

d. If the check of the files does not disclose a previous claim and the claimant states that a claim has not been filed during the past year, a new claim shall be taken.

e. Partially unemployed claims.

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(1) A partially unemployed individual shall file a claim for benefits in the same manner as an initial claim for unemployment insurance.

(2) Reporting wages. A partially unemployed individual shall report all wages which are earned for each week benefits are claimed.

(3) A claimant in a continuous reporting status, employed with the same employer, may exceed the claimant's weekly benefit amount plus \$15 for four consecutive weeks before the individual is required to file an additional claim for benefits.

f. If the check of the files does not disclose a monetarily valid claim in another state, a new claim shall be taken.

ITEM 9. Amend paragraph **24.2(4)“a”** as follows:

a. A request for cancellation of an unemployment insurance claim may be made by the individual ~~in writing~~ and be directed to the ~~Unemployment Insurance Service Center, Department of Workforce Development, P.O. Box 10332, Des Moines, Iowa 50306~~ benefits bureau of the unemployment insurance services division. The statement must include the specific reason for the request and contain as much pertinent information as possible so that a decision can be made. A notice with the result of the request will be sent.

ITEM 10. Amend paragraph **24.2(4)“c,”** introductory paragraph, as follows:

c. Cancellation requests within the ten-day protest period. The ~~claims-section~~ benefits bureau, upon review of the timely request and before payment is made, may cancel the claim for the following reasons:

ITEM 11. Amend subrule 24.5(2), introductory paragraph, as follows:

24.5(2) Cooperation of employers. To enable workforce development centers to make the preliminary arrangements for mass claim taking, the major employers in the area should notify the local office in advance, as soon as they know that a mass separation will take place. The workforce development center shall provide the information to legal counsel for the unemployment insurance services ~~bureau~~ division so that the mass claim separation can be coordinated between the affected parties. This information should include:

ITEM 12. Amend paragraph **24.9(1)“a”** as follows:

a. When an initial claim for benefits is filed, the department shall ~~mail~~ send to the individual claiming benefits a ~~Form 65-5318, Iowa Monetary Record, which is,~~ including a notification statement of the individual's weekly benefit amount, total benefits, base period wages, and other data pertinent to the individual's benefit rights.

ITEM 13. Amend subrule 24.19(3) as follows:

24.19(3) Upon receiving a written request for review or, on its own initiative and on the basis of the facts as it may have in its possession or may acquire, the ~~claims-section~~ benefits bureau may affirm, modify, or reverse the prior decision, or refer the claim to an administrative law judge. The claimant or any other party filing the request for review shall be promptly notified of the decision or referral. Unless the claimant or any other party files an appeal within ten days after the date of mailing, the latter decision shall be final and benefits shall be paid or denied in accordance therewith.

ITEM 14. Amend paragraph **24.33(2)“k”** as follows:

k. The requirements in subrules 24.33(1) and 24.33(2) will cover the establishment and termination reports of the work stoppage and give the information necessary for the ~~claims-section~~ benefits bureau to investigate the work stoppage when claims are filed on which a protest is made that the claimant is involved in a work stoppage.

ARC 3137C**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 the Department of Workforce Development hereby gives Notice of Intended Action to amend Chapter 26, “Contested Case Proceedings,” Iowa Administrative Code.

These proposed amendments will expedite and simplify the discovery process in unemployment appeal hearings and will clarify the process for submitting exhibits for unemployment appeal hearings 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 administrative rules that address these changes.

Any interested person may make written or oral suggestions or comments on the proposed amendments on or before July 11, 2017, by sending them to Emily Chafa, Iowa Workforce Development, Appeals Bureau, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to emily.chafa@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.

ITEM 1. Amend rule 871—26.9(17A,96) as follows:

871—26.9(17A,96) Discovery.

26.9(1) Discovery procedures applicable to civil actions are available to all parties in interest in contested cases.

26.9(2) Unless otherwise limited by a protective order, ~~the frequency of use of discovery methods~~ is not limited. Upon application by any adversely affected party or upon the presiding officer’s own motion, the presiding officer may ~~order otherwise~~ limit discovery in the following situations:

- a. The discovery sought is unduly repetitious, or the information sought ~~may~~ can be obtained ~~in~~ by another method that is more convenient, less burdensome or less expensive; or
- b. The party seeking discovery has had prior ample opportunity to obtain the information; or
- c. The discovery is unduly burdensome or expensive when viewed in the context of the factual issues to be resolved, the limited resources of the parties, and the parties’ interest in prompt resolution of the contested case.

26.9(3) A party may obtain discovery regarding any matter, not privileged, relevant to the subject matter involved in the contested case, including the existence, description, nature, custody, condition and location of any tangible items and the identity and location of persons having knowledge of discoverable matters. Information may be discovered, even if inadmissible itself, if it appears reasonably calculated to lead to the discovery of admissible evidence. ~~In any event, the~~ The names of a party’s witnesses, their expected testimony, and exhibits to be offered into evidence may be obtained by discovery.

26.9(4) A party who ~~has~~ responded to a request for discovery with a response which was complete and accurate when made need not supplement the response to include information obtained ~~after the response~~ later. However, a party must promptly supplement its response to requests for the identity and location of persons having knowledge of discoverable matters; and the identity of each person expected

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

to be called to testify at the hearing, and the party must produce copies of exhibits expected to be offered into evidence at the hearing as such decisions are made. A party must also promptly amend any response if it obtains information ~~establishing~~ showing that its prior response was incorrect when made or, though correct when made, is no longer correct.

26.9(5) No motion relating to discovery, including motions for imposition of sanctions, will be considered unless the moving party alleges states that it ~~has~~ made a good-faith but unsuccessful effort to resolve the issues raised in the motion with the opposing party without intervention by the presiding officer.

26.9(6) Upon motion by a party or the person from whom discovery is sought or by any person who may be adversely affected thereby, and for good cause shown, the presiding officer before whom the contested case is pending may make any order which justice requires to protect a party or person from oppression or undue burden ~~of or~~ expense. Such order may deny the request for discovery or limit terms, conditions, manner and scope thereof.

26.9(7) A party may, in accordance with subrule 26.9(5), ~~apply to ask~~ ask the presiding officer ~~before whom a contested case is pending~~ for an order compelling discovery if the other party ~~upon whom the request has been served~~ fails within a reasonable time to make a complete, good-faith response. After notice to both parties and hearing ~~upon on~~ the motion, the presiding officer shall enter an order which denies or compels discovery, ~~which~~. This order may be combined with a protective order pursuant to subrule 26.9(6).

26.9(8) Upon ~~application~~ written request by any party or upon the presiding officer's own motion, the presiding officer may impose sanctions for the failure to make respond to discovery requests; however, sanctions shall not be imposed without prior specific notice from the presiding officer of the contemplated sanction, opportunity to be heard, and, if necessary, further opportunity to cure its failure. The sanctions may include the following:

- a. ~~The granting of a postponement to a~~ Postponing and rescheduling the hearing if requested by the party demonstrably prejudiced by the failure;
- b. ~~The exclusion of the~~ Excluding testimony of witnesses not identified in response to a specific request for such information;
- c. ~~The exclusion~~ Excluding from the record of those exhibits not identified in response to a specific request for such information;
- d. ~~The exclusion of~~ Excluding the party from ~~participation~~ participating in the contested case proceedings;
- e. ~~The dismissal of~~ Dismissing the party's appeal.

26.9(9) Requests for discovery shall be ~~filed with the Appeals Bureau, Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319, for service on other parties and persons served on the opposing party by ordinary mail, fax or e-mail.~~ Responses must be ~~filed with~~ served on the party requesting the discovery within ten days after ~~mailing by the department the discovery request is sent unless the presiding officer grants an extension of time in which to comply has been granted by the presiding officer.~~ Requests for discovery ~~received within five~~ must be made at least ten days before a scheduled contested case hearing ~~will not be honored in the absence of a request for a postponement showing good cause therefor.~~ A party's inattention to preparation is not good cause ~~for postponement to~~ postpone the hearing.

ITEM 2. Amend subrule 26.15(5) as follows:

26.15(5) Proposed exhibits ~~should must~~ be sent to the appeals bureau and to the other party or parties to the proceeding ~~prior to before~~ the hearing date by mail, fax, ~~or e-mail~~ or hand-delivery.

ARC 3124C

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed Emergency

Pursuant to the authority of 2017 Iowa Acts, Senate File 489, the State Fire Marshal hereby adopts new Chapter 265, "Consumer Fireworks Sales Licensing and Safety Standards," Iowa Administrative Code.

2017 Iowa Acts, Senate File 489, relating to the purchase, use, and regulation of consumer and display fireworks, was enacted by the Iowa General Assembly during its regular session this year. The legislation requires the State Fire Marshal to promulgate administrative rules for the regulation of the storage, transportation, handling, and use of consumer fireworks and for the sale of consumer fireworks and the licensing of consumer fireworks retailers and registration of wholesalers. The legislation also authorizes the licensing fees that are collected to be used to pay for the costs of administration and enforcement of the legislation and also establishes a Local Fire Protection and Emergency Medical Service Providers Grant Program to provide fireworks safety education and to purchase equipment related to the sale and use of consumer fireworks.

Pursuant to Iowa Code section 17A.4(3), the State Fire Marshal finds that notice and public participation are unnecessary because 2017 Iowa Acts, Senate File 489, provides that the legislation is effective upon enactment and because 2017 Iowa Acts, Senate File 489, also requires the State Fire Marshal to adopt emergency rules to implement the provisions of the legislation.

Pursuant to Iowa Code section 17A.5(2)"b"(1)(a) and (b), the State Fire Marshal also finds that the normal effective date of these rules, 35 days after publication, should be waived and the rules made effective immediately upon filing, because the legislation so provides and because the rules confer a benefit or remove a restriction on the public or some segment thereof. Specifically, 2017 Iowa Acts, Senate File 489, provides that retail sales of consumer fireworks are authorized beginning June 1, 2017, for retail sales from a permanent building, and beginning June 13, 2017, for retail sales from a temporary structure.

This amendment is also proposed under Notice of Intended Action and is published herein as **ARC 3123C**. The notice provides for a public hearing and other opportunities for public comment.

The fiscal impact for the licensing and inspections is expected to be less than \$100,000, which includes the costs of administering the licensing program and the costs associated with inspections and with enforcement of the laws and regulations.

Pursuant to the provisions of rule 661—10.222(17A), the State Fire Marshal does not have authority to waive requirements established by statute.

The State Fire Marshal adopted these rules on May 26, 2017.

It is expected that there will be a positive impact on jobs and the economy, as there will be new opportunities for persons to be employed in the sale of fireworks. There will be a positive impact on the state economy from these new jobs and new business opportunities resulting from the sale of consumer fireworks.

This amendment is intended to implement 2017 Iowa Acts, Senate File 489, sections 3 and 4.

These rules became effective on May 31, 2017.

The following amendment is adopted.

Adopt the following new 661—Chapter 265:

CHAPTER 265

CONSUMER FIREWORKS SALES LICENSING AND SAFETY STANDARDS

PUBLIC SAFETY DEPARTMENT[661](cont'd)

DIVISION I
SAFETY STANDARDS

661—265.1(87GA,SF289) Sale of consumer fireworks—safety standards. Any retailer or community group offering for sale at retail any first-class or second-class consumer fireworks, as described in American Pyrotechnics Association (APA) Standard 87-1, as published in December 2001, shall do so in accordance with the National Fire Protection Association (NFPA) Standard 1124, published in the Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles, 2006 edition (hereinafter referred to as “APA 87-1” and “NFPA 1124,” respectively).

661—265.2 to 265.9 Reserved.

DIVISION II
CONSUMER FIREWORKS SALES—RESTRICTIONS

661—265.10(87GA,SF489) Sales allowed. A retailer or community group that is issued a license pursuant to this chapter is authorized to sell consumer fireworks as defined in this chapter. However, sales are permitted only as follows.

265.10(1) *Prohibited sale or transfer to persons under 18 years of age.* A person, firm, partnership or corporation shall not sell or transfer consumer fireworks, as described in APA 87-1, chapter 3, to a person who is less than 18 years of age.

265.10(2) *Exceptions for persons under 18 years of age.*

a. A retailer selling or offering for sale consumer fireworks as described in APA 87-1, chapter 3, shall supervise any employees who are less than 18 years of age who are involved in the sale, handling, or transport of consumer fireworks in the course of their employment for the retailer.

b. A community group selling or offering for sale consumer fireworks as described in APA 87-1, chapter 3, shall ensure that any persons who are less than 18 years of age who are involved in the sale, handling, or transport of consumer fireworks by the community group, whether the persons less than 18 years of age are paid or unpaid, shall do so under the direct supervision of an adult member of the community group.

265.10(3) *Prohibited sales—persons under the influence of alcohol or drugs.* A person shall not knowingly sell consumer fireworks to any person who is obviously under the influence of alcohol or drugs.

265.10(4) *Safety requirements—storage and retail sales.*

a. A retailer or community group selling consumer fireworks as described in APA 87-1, chapter 3, shall meet all of the requirements of NFPA 1124, published in the Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles, 2006 edition.

b. All persons who, as part of the retail sales of consumer fireworks, handle or sell said fireworks shall receive safety training that complies with the requirements of NFPA 1124.

265.10(5) *Dates of sale.*

a. Permanent building. A retailer or community group may sell consumer fireworks as described in APA 87-1, chapter 3, at a permanent building only between June 1 and July 8 and between December 10 and January 3 each year, all dates inclusive.

b. Temporary structure. A retailer or community group may sell consumer fireworks as described in APA 87-1, chapter 3, at a temporary structure between June 13 and July 8 each year, both dates inclusive.

661—265.11 to 265.19 Reserved.

DIVISION III
CONSUMER FIREWORKS RETAILER LICENSING

661—265.20(87GA,SF289) Definitions. The following definitions apply to Division III.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

“*APA 87-1*” means the American Pyrotechnics Association Standard 87-1, as published in December 2001.

“*Community group*” means a nonprofit entity that is open for membership to the general public and is exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code or a fraternal benefit society, as that term is defined in Iowa Code section 512B.3.

“*First-class consumer fireworks*” means the following consumer fireworks, as described in APA 87-1, chapter 3:

1. Aerial shell kits and reloadable tubes.
2. Chasers.
3. Helicopter and aerial spinners.
4. Firecrackers.
5. Mine and shell devices.
6. Missile-type rockets.
7. Roman candles.
8. Sky rockets and bottle rockets.

9. Multiple tube devices as described in this definition of first-class consumer fireworks that are manufactured in accordance with APA 87-1, section 3.5.

“*NFPA 1124*” means the National Fire Protection Association (NFPA) Standard 1124, published in the Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles, 2006 edition.

“*Retailer*” means the same as defined in Iowa Code section 423.1.

“*Second-class consumer fireworks*” means the following consumer fireworks, as described in APA 87-1, chapter 3:

1. Cone fountains.
2. Cylindrical fountains.
3. Flitter sparklers.
4. Ground and hand-held sparkling devices, including multiple tube ground and hand-held sparkling devices that are manufactured in accordance with APA 87-1, section 3.5.
5. Ground spinners.
6. Illuminating torches.
7. Toy smoke devices that are not classified as novelties pursuant to APA 87-1, section 3.2.
8. Wheels.
9. Wire or dipped sparklers that are not classified as novelties pursuant to APA 87-1, section 3.2.

661—265.21(87GA,SF489) Consumer fireworks retail sales license. Compliance with the following is required in order for a license to be granted by the state fire marshal for the retail sales of consumer fireworks.

265.21(1) Plan approval.

a. Every location where the retail sales of consumer fireworks take place or where consumer fireworks are stored, including any permanent or temporary building(s) or structure(s), must meet all of the requirements of NFPA 1124.

b. A license is required for each location where the retail sales of consumer fireworks are conducted. The plan(s) for each retail sales location, including any permanent or temporary building or structure, and for each building or structure for the storage of fireworks must be submitted.

c. The retailer or community group shall also submit to the state fire marshal’s office the proposed plan(s), including any required site plan(s) for the location(s) and for any building(s) or structure(s), whether permanent or temporary, that will be used for the storage of fireworks.

d. The plan(s) will be reviewed to determine compliance with the requirements of NFPA 1124. If the plan(s) is incomplete or noncompliant, the retailer or community group will receive notification of corrections that need to be made before approval can be granted.

e. A plan review by the state building code commissioner or the local building code official is required for new permanent buildings and for existing buildings which are changing occupancies.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

Existing buildings for which the current occupancy is retail are not required to have a plan review by a state or local building code office.

NOTE: Regarding the incorporation of the reference to NFPA 102, Standard for Grandstands, Folding and Telescopic Seating, Tents, and Membrane Structures into NFPA 1124 concerning tents and membrane structures, Sections 7.3.5 and 7.4.8.1.2 of NFPA 1124 should be read together with Section A.7.4.8.1.2 in the Explanatory Material in Annex A to NFPA 1124 and used for the purposes of (1) determining the requirements for the means of egress in tents and membrane structures except as modified by Section 7.3.14 of NFPA 1124 for special requirements for the retail sales of consumer fireworks, and (2) to prohibit the use, discharge, or ignition of fireworks within the tent or membrane structure. The other provisions of NFPA 1124, including the sections relating to the retail sales of consumer fireworks in tents or membrane structures, remain applicable.

265.21(2) Annual inspection.

a. An inspection is required each year before a license can be issued for each of the location(s) and for any building or structure where the retail sales of consumer fireworks are conducted.

b. Inspections shall only be conducted by persons approved by the state fire marshal. The inspection form shall be approved by the state fire marshal and will be available only to approved inspectors.

c. A list of the names of approved inspectors and their contact information is available on the state fire marshal Web site at www.dps.state.ia.us/fm/licensing/consumerfireworks.shtml.

d. An approved inspector may charge a reasonable fee for the annual inspection of the location. The inspection fee, if any, for each inspection must be paid directly to the inspector or the government entity of the inspector. The licensing fee schedule in this chapter does not include any inspection fees.

e. Each location, including the building(s) or structure(s) where the retail sales of consumer fireworks will be conducted or are conducted, must pass the inspection. The inspection is pass/fail, and all items on the inspection form must be scored as pass for the license to be issued. If one or more item(s) are marked as fail, the inspection will be scored as fail. The inspector is permitted to discuss the inspection with the retailer or community group or the retailer's or community group's representative to explain any items that were marked as fail, and how to correct those issues.

f. Upon passing the inspection and receiving payment of the inspection fee, the inspector shall submit the completed inspection form to the state fire marshal's office. The inspector may submit, but is not required to submit, the completed inspection form if the inspection fee has not been paid.

265.21(3) Application. The application for a license for retail sales of first-class consumer fireworks or second-class consumer fireworks, or both first-class consumer fireworks and second-class consumer fireworks, shall be made to the state fire marshal. The application and instructions may be found on the state fire marshal Web site at www.dps.state.ia.us/fm/licensing/consumerfireworks.shtml.

265.21(4) Requirements for application. The following must be submitted to the state fire marshal's office:

a. The completed application, signed by the owner, officer, director, or another person authorized to sign documents on behalf of the retailer or community group.

b. Document(s) that establish that the applicant is either a community group or retailer.

c. The plan(s) for each retail sales location, including any permanent or temporary building or structure.

d. The plan(s), including any required site plan(s) for the location(s) and for any building(s) or structure(s), whether permanent or temporary, that will be used for the storage of fireworks.

e. Proof of commercial general liability insurance with minimum per occurrence coverage of at least \$1 million and aggregate coverage of at least \$2 million.

f. The fee for the license for each location.

265.21(5) License issued—display of license. The submitted application, any additional documents and information, and the completed inspection form shall be reviewed by the state fire marshal's office.

a. If all of the requirements are met and the correct license fee is paid, the state fire marshal shall issue the license. The license will be sent by e-mail or can be downloaded from the state fire marshal's Web site at www.dps.state.ia.us/fm/licensing/consumerfireworks.shtml.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

b. The license must be clearly displayed at the location where the retail sales of consumer fireworks for which the license was issued are conducted.

c. If one or more of the requirements are not met, or if the correct license fee is not paid, the license shall not be issued.

265.21(6) *Unauthorized use of license.* Only the retailer or the community group which is issued the license may use that location for the retail sales of consumer fireworks. The license may not be transferred to any other location, or to any other retailer, community group, person, group of people, business, or other for-profit or nonprofit entity. No unlicensed retailer, community group, person, group of people, business, or other for-profit or nonprofit entity may use the license issued to another retailer or community group for the retail sales of consumer fireworks.

661—265.22(87GA,SF489) License fee schedule. The following license fees shall be paid before issuance of a license for the retail sale of consumer fireworks.

265.22(1) *Permanent building—retailer—first-class consumer fireworks.* The annual fee is \$1,000 for a retailer at a permanent building who devotes 50 percent or more of the retailer's retail floor space to the sale or display of first-class consumer fireworks.

265.22(2) *Temporary building—retailer—first-class consumer fireworks.* The annual fee is \$500 for a retailer at a temporary structure who devotes 50 percent or more of the retailer's retail floor space to the sale or display of first-class consumer fireworks.

265.22(3) *Retailer—first-class consumer fireworks—less than 50 percent of retail space.* The annual fee is \$400 for a retailer who devotes less than 50 percent of the retailer's retail floor space to the sale or display of first-class consumer fireworks.

265.22(4) *Community group—first-class consumer fireworks.* The annual fee is \$400 for a community group that offers for sale, exposes for sale, or sells first-class consumer fireworks.

265.22(5) *Retail sale of both first-class consumer fireworks and second-class consumer fireworks.* A license issued for the retail sale of first-class consumer fireworks allows the retailer or community group to sell or offer for sale both first-class consumer fireworks and second-class consumer fireworks at the same location. The license fee shall be based on the percentage of the retail space devoted to the sale of first-class fireworks.

265.22(6) *Retailer or community group—license for second-class fireworks only.* The annual fee is \$100 for a community group that offers for sale, exposes for sale, or sells second-class consumer fireworks but not first-class consumer fireworks. A license issued for the sale of second-class consumer fireworks does not allow the community group to sell or offer or expose for sale any first-class consumer fireworks.

661—265.23(87GA,SF489) No refund of fees. If the application and required information are accepted and the license is issued, no refund of the license fee will be given if the retailer or community group is unable to engage in the retail sale of consumer fireworks for any reason, including but not limited to local laws and ordinances or the revocation of the license by the state fire marshal.

661—265.24(87GA,SF489) Plan review and inspection—guidelines. The review of plans submitted to the state fire marshal's office for approval for licensing shall be done as soon as reasonably possible. When the plans have been approved, the inspection can be scheduled. An inspection shall be conducted as promptly as is reasonably possible so as not to create undue delay in the licensing process.

265.24(1) *Plan review—timelines.* The expected timeline for plan review by the state fire marshal's office is three days from the date the plan is received. If the plan requires corrections, the expected timeline is three days from the date the corrected plan is received.

265.24(2) *Inspection—timelines.* The expected timeline for completion of an inspection of the location is three days from the date that plan approval is granted. If, after inspection, corrections are required, the expected timeline for completion of the inspection is three days from the date the inspector receives notification that the corrections have been made.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

265.24(3) State fire marshal—waiver of timelines. If the expected timelines for plan review and inspection cannot be met, the state fire marshal shall have the discretion to authorize the issuance of a license for the retail sales of consumer fireworks that is conditioned on plan approval and an inspection passed after issuance of the license and if, in the discretion of the state fire marshal, the retailer or community group is able to meet the requirements of NFPA 1124.

661—265.25 to 265.29 Reserved.

DIVISION IV
CONSUMER FIREWORKS WHOLESALER REGISTRATION

661—265.30(87GA,SF489) Definitions. The following definitions apply to Division IV.

“Consumer fireworks” means first-class consumer fireworks and second-class consumer fireworks, as those terms are defined in 2017 Iowa Acts, Senate File 489, section 3.

“NFPA 1124” means the National Fire Protection Association (NFPA) Standard 1124, published in the Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles, 2006 edition.

“Wholesaler” means a person who engages in the business of selling or distributing consumer fireworks for the purpose of resale in this state.

661—265.31(87GA,SF489) Annual registration. Each wholesaler shall register with the state fire marshal annually.

265.31(1) Registration process. Each wholesaler shall complete the annual registration form and submit the form to the state fire marshal’s office. The registration form and instructions may be found on the state fire marshal Web site at www.dps.state.ia.us/fm/licensing/consumerfireworks.shtml.

265.31(2) Registration fee. Each wholesaler shall pay an annual registration fee of \$1,000 to the state fire marshal.

661—265.32(87GA,SF489) Safety regulations—storage and transfer. Each wholesaler shall comply with all of the requirements of NFPA 1124 for the storage and transfer of consumer fireworks.

661—265.33(87GA,SF489) Insurance—required. Each wholesaler shall maintain commercial general liability insurance with minimum per occurrence coverage of at least \$1 million and aggregate coverage of at least \$2 million.

661—265.34 to 265.39 Reserved.

DIVISION V
VIOLATIONS—LICENSE REVOCATION

661—265.40(87GA,SF489) Revocation of license. The consumer fireworks retail sales license granted to a retailer or community group shall be revoked upon a finding by the state fire marshal that the licensee intentionally violated any of the rules in Division III of this chapter.

265.40(1) Notice of violation. The state fire marshal, any paid or volunteer member of a fire department, or any law enforcement officer may investigate a complaint of a violation of the rules in Division III of this chapter. After a review of the investigation, the state fire marshal may issue a Notice of Violation and Order to Show Cause to the licensee. The Notice shall contain the date, time and place for the hearing before the division of the state fire marshal.

265.40(2) Hearing. A hearing on the violation shall be held before the division of the state fire marshal.

265.40(3) Findings. If, after a hearing on the Order to Show Cause, the division of the state fire marshal finds that the licensee intentionally violated any of the rules in Division III, the state fire marshal shall revoke the license or licenses of the retailer or community group for the retail sale of consumer fireworks.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

661—265.41(87GA,SF489) Petition for judicial review. The licensee may file a petition for judicial review of the decision of the division of the state fire marshal in accordance with the terms of the Iowa administrative procedure Act, Iowa Code chapter 17A.

661—265.42(87GA,SF489) License revocation effective date. The revocation of the license or licenses for the retail sale of consumer fireworks commences on the thirty-first day after the date of the order of the division of the state fire marshal, if a petition for judicial review has not been filed in the district court. If the licensee has filed a petition for judicial review, the revocation of the license or licenses for the retail sale of consumer fireworks commences on the thirty-first day following the entry of the order of the district court, if the order affirms the order of the division of the state fire marshal.

661—265.43(87GA,SF489) Revocation—denial of new license. A new license shall not be issued to a person whose license has been revoked or to the business in control of the premises on which the violation occurred for a period of one year if there is a finding that the owner of the business had actual knowledge of the violation resulting in the license revocation.

661—265.44 to 265.49 Reserved.

DIVISION VI
FIRE PROTECTION AND EMERGENCY MEDICAL SERVICES GRANT PROGRAM

661—265.50(87GA,SF489) Consumer fireworks fee fund. All fees received from the licenses issued for the retail sale of consumer fireworks and the annual registration fees received from wholesalers of consumer fireworks shall be deposited into the consumer fireworks fee fund pursuant to 2017 Iowa Acts, Senate File 489, section 3. The state fire marshal shall use the fees deposited into this fund to fulfill the responsibilities of the state fire marshal for the administration and enforcement of 2017 Iowa Acts, Senate File 489, sections 3 and 4.

661—265.51(87GA,SF489) Local fire protection and emergency medical service providers grant program. The local fire protection and emergency medical service providers grant program is established by the state fire marshal. The grant program shall be funded with only those moneys from the consumer fireworks fee fund which are not needed by the state fire marshal to fulfill the responsibilities of the state fire marshal for the administration and enforcement of 2017 Iowa Acts, Senate File 489, sections 3 and 4.

265.51(1) Definitions. The following definitions apply to Division VI.

“Emergency medical services” means the same as defined in Iowa Code section 147A.1(5).

“Fire protection service” means volunteer or paid fire departments.

265.51(2) Authorized applicants. Any local fire protection service provider or local emergency medical service provider in the state of Iowa may apply for grant funds from the local fire protection and emergency medical service providers grant program.

265.51(3) Authorized purposes of grant funds. The grant funds in the local fire protection and emergency medical service providers grant program may only be used for the following:

- a. To establish or provide fireworks safety education programming to members of the public.
- b. To purchase necessary enforcement, protection, or emergency response equipment related to the sale and use of consumer fireworks in this state.

265.51(4) Application. The application for grant funds shall be made to the state fire marshal. The application form may be found at www.dps.state.ia.us/fm/licensing/consumerfireworks.shtml. Applications must be received on or before June 30 of each year. The application shall include all of the following:

- a. The application shall be signed by a person who is an official, owner, or another person who has authorization to sign on behalf of the fire protection service or the emergency medical service provider entity.
- b. The specifics of the proposed use of the grant funds.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

(1) If the application is for equipment, the applicant should include a detailed description of the equipment, the company or entity from which the purchase will be made, the cost, and a justification as to how this equipment purchase fits the purposes of the grant program.

(2) If the application is for safety education programming, the application shall include a detailed description of the programming, the specific people who will be providing the programming, and a description of the materials to be purchased and used.

c. The amount of grant funds requested.

265.51(5) *Approval of application.* The state fire marshal shall review the application and determine whether to make the award of grant funds. The state fire marshal has the sole discretion in determining whether or not to award funds from the grant program to the applicant and the amount of funds awarded to each applicant. Factors to be considered in making an award of grant funds include, but are not limited to:

a. The amount of grant funds available.

b. The number of applicants for grant funds.

c. The proposed use of the grant funds and whether the use is consistent with the approved program purposes.

d. Whether the applicant has previously been approved for grant funds from this program.

e. The applicant's use of any previous grant funds received from the program.

265.51(6) *Report required.* All grant recipients shall file a report with the state fire marshal that lists the amount of grant funds received and the purpose(s) for which the grant funds were spent. The state fire marshal may conduct an inspection or audit to determine compliance with the rules and purposes of the grant program.

These rules are intended to implement 2017 Iowa Acts, Senate File 489, sections 3, 4, and 11.

[Filed Emergency 5/26/17, effective 5/31/17]

[Published 6/21/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/21/17.

ARC 3139C

AGING, DEPARTMENT ON[17]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 231.23 and 17A.3, the Department on Aging hereby amends Chapter 7, “Area Agency on Aging Service Delivery,” Iowa Administrative Code.

This amendment removes the six-month assessment requirement to review the older individual’s eligibility to receive a home-delivered meal. This change is intended to provide efficiencies in the area agencies on aging operations. The area agency on aging is still obligated to have procedures in place related to the determination of need, and the timing is at the area agency on aging’s discretion. The area agency on aging can still review the eligibility on a six-month basis if necessary.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2967C** on March 15, 2017. No comments were received from the public. This amendment is identical to that published under Notice.

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 231.66.

This amendment will become effective July 26, 2017.

The following amendment is adopted.

Amend paragraph **7.21(2)“a”** as follows:

- a. Initial ~~and subsequent six-month assessments~~ assessment of the older individual’s eligibility;

[Filed 6/2/17, effective 7/26/17]

[Published 6/21/17]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 6/21/17.

ARC 3140C

AGING, DEPARTMENT ON[17]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 231.23 and 17A.3, the Department on Aging hereby amends Chapter 15, “Elder Abuse Prevention Initiative and Dependent Adult Abuse Mandatory Reporter Training,” Iowa Administrative Code.

These amendments rescind rule 17—15.20(231) to eliminate mandatory reporter training provided by the Department. The Department created the mandatory reporter training when there was an identified gap in the availability of this service in Iowa. There are now 24 pages of approved curriculum and providers of mandatory reporter training listed on the Iowa Department of Public Health Web site. Because a significant number of training providers and curriculum options are available, it is no longer necessary for the Department to provide this training. These amendments also change the title of Chapter 15 to “Elder Abuse Prevention and Awareness.”

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2968C** on March 15, 2017. No comments were received from the public. These amendments are identical to those published under Notice.

These amendments are subject to the Department’s general waiver provision.

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

These amendments are intended to implement Iowa Code section 231.56A.

These amendments will become effective July 26, 2017.

The following amendments are adopted.

ITEM 1. Amend **17—Chapter 15**, title, as follows:

**ELDER ABUSE PREVENTION INITIATIVE AND DEPENDENT ADULT ABUSE
MANDATORY REPORTER TRAINING** ELDER ABUSE PREVENTION AND AWARENESS

AGING, DEPARTMENT ON[17](cont'd)

ITEM 2. Rescind rule **17—15.20(231)**.

ITEM 3. Renumber rule **17—15.21(231)** as **17—15.20(231)**.

[Filed 6/2/17, effective 7/26/17]

[Published 6/21/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/21/17.

ARC 3141C

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.

These amendments are a result of the five-year rolling administrative rules review outlined in Iowa Code section 17A.7(2). The rules in Chapter 4 describe rules of conduct. The amendments update definitions; clarify competence, conflict of interest, full disclosure, compliance with laws, professional conduct, and seal of certificate; and update the terminology regarding experience.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3015C** on April 12, 2017. A public hearing was held on May 2, 2017. No public comment was received. The adopted amendments are identical to the amendments published under Notice.

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

These amendments were adopted by the Board on May 19, 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 section 544A.15.

These amendments will become effective July 26, 2017.

The following amendments are adopted.

ITEM 1. Rescind the definition of "Official copy" in subrule **4.1(1)**.

ITEM 2. Adopt the following **new** definition of "Responsible charge" in subrule **4.1(1)**:

"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 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(2) as follows:

4.1(2) Competence.

a. No change.

b. In designing a project, an architect shall take into account all applicable state and municipal building laws and regulations. While an architect may rely on the advice of other professionals (e.g., attorneys, engineers and other qualified persons) as to the intent and meaning of the such laws and regulations, once having obtained such advice, an architect shall not knowingly design a project in violation of these laws and regulations.

c. An architect shall undertake to perform professional services only when the architect, together with those whom the architect may engage as consultants, ~~are~~ is qualified by education, training and experience in the specific technical areas involved.

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

d. No change.

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

4.1(3) Conflict of interest.

a. No change.

b. If an architect has any business association or direct or indirect financial interest which is substantial enough to influence the architect's judgment in connection with the architect's performance ~~or~~ of professional services, the architect shall fully disclose, in writing, to the client or employer the nature of the business association or financial interest, and if the client or employer objects to the association or financial interest, the architect will either terminate such association or interest or offer to give up the commission or employment.

c. and d. No change.

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

4.1(4) Full disclosure.

a. No change.

b. An architect shall accurately represent to a prospective or existing client or employer the architect's qualifications, capabilities, and experience and the scope of the architect's responsibility in connection with work for which the architect is claiming credit.

c. If, in the course of work on a project, an architect becomes aware of a decision taken by the employer or client against the architect's advice which violates applicable state or municipal building laws and regulations and which will, in the architect's judgment, adversely affect the safety to the public of the finished project, the architect shall:

1. Report the decision to the local building inspector or other public official charged with enforcement of the applicable state or municipal building laws and regulations;

2. Refuse to consent to the decisions, and;

3. No change.

d. to f. No change.

ITEM 6. 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 jurisdiction. A copy of the record of conviction, guilty plea, deferred judgment, or other finding of guilt is conclusive evidence. A registered architect shall notify the board of a conviction within 30 days of the conviction.

b. An architect shall neither offer nor make any payment or gift to a government official (whether elected or appointed) with the intent of influencing the official's judgment in connection with a prospective or existing project in which the architect is interested.

c. No change.

d. An Iowa-registered 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 7. Amend subrule 4.1(6) as follows:

4.1(6) Professional conduct.

a. Each office ~~maintained for the preparation of drawings, specifications, reports or other professional work~~ engaged in the practice of architecture shall have an architect resident regularly employed in that office having responsible ~~control~~ charge of such work.

b. to d. No change.

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

~~Failure by a registrant to adhere to these rules of conduct shall cause the registration to be reviewed by the board and shall, at the discretion of the board, be cause for a reprimand, suspension or revocation of the registration.~~

ITEM 8. Amend subrule 4.1(7) as follows:

4.1(7) Seal and certificate of responsibility.

a. to c. No change.

d. Each technical submission submitted to a ~~building official 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	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 architect under the laws of the state of Iowa.	
	<hr/>	
	Printed or typed name	
	<hr/>	
	Signature	Date
	<hr/>	
	Registration expires	Date issued
	<hr/>	
	Printed or typed name. <hr/>	
	License number <hr/>	
My license renewal date is June 30, <hr/>		
Pages or sheets covered by this seal: <hr/>		
<hr/>		
<hr/>		
<hr/>		

e. to g. No change.

h. The seal appearing on any technical submission shall be prima facie evidence that said technical submission was prepared by or under the responsible ~~control~~ charge of the individual named on that seal.

ITEM 9. Amend subrule 4.1(9) as follows:

4.1(9) ~~Intern Development~~ Architectural Experience Program supervisor. The Architectural Experience Program supervisor, formerly known as the Intern Development Program supervisor, shall not fail to respond to a request to verify experience hours reported to the National Council of Architectural Registration Board's ~~Intern Development~~ Architectural Experience Program when

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

requested by NCARB, the board, or a subordinate, associate, or intern who is, or has been, supervised by the ~~Intern Development~~ Architectural Experience Program supervisor.

[Filed 5/24/17, effective 7/26/17]

[Published 6/21/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/21/17.

ARC 3142C

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.

These amendments are a result of the five-year rolling administrative rules review outlined in Iowa Code section 17A.7(2). The rules in Chapter 7 describe disciplinary action imposed on those who engage in unlicensed practice. The amendments update the references to the Rule of Civil Procedure.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3014C** on April 12, 2017. A public hearing was held on May 2, 2017. No public comment was received. The adopted amendments are identical to the amendments published under Notice.

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

These amendments were adopted by the Board on May 19, 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 section 544A.15.

These amendments will become effective July 26, 2017.

The following amendments are adopted.

ITEM 1. Amend subrule 7.3(1) as follows:

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 by restricted certified mail, return receipt requested, or personal service in accordance with Rule of Civil Procedure ~~56.4~~ 1.305. Alternatively, the nonregistrant may accept service personally or through authorized counsel. The notice shall include the following:

- a.* A statement of the legal authority and jurisdiction under which the proposed civil penalty would be imposed.
- b.* Reference to the particular sections of the statutes and rules involved.
- c.* A short, plain statement of the alleged unlawful practices.
- d.* The dollar amount of the proposed civil penalty.
- e.* Notice of the nonregistrant's right to a hearing and the time frame in which hearing must be requested.
- f.* The address to which written request for hearing must be made.

ITEM 2. Amend subrule 7.3(2) as follows:

7.3(2) Nonregistrants must request 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 ~~56.4~~ 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.

[Filed 5/24/17, effective 7/26/17]

[Published 6/21/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/21/17.

ARC 3143C**DENTAL BOARD[650]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 147.34 and 153.39, the Dental Board amends Chapter 22, “Dental Assistant Radiography Qualification,” Iowa Administrative Code.

This amendment allows outside training providers to develop and submit their own dental assisting radiography qualification examinations for approval, increases the number of outside testing locations where applicants for dental assisting radiography qualification can take the board-approved examinations, and increases the number of dental assisting radiography examinations available to applicants. The amendment also sets 50 as the minimum number of questions for the examination, specifies that the examinations must be administered in a proctored setting, and establishes a minimum passing rate of 75 percent or better.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 1, 2017, as **ARC 2923C**. A public hearing was held on February 21, 2017, at 2 p.m. at the office of the Iowa Dental Board. There were no attendees at the public hearing, nor were any written comments received. In addition, the Board reviewed and discussed the proposed amendment during its January 27, 2017, open-session board meeting and allowed additional comments from the public. This amendment is identical to the one published under Notice.

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

After analysis and review of this rule making, there is a positive impact on jobs.

This amendment is intended to implement Iowa Code sections 147.34 and 153.39.

This amendment will become effective July 26, 2017.

The following amendment is adopted.

Amend rule 650—22.5(136C,153) as follows:

650—22.5(136C,153) Examination requirements. An applicant for dental assistant radiography qualification shall successfully pass a board-approved examination in dental radiography.

22.5(1) ~~Examinations approved by the board are those administered by the board or board’s approved testing centers or, if taken after January 1, 1986, the Dental Assisting National Board Dental Radiation Health and Safety Examination.~~ Examinations must be prior approved by the board and must be administered in a proctored setting. All board-approved examinations must have a minimum of 50 questions. The Dental Assisting National Board Radiation Health and Safety Examination is an approved examination.

22.5(2) A score of 75 percent or better on ~~the board~~ a board-approved examination shall be considered successful completion of the examination. The board accepts the passing standard established by the Dental Assisting National Board for applicants who take the Dental Assisting National Board Radiation Health and Safety Examination.

22.5(3) Information on taking ~~the~~ a board-approved examination may be obtained by contacting the board office at 400 SW 8th Street, Suite D, Des Moines, Iowa 50309-4687.

22.5(4) A dental assistant must meet such other requirements as may be imposed by the board’s approved dental assistant testing centers.

22.5(5) A dental assistant who fails to successfully complete ~~the~~ a board-approved examination after two attempts will be required to submit, prior to each subsequent examination attempt, proof of additional formal education in dental radiography in a program approved by the board or sponsored by a school accredited by the Commission on Dental Accreditation of the American Dental Association.

[Filed 5/17/17, effective 7/26/17]

[Published 6/21/17]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 6/21/17.

ARC 3144C

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of Iowa Code section 505.8 and chapter 508, the Insurance Division hereby amends Chapter 96, "Synthetic Guaranteed Investment Contracts," Iowa Administrative Code.

The rules in Chapter 96 prescribe the terms and conditions under which life insurance companies may issue group annuity contracts and other contracts issued in connection with group annuity contracts that establish the insurer's obligation by reference to a segregated portfolio of assets that is not owned by the insurer; the essential operational features of the segregated portfolio of assets; and the reserve requirements for these group annuity contracts and agreements.

The adopted amendments to Chapter 96 do the following:

1. Revise the definitions of "spot rate" and "synthetic guaranteed investment contract."
2. Require that a plan of operations for a class of contracts shall include (1) the criteria used by an insurer in evaluating the potential issuance of a pooled fund contract, (2) the criteria used to approve the investment manager for the segregated portfolio of assets associated with a pooled fund contract, and (3) a description of risk-mitigation techniques used by the insurer in connection with contracts issued to pooled funds.
3. Revise the calculation of the minimum value of guaranteed contract benefits under a contract issued to a pooled fund representing multiple employer-sponsored plans to reflect projected plan sponsor contract value withdrawals available to the member plans in the pooled fund.
4. Require that an actuarial memorandum clearly describe how the valuation actuary has reflected withdrawal risks, if applicable, including the impact of any dynamic lapse assumption and the results of sensitivity testing of the prudent estimate of future plan sponsor withdrawals.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 26, 2017, as **ARC 3032C**. A public hearing was held on May 17, 2017, at the offices of the Iowa Insurance Division, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa, and written comments were accepted through May 17, 2017. The Division received two comments and one written statement at the public hearing in support of the amendments to Chapter 96. These amendments are identical to those published under Notice.

The Division's waiver provision in subrule 96.6(2) applies 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 section 505.8 and chapter 508.

These amendments will become effective July 26, 2017.

The following amendments are adopted.

ITEM 1. Amend rule 191—96.3(505,508) as follows:

191—96.3(505,508) Scope and application.

96.3(1) This chapter applies to that portion of a group annuity contract or other contract issued in connection with group annuity contracts described in rule 191—96.4(505,508), definition of "synthetic guaranteed investment contract," and issued by a life insurer ~~that~~:

- a. ~~That~~ functions as an accounting record for an accumulation fund; and
- b. ~~That~~ has benefit guarantees relating to a principal amount and levels of interest at a fixed rate of return specified in advance.

96.3(2) The fixed rate of return ~~will~~:

- a. ~~Shall~~ be constant over the applicable rate periods, ~~and may~~;
- b. ~~May~~ reflect prior and current market conditions with respect to the segregated portfolio ~~but may~~; and
- c. ~~Shall~~ not reference future changes in market conditions.

96.3(3) This chapter applies to all synthetic guaranteed investment contract forms filed on or after January 18, 2012. ~~Contract~~ In addition, the minimum statutory reserve requirements of rule

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191—96.10(505,508) shall apply to all synthetic guaranteed investment contracts regardless of issue date. The contract forms ~~that have been~~ and related plans of operation that were issued or filed before January 18, 2012 prior to January 1, 2017, need not be refiled with the commissioner.

ITEM 2. Amend rule **191—96.4(505,508)**, definitions of “Spot rate,” and “Synthetic guaranteed investment contract,” as follows:

“Spot rate,” means:

1. “Treasury-based spot rate,” corresponding to a given time of benefit payment, means the yield on a zero-coupon noncallable and nonprepayable United States government obligation maturing at that time, or the zero-coupon yield implied by the price of a representative sampling of coupon-bearing, noncallable and nonprepayable United States government obligations in accordance with a formula set forth in the plan of operation.

2. “Index spot rate,” corresponding to a given time of benefit payment, means the zero-coupon yield implied by (a) the Barclays Short Term Corporate Index for a given time of benefit payment under one year or (b) the zero-coupon yield implied by the Barclays United States Corporate Investment Grade Bond Index for a given time of benefit payment greater than or equal to one year.

3. “Blended spot rate,” corresponding to a given time of benefit payment, means a blend of 50 percent each of (a) the treasury-based spot rate, and (b) the index spot rate. To the extent that guaranteed contract liabilities are denominated in the currency of a foreign country rated in one of the two highest rating categories by an independent, nationally recognized United States rating agency acceptable to the commissioner and are supported by investments denominated in the currency of the foreign country, the treasury-based spot rate component of the blended spot rate may be determined by reference to substantially similar obligations of the government of the foreign country. For liabilities other than those described above, the blended spot rate shall be determined on a basis mutually agreed upon by the insurer and the commissioner.

“Synthetic guaranteed investment contract” or “contract” means a group annuity contract or other contract issued in connection with a group annuity contract that ~~in whole or in part~~ establishes the insurer’s obligations by reference to a segregated portfolio of assets that is not owned by the insurer. The contract functions as an accounting record for an accumulation fund, and the fixed rate of return credited to the fund reflects an amortization of the segregated portfolio’s market gains and losses based on the period specified in the crediting formula, subject to any minimum interest rate guarantee.

ITEM 3. Amend subparagraph **96.5(2)“a”(7)** as follows:

(7) A description of the allowable investment parameters (such as objectives, derivative strategies, asset classes, quality, duration and diversification requirements applied to the assets held within the segregated portfolio) to be reflected in the investment guidelines applicable to each contract issued in the class to which the submitted plan of operation applies; and a description of the procedures that will be followed by the insurer in evaluating the appropriateness of any specific investment guidelines submitted by the contract holder. If the insurer chooses to operate a contract in accordance with investment guidelines that do not conform to the criteria established pursuant to this subparagraph, the nonconforming set of investment guidelines shall be filed with the commissioner in accordance with the filing requirements of this subrule;

ITEM 4. Renumber subparagraphs **96.5(2)“a”(8)** and **(9)** as **96.5(2)“a”(10)** and **(11)**.

ITEM 5. Adopt the following **new** subparagraph **96.5(2)“a”(8)**:

(8) For contract forms filed on or after January 1, 2017, a description of the criteria used by the insurer in approving for contract issuance a pooled fund representing multiple employer-sponsored plans and in approving the investment manager for the segregated portfolio of assets associated with such pooled fund contract;

ITEM 6. Adopt the following **new** subparagraph **96.5(2)“a”(9)**:

(9) For contract forms filed on or after January 1, 2017, a description of risk-mitigation techniques used by the insurer in connection with contracts issued to pooled funds representing multiple employer-sponsored plans;

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ITEM 7. Amend subrule 96.10(2) as follows:

96.10(2) In determining compliance with the asset maintenance requirement and the reserve for the value of guaranteed contract liabilities specified in subrule 96.10(1), the insurer shall deduct a percentage of the market value of an asset as follows:

a. For debt instruments, the percentage shall be the NAIC asset valuation “reserve objective factor,” but the factor shall be increased by 50 percent for the purpose of this calculation if the difference in durations of the assets and liabilities is more than one-half year. The above notwithstanding, in the event that, under the terms of the synthetic guaranteed investment contract, the asset default risk for debt instruments is borne solely by the contract holder, there shall be no asset valuation reserve percentage deduction from the market value of an asset, for purposes of complying with the asset maintenance requirement and the reserve for guaranteed contract liabilities specified in subrule 96.10(1).

b. For assets that are not debt instruments, the percentage shall be the NAIC asset valuation reserve “maximum reserve factor.”

ITEM 8. Amend subrule 96.10(6) as follows:

96.10(6) For purposes of this chapter, the “value of guaranteed contract liabilities” is defined to be the sum of the expected guaranteed contract benefits, each discounted at a rate corresponding to the expected time of payment of the expected guaranteed contract benefit that is not greater than the maximum multiple of the spot rate supportable by the expected return from the segregated portfolio assets, and in no event greater than ~~405 percent~~ of the blended spot rate as described in the plan of operation, pursuant to rule 191—96.5(505,508), or the actuary’s opinion and memorandum, pursuant to subrule 96.10(8), except that if the expected time of payment of an expected guaranteed contract benefit is more than 30 years, it shall be discounted from the expected date of payment to year 30 at a rate of no more than 80 percent of the 30-year blended spot rate and from year 30 to the date of valuation at a rate not greater than ~~405 percent~~ of the 30-year blended spot rate.

ITEM 9. Adopt the following new paragraph **96.10(7)“c”**:

c. The minimum value of guaranteed contract benefits under a contract issued to a pooled fund representing multiple employer-sponsored plans shall be determined so as to reflect projected plan sponsor contract value withdrawals available to the member plans in the pooled fund.

(1) Projections of such future cash flows shall take into account:

1. Known plan sponsor withdrawals, and

2. A prudent estimate of future plan sponsor withdrawals. The prudent estimate shall be based on company experience and other relevant criteria.

(2) A single valuation rate shall be determined, pursuant to subrule 96.10(6), equal to the lesser of:

1. The expected return from the segregated portfolio of assets, or

2. The blended spot rate based on the duration of the segregated portfolio of assets.

(3) The single valuation rate shall be used to model future market values of the segregated portfolio of assets. Future credited interest rates shall be modeled according to the contractually defined crediting rate formula. Modeled future contract values shall reflect modeled future market values, modeled future credited interest rates, known future plan sponsor withdrawals, the prudent estimate of future plan sponsor withdrawals, future withdrawals pursuant to paragraph 96.10(7)“b,” and any remaining final payment at the modeled contract termination date.

(4) All such modeled withdrawals and termination payments shall be discounted using the single valuation rate and the modeled times of those withdrawals and payments. The sum of these present values shall be deemed the minimum value of the guaranteed contract liabilities for a pooled fund contract.

ITEM 10. Amend subparagraph **96.10(8)“g”(5)** as follows:

(5) Clearly describe how the valuation actuary has reflected withdrawal risks, if applicable, including a discussion of the positioning of the contracts within the benefit withdrawal priority order

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pertaining to the contracts, the impact of any dynamic lapse assumption and the results of sensitivity testing the prudent estimate of future plan sponsor withdrawals pursuant to paragraph 96.10(7) "c";

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/21/17.

ARC 3145C

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of Iowa Code section 505.8, the Insurance Division hereby amends Chapter 98, "Annual Financial Reporting Requirements," Iowa Administrative Code.

The rules in Chapter 98 improve the Division's surveillance of the financial condition of insurers by requiring an annual audit of financial statements by certified public accountants, Communication of Internal Control Related Matters Noted in an Audit, and Management's Report of Internal Control Over Financial Reporting. These adopted amendments to Chapter 98 set forth the requirements for the establishment of an internal audit function, including independence and reporting requirements of an insurer or group of insurers, unless otherwise exempt from the requirements of these rules. Several internal cross references are also corrected.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 26, 2017, as **ARC 3033C**. A public hearing was held on May 17, 2017, at the offices of the Iowa Insurance Division, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa, and written comments were accepted through May 17, 2017. The Division received two comments and one written statement at the public hearing in support of the amendments to Chapter 98. These amendments are identical to those published under Notice.

Chapter 98 does not provide for waivers.

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

These amendments are intended to implement Iowa Code section 505.8.

These amendments will become effective July 26, 2017.

The following amendments are adopted.

ITEM 1. Amend subrule 98.2(2) as follows:

98.2(2) Foreign or alien insurers filing the audited financial report in another state, pursuant to that state's requirement for filing of audited financial reports, which has been found by the commissioner to be substantially similar to the requirements herein, are exempt from rules ~~98.4(505)~~ 191—98.4(505) through ~~98.12(505)~~ 191—98.12(505) and ~~98.17(505)~~ 191—98.18(505) if:

a. A copy of the audited financial report, Communication of Internal Control Related Matters Noted in an Audit, and the letter to the insurer with the accountant's qualifications that are filed with such other state are filed with the commissioner in accordance with the filing dates specified in rules ~~98.4(505)~~ 191—98.4(505), ~~98.11(505)~~ 191—98.11(505), and ~~98.17(505)~~ 191—98.18(505), respectively (Canadian insurers may submit accountants' reports as filed with the Office of the Superintendent of Financial Institutions Canada).

b. A copy of any Notification of Adverse Financial Condition Report filed with such other state is filed with the commissioner within the time specified in rule ~~98.10(505)~~ 191—98.10(505).

ITEM 2. Amend rule **191—98.3(505)**, definitions of "Audit committee" and "Independent board member," as follows:

"Audit committee" means a committee (or equivalent body) established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or group of insurers, the internal audit function of an insurer or group of insurers (if applicable), and external audits of financial statements of the insurer or group of insurers. The audit committee of any

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entity that controls a group of insurers may be deemed to be the audit committee for one or more of these controlled insurers solely for the purposes of this chapter at the election of the controlling person. Refer to subrule ~~98.13(5)~~ 98.13(6) for exercising this election. If an audit committee is not designated by the insurer, the insurer's entire board of directors shall constitute the audit committee.

"Independent board member" has the same meaning as described in subrule ~~98.13(3)~~ 98.13(4).

ITEM 3. Adopt the following new definition of "Internal audit function" in rule **191—98.3(505)**:

"Internal audit function" means a person or persons that provide independent, objective and reasonable assurance designed to add value and improve an organization's operations and accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.

ITEM 4. Amend rule 191—98.9(505) as follows:

191—98.9(505) Scope of audit and report of independent certified public accountant. Financial statements furnished pursuant to rule ~~98.5(505)~~ 191—98.5(505) shall be examined by the independent certified public accountant. The audit of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards. In accordance with AU Section 319 of the Professional Standards of the AICPA, Consideration of Internal Control in a Financial Statement Audit, the independent certified public accountant should obtain an understanding of internal control sufficient to plan the audit. To the extent required by AU Section 319, for those insurers required to file a Management's Report of Internal Control Over Financial Reporting pursuant to rule ~~98.15(505)~~ 191—98.16(505), the independent certified public accountant should consider (as that term is defined in Statement on Auditing Standards (SAS) No. 102, Defining Professional Requirements in Statements on Auditing Standards or its replacement) the most recently available report in planning and performing the audit of the statutory financial statements. Consideration shall be given to the procedures illustrated in the Financial Condition Examiners Handbook promulgated by the ~~National Association of Insurance Commissioners~~ NAIC as the independent certified public accountant deems necessary.

ITEM 5. Renumber subrules **98.13(2)** to **98.13(9)** as **98.13(3)** to **98.13(10)**.

ITEM 6. Adopt the following new subrule 98.13(2):

98.13(2) The audit committee of an insurer or group of insurers shall be responsible for overseeing the insurer's internal audit function and granting the person or persons performing the function suitable authority and resources to fulfill their responsibilities if required by rule 191—98.14(505).

ITEM 7. Amend renumbered subrule 98.13(3) as follows:

98.13(3) Each member of the audit committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to subrule ~~98.13(5)~~ 98.13(6).

ITEM 8. Amend renumbered subrule 98.13(8) as follows:

98.13(8) If an insurer is a member of an insurance holding company system, the reports required by subrule ~~98.13(6)~~ 98.13(7) may be provided to the audit committee on an aggregate basis for insurers in the holding company system, provided that any substantial differences among insurers in the system are identified to the audit committee.

ITEM 9. Renumber rules **191—98.14(505)** to **191—98.20(505)** as **191—98.15(505)** to **191—98.21(505)**.

ITEM 10. Adopt the following new rule 191—98.14(505):

191—98.14(505) Internal audit function requirements.

98.14(1) An insurer is exempt from the requirements of this rule if:

a. The insurer has annual direct written and unaffiliated assumed premiums, including international direct and assumed premiums but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$500 million; and

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b. If the insurer is a member of a group of insurers, the group has annual direct written and unaffiliated assumed premiums, including international direct and assumed premiums but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$1 billion.

98.14(2) The insurer or group of insurers shall establish an internal audit function providing independent, objective and reasonable assurance to the audit committee and insurer management regarding the insurer's governance, risk management and internal controls. This assurance shall be provided by performing general and specific audits, reviews and tests and by employing other techniques deemed necessary to protect assets, evaluate control effectiveness and efficiency, and evaluate compliance with policies and rules.

98.14(3) In order to ensure that internal auditors remain objective, the internal audit function must be organizationally independent. Specifically, the internal audit function will not defer ultimate judgment on audit matters to others and shall appoint an individual to head the internal audit function who will have direct and unrestricted access to the board of directors. Organizational independence does not preclude dual-reporting relationships.

98.14(4) The head of the internal audit function shall report to the audit committee regularly, but no less than annually, on the periodic audit plan, factors that may adversely impact the internal audit function's independence or effectiveness, material findings from completed audits and the appropriateness of corrective actions implemented by management as a result of audit findings.

98.14(5) If an insurer is a member of an insurance holding company system or included in a group of insurers, the insurer may satisfy the internal audit function requirements set forth in this rule at the ultimate controlling parent level, an intermediate holding company level or the individual legal entity level.

ITEM 11. Amend renumbered subrule 98.15(3) as follows:

98.15(3) For purposes of subrule 98.14(2) 98.15(2), actions that, "if successful, could result in rendering the insurer's financial statements materially misleading" include, but are not limited to, actions taken at any time with respect to the professional engagement period to coerce, manipulate, mislead or fraudulently influence an accountant:

a. To issue or reissue a report on an insurer's financial statements that is not warranted in the circumstances (due to material violations of statutory accounting principles prescribed by the commissioner, generally accepted auditing standards, or other professional or regulatory standards);

b. Not to perform audit, review or other procedures required by generally accepted auditing standards or other professional standards;

c. Not to withdraw an issued report; or

d. Not to communicate matters to an insurer's audit committee.

ITEM 12. Amend renumbered subrule 98.16(2) as follows:

98.16(2) Notwithstanding the premium threshold in subrule ~~98.15(1)~~ 98.16(1), the commissioner may require an insurer to file Management's Report of Internal Control Over Financial Reporting if the insurer is in any RBC level event, or if the insurer meets any one or more of the standards of an insurer deemed to be hazardous to policyholders, creditors or the general public.

ITEM 13. Amend renumbered subrule 98.16(5) as follows:

98.16(5) Management shall document and make available upon financial condition examination the basis upon which its assertions, required in subrule ~~98.15(4)~~ 98.16(4), are made. Management may base its assertions, in part, upon its review, monitoring and testing of internal controls undertaken in the normal course of its activities.

a. Management shall have discretion as to the nature of the internal control framework used, and the nature and extent of documentation, in order to make its assertion in a cost-effective manner and, as such, may include assembly of or reference to existing documentation.

b. Management's Report of Internal Control Over Financial Reporting, required by subrule ~~98.15(1)~~ 98.16(1), and any documentation provided in support thereof during the course of a financial condition examination, shall be kept confidential by the state insurance department.

INSURANCE DIVISION[191](cont'd)

ITEM 14. Amend renumbered rule 191—98.17(505) as follows:

191—98.17(505) Exemptions.

98.17(1) Upon written application of any insurer, the commissioner may grant an exemption from compliance with any and all provisions of this chapter if the commissioner finds, upon review of the application, that compliance with this chapter would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Within ten days from a denial of an insurer's written request for an exemption from this chapter, the insurer may request in writing a hearing on its application for an exemption. The hearing shall be held in accordance with 191—Chapter 3.

98.17(2) If an insurer or group of insurers that is exempt from the requirements of rule 191—98.14(505) no longer qualifies for that exemption, the insurer or group of insurers shall have one year after the year the threshold is exceeded to comply with the requirements of this chapter.

ITEM 15. Amend renumbered rule 191—98.18(505) as follows:

191—98.18(505) Letter to insurer with accountant's qualifications. The accountant shall furnish the insurer, in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating:

1. to 3. No change.
4. That the accountant consents to the requirements of rule ~~98.18(505)~~ 191—98.19(505) and that the accountant consents and agrees to make available for review by the commissioner, or a designee or appointed agent, the workpapers, as defined in rule ~~98.12(505)~~ 191—98.12(505).
5. No change.
6. A representation that the accountant is in compliance with the requirements of rule ~~98.7(505)~~ 191—98.7(505).

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[Published 6/21/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/21/17.

ARC 3146C

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3, 421.14, and 452A.59, the Department of Revenue hereby amends Chapter 68, "Motor Fuel and Undyed Special Fuel," Iowa Administrative Code.

This amendment is necessary to implement a change to the tax rates on motor fuels effective July 1, 2017. The change in the tax rates on motor fuels reflects a change in the ethanol distribution percentage for calendar year 2016. Under Iowa Code section 452A.3(1) and 701—paragraph 68.2(2)"a," the rate of excise tax on motor fuels for the fiscal year is based on the ethanol distribution percentage as measured in the previous calendar year.

Notice of Intended Action was published in IAB Vol. XXXIX, No. 22, p. 2074, April 26, 2017, as **ARC 3036C**. The Department allowed public comments until May 16, 2017. No public comments were received. This amendment is identical to that published under Notice.

Any person who believes that the application of the discretionary provisions of this rule would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Reducing taxes generally stimulates economic growth. However, the Department is unable to predict the specific impact this amendment will have on jobs.

This amendment is intended to implement Iowa Code section 452A.3.

This amendment will become effective on July 26, 2017.

REVENUE DEPARTMENT[701](cont'd)

The following amendment is adopted.

Amend subrule 68.2(1) as follows:

68.2(1) The following rates of tax apply to the use of fuel in operating motor vehicles and aircraft:

Gasoline	20.3¢ per gallon (for July 1, 2003, through June 30, 2004) 20.5¢ per gallon (for July 1, 2004, through June 30, 2005) 20.7¢ per gallon (for July 1, 2005, through June 30, 2006) 21¢ per gallon (for July 1, 2006, through June 30, 2007) 20.7¢ per gallon (for July 1, 2007, through June 30, 2008) 21¢ per gallon (for July 1, 2008, through February 28, 2015) 31¢ per gallon (for March 1, 2015, through June 30, 2015) 30.8¢ per gallon (for July 1, 2015, through June 30, 2016) 30.7¢ per gallon (beginning for July 1, 2016, through June 30, 2017) <u>30.5¢ per gallon (beginning July 1, 2017)</u>
Ethanol blended gasoline	19¢ per gallon (for July 1, 2003, through February 28, 2015) 29¢ per gallon (for March 1, 2015, through June 30, 2015) 29.3¢ per gallon (for July 1, 2015, through June 30, 2016) 29¢ per gallon (beginning July 1, 2016)
E-85 gasoline	17¢ per gallon (for January 1, 2006, through June 30, 2007) 19¢ per gallon (for July 1, 2007, through February 28, 2015) 29¢ per gallon (for March 1, 2015, through June 30, 2015) 29.3¢ per gallon (for July 1, 2015, through June 30, 2016) 29¢ per gallon (beginning July 1, 2016)
Aviation gasoline	8¢ per gallon (beginning July 1, 1988)
Diesel fuel other than B-11 or higher	22.5¢ per gallon (on and before February 28, 2015) 32.5¢ per gallon (beginning March 1, 2015)
Biodiesel blended fuel (B-11 or higher)	22.5¢ per gallon (on and before February 28, 2015) 32.5¢ per gallon (for March 1, 2015, through June 30, 2015) 29.5¢ per gallon (beginning July 1, 2015)
Aviation jet fuel	3¢ per gallon (on and before February 28, 2015) 5¢ per gallon (beginning March 1, 2015)
L.P.G.	20¢ per gallon (on and before February 28, 2015) 30¢ per gallon (beginning March 1, 2015)
C.N.G.	16¢ per 100 cu. ft. (on and before June 30, 2014) 21¢ per gallon (for July 1, 2014, through February 28, 2015) 31¢ per gallon (beginning March 1, 2015)
L.N.G.	22.5¢ per gallon (on and before February 28, 2015) 32.5¢ per gallon (beginning March 1, 2015)

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