



IOWA ADMINISTRATIVE BULLETIN

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Pages 1383 to 1504

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PHARMACY BOARD[657]

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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

Telephone: (515)281-3355

Fax: (515)281-5534

CITATION of Administrative Rules

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

441 IAC 79	(Chapter)
441 IAC 79.1	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

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

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

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

Schedule for Rule Making 2018

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

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
15	Wednesday, December 27, 2017	January 17, 2018
16	Friday, January 12, 2018	January 31, 2018
17	Friday, January 26, 2018	February 14, 2018

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 Friday, January 5, 2018, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

NOTE: See also Supplemental Agenda to be published in the January 3, 2018, Iowa Administrative Bulletin.

AGING, DEPARTMENT ON[17]

Department organization, 2.5 <u>Notice</u> ARC 3478C	12/6/17
Access to residents—restrictions on visits, 8.6(10)“c” <u>Notice</u> ARC 3479C	12/6/17
Staffing ratio for substitute decision maker, 22.5 <u>Filed</u> ARC 3484C	12/6/17
Training requirement for options counselors, 23.7 <u>Filed</u> ARC 3485C	12/6/17

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Vegetable seed labeling, 40.3 <u>Filed</u> ARC 3486C	12/6/17
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COLLEGE STUDENT AID COMMISSION[283]

EDUCATION DEPARTMENT[281]“umbrella”

Meetings of the commission—special meetings, affirmative votes, 1.2(3) <u>Notice</u> ARC 3516C	12/20/17
Student loan debt collection, 37.4, 37.5(1) <u>Notice</u> ARC 3517C	12/20/17

DENTAL BOARD[650]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Dental hygienists—provision of educational services without supervision, 10.3, 10.4 <u>Filed</u> ARC 3487C	12/6/17
Review of applications for license, permit, registration or qualification, 11.8, 20.18 <u>Notice</u> ARC 3477C	12/6/17
Dentists and dental hygienists—alternative examination for licensure, amendments to chs 11, 12, 15 <u>Filed</u> ARC 3488C	12/6/17
Licensure and registration—renewal, reinstatement, dental assisting, continuing education, amend chs 14, 20; adopt ch 25 <u>Filed</u> ARC 3489C	12/6/17
Fees, amendments to ch 15 <u>Filed</u> ARC 3490C	12/6/17
Sedation and nitrous oxide inhalation analgesia, 29.1, 29.3 to 29.5 <u>Filed</u> ARC 3491C	12/6/17

EDUCATIONAL EXAMINERS BOARD[282]

EDUCATION DEPARTMENT[281]“umbrella”

Licensure; authorizations; endorsements; conversion information, amend chs 13, 15, 16, 18, 22, 27; rescind ch 21 <u>Notice</u> ARC 3471C	12/6/17
Teacher leadership and compensation model for mentoring; computer science endorsement, 13.7, 13.28 <u>Notice</u> ARC 3470C	12/6/17

EDUCATION DEPARTMENT[281]

General transfer rule—exception to ensure homeless student access to extracurricular activities, 36.15(3) <u>Filed</u> ARC 3492C	12/6/17
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ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

Air quality, amendments to chs 20, 22, 23, 25, 30, 33, 34 <u>Notice</u> ARC 3520C	12/20/17
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HUMAN SERVICES DEPARTMENT[441]

Appeals to managed care organizations, 73.12(2) <u>Notice</u> ARC 3514C	12/20/17
Tiered-rate reimbursement methodology for supported community living, day habilitation and adult day care services under intellectual disability waiver, 78.41, 79.1, 83.67(4)“i” <u>Notice</u> ARC 3476C	12/6/17
Health insurance premium payment (HIPP) program, 75.21 <u>Filed</u> ARC 3493C	12/6/17
Medicaid—qualified Medicare beneficiary (QMB) providers, health insurance premium payment (HIPP) providers, 77.53, 77.54, 78.58, 78.59, 79.1, 79.14(1), 80.2(2) <u>Filed</u> ARC 3494C	12/6/17
Tiered-rate reimbursement methodology for supported community living, day habilitation and adult day care services under intellectual disability waiver, 78.41, 79.1, 83.67(4)“i” <u>Filed Emergency</u> ARC 3481C	12/6/17
Employee background checks—department as requesting entity, 119.1 <u>Notice</u> ARC 3515C	12/20/17
Child abuse prevention program, amendments to ch 155 <u>Filed</u> ARC 3495C	12/6/17

INSPECTIONS AND APPEALS DEPARTMENT[481]

Contested cases; rules of procedure and practice before the administrative hearings division, adopt ch 9; amend chs 10, 30, 50, 57, 58, 62 to 65, 67, 90, 100, 105, 106 <u>Filed</u> ARC 3523C	12/20/17
Iowa code of administrative judicial conduct, 10.1, 10.29, ch 15 <u>Filed</u> ARC 3524C	12/20/17

Residential care facilities for persons with an intellectual disability, 57.1, 57.6 Notice **ARC 3472C** 12/6/17
 Prohibition of mechanical restraints in residential care facilities, 57.1, 57.33(8) Notice **ARC 3473C** 12/6/17
 Residential care facilities for persons with mental illness, ch 62 Notice **ARC 3474C** 12/6/17
 Residential care facility—three- to five-bed specialized license, ch 63 Notice **ARC 3475C** 12/6/17

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]“umbrella”

Term and universal life insurance reserve financing, ch 112 Filed **ARC 3496C** 12/6/17

LABOR SERVICES DIVISION[875]

WORKFORCE DEVELOPMENT DEPARTMENT[871]“umbrella”

Wind tower lifts; wind turbine tower elevators; update of references to ASME code, 71.11,
 71.14(1)“b,” 72.1, 72.13(2), 73.8(2) Notice **ARC 3503C** 12/20/17
 Boilers and pressure vessels, 81.5, 82.1, 83.1(1), 84.1(1), 85.3(1), 90.15(1), 91.1(2),
 91.13(3), 93.2 Notice **ARC 3504C** 12/20/17

NURSING BOARD[655]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Nursing education programs, amendments to ch 2 Filed **ARC 3497C** 12/6/17

**PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA
 COMPREHENSIVE[591]**

Environmental protection charge (EPC); insurance fund; aboveground petroleum storage
 tank fund, rescind chs 5, 6, 10, 12, 14 Filed **ARC 3498C** 12/6/17

PHARMACY BOARD[657]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Imitation controlled substances, 1.2, 3.29, 3.30(1), 4.10, 4.11(1), 5.24, 5.26(1), 10.44, 17.18,
 19.11, 41.6 Notice **ARC 3506C** 12/20/17
 Practice standards, amend chs 4, 8, 13, 18, 19; adopt ch 39 Notice **ARC 3509C** 12/20/17
 Care facility pharmacy practice, amendments to chs 10, 23 Notice **ARC 3511C** 12/20/17
 Cannabidiol investigational products; Iowa prescription monitoring program, 10.38(3),
 37.3(3), 37.4(9) Notice **ARC 3505C** 12/20/17
 Registration—medical director-based service program, 11.3(1) Notice **ARC 3507C** 12/20/17
 Telepharmacy practice—functions of pharmacy support person, 13.8(7) Notice **ARC 3508C** 12/20/17
 Nuclear pharmacy practice, 16.1 to 16.4, 16.6, 16.8 Filed **ARC 3525C** 12/20/17
 Centralized prescription filling and processing, 18.3, 18.5(2), 18.10, 18.15 Notice **ARC 3512C** 12/20/17
 Repackaging of VA medications, 22.6 Notice **ARC 3510C** 12/20/17

PUBLIC HEALTH DEPARTMENT[641]

Newborn testing for cytomegalovirus, 3.1, 3.2, 3.13 Notice **ARC 3519C** 12/20/17
 State medical examiner—autopsy fee, 126.3(1) Filed **ARC 3499C** 12/6/17

PUBLIC SAFETY DEPARTMENT[661]

2012 life safety code—adoption by reference, 205.1, 205.5, 205.10, 205.15, 205.20, 205.25
Filed **ARC 3526C** 12/20/17

REAL ESTATE COMMISSION[193E]

Professional Licensing and Regulation Bureau[193]

COMMERCE DEPARTMENT[181]“umbrella”

Branch offices, licensure, prelicense and continuing education, courses and attendance
 certificates, amendments to chs 7, 16, 17 Filed **ARC 3500C** 12/6/17

REVENUE DEPARTMENT[701]

Optional designations of funds by taxpayer, 43.4 Filed **ARC 3527C** 12/20/17

SECRETARY OF STATE[721]

Fee increase to fund technology modernization fund—sunset provision, 2.3 Notice **ARC 3518C** 12/20/17

TRANSPORTATION DEPARTMENT[761]

Planting and harvesting period, 520.8 Notice **ARC 3482C** 12/6/17
 Improvements and maintenance on primary road extensions, 150.1 to 150.5 Filed **ARC 3501C** 12/6/17
 Motor vehicle and travel trailer dealers, manufacturers, distributors and wholesalers,
 amendments to ch 425 Notice **ARC 3513C** 12/20/17
 Planting and harvesting period, 520.8 Filed **Emergency ARC 3483C** 12/6/17

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]"umbrella"

Rule making, amendments to ch 3 Filed **ARC 3502C** 12/6/17**WORKERS' COMPENSATION DIVISION[876]**

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

Evaluation of permanent impairments; vocational training and education; suitable work;
commutations, amendments to chs 1 to 6, 8, 12 Filed **ARC 3528C** 12/20/17**WORKFORCE DEVELOPMENT BOARD AND WORKFORCE DEVELOPMENT CENTER****ADMINISTRATION DIVISION[877]**

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

Workforce development board; regional advisory boards, amendments to chs 1, 6 Notice **ARC 3480C**..... 12/6/17**WORKFORCE DEVELOPMENT DEPARTMENT[871]**Employer records, reports, contribution and charges—fees, collection of covered
unemployment compensation, 22.9(3), 23.68, 23.82(1) Filed **ARC 3529C** 12/20/17Taxable wages; employer penalties; claims; federal payment offset, 23.6(2), 23.60, 24.3,
25.17 Notice **ARC 3522C** 12/20/17Claims and benefits—reporting by claimants, 24.2(1)"e" Notice **ARC 3521C**..... 12/20/17Subpoenas for witnesses and documents, 26.13 Filed **ARC 3530C**..... 12/20/17**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 52501Representative Megan Jones
4470 Highway 71
Sioux Rapids, Iowa 50585Senator Mark Costello
37265 Rains Avenue
Imogene, Iowa 51645Representative Amy Nielsen
168 Lockmoor Circle
North Liberty, Iowa 52317Senator Wally Horn
101 Stoney Point Road, SW
Cedar Rapids, Iowa 52404Representative Rick Olson
3012 East 31st Court
Des Moines, Iowa 50317Senator Pam Jochum
2368 Jackson Street
Dubuque, Iowa 52001Representative Dawn Pettengill
P.O. Box A
Mt. Auburn, Iowa 52313Senator Jack Whitver
4019 NE Bellagio Circle
Ankeny, Iowa 50021Representative Guy Vander Linden
1610 Carbonado Road
Oskaloosa, Iowa 52577Jack Ewing
Legal Counsel
Capitol
Des Moines, Iowa 50319
Telephone (515)281-6048
Fax (515)281-8451Colin Smith
Administrative Rules Coordinator
Governor's Ex Officio Representative
Capitol, Room 18
Des Moines, Iowa 50319
Telephone (515)281-5211

DENTAL BOARD[650]

Review of applications for
license, permit, registration or
qualification, 11.8, 20.18
IAB 12/6/17 **ARC 3477C**

Board Office, Suite D
400 S.W. Eighth St.
Des Moines, Iowa

January 9, 2018
2 p.m.

EDUCATIONAL EXAMINERS BOARD[282]

Licensure; authorizations;
endorsements; conversion
information, amend chs 13, 15,
16, 18, 22, 27; rescind ch 21
IAB 12/6/17 **ARC 3471C**

Room 3 Southwest
Grimes State Office Bldg.
Des Moines, Iowa

December 27, 2017
1 p.m.

Teacher leadership and
compensation model for
mentoring; computer science
endorsement, 13.7, 13.28
IAB 12/6/17 **ARC 3470C**

Room 3 Southwest
Grimes State Office Bldg.
Des Moines, Iowa

December 27, 2017
1 p.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Air quality, amendments to chs
20, 22, 23, 25, 30, 33, 34
IAB 12/20/17 **ARC 3520C**

Conference Room 4 East
Wallace State Office Bldg.
Des Moines, Iowa

January 22, 2018
1 p.m.

INSPECTIONS AND APPEALS DEPARTMENT[481]

Residential care facilities for
persons with an intellectual
disability, 57.1, 57.6
IAB 12/6/17 **ARC 3472C**

Room 319
Lucas State Office Bldg.
Des Moines, Iowa

January 3, 2018
10 a.m.

Prohibition of mechanical
restraints in residential care
facilities, 57.1, 57.33(8)
IAB 12/6/17 **ARC 3473C**

Room 319
Lucas State Office Bldg.
Des Moines, Iowa

January 3, 2018
10 a.m.

Residential care facilities for
persons with mental illness, ch
62
IAB 12/6/17 **ARC 3474C**

Room 319
Lucas State Office Bldg.
Des Moines, Iowa

January 3, 2018
10 a.m.

Residential care facility—three-
to five-bed specialized license,
ch 63
IAB 12/6/17 **ARC 3475C**

Room 319
Lucas State Office Bldg.
Des Moines, Iowa

January 3, 2018
10 a.m.

LABOR SERVICES DIVISION[875]

Wind tower lifts; wind turbine tower elevators; update of references to ASME code, 71.11, 71.14(1)“b,” 72.1, 72.13(2), 73.8(2) IAB 12/20/17 ARC 3503C	150 Des Moines St. Des Moines, Iowa	January 10, 2018 1:30 p.m. (If requested)
Boilers and pressure vessels, 81.5, 82.1, 83.1(1), 84.1(1), 85.3(1), 90.15(1), 91.1(2), 91.13(3), 93.2 IAB 12/20/17 ARC 3504C	150 Des Moines St. Des Moines, Iowa	January 10, 2018 10:30 a.m. (If requested)

TRANSPORTATION DEPARTMENT[761]

Motor vehicle and travel trailer dealers, manufacturers, distributors and wholesalers, amendments to ch 425 IAB 12/20/17 ARC 3513C	Motor Vehicle Division Offices 6310 SE Convenience Blvd. Ankeny, Iowa	January 11, 2018 10 a.m. (If requested)
Planting and harvesting period, 520.8 IAB 12/6/17 ARC 3482C	Motor Vehicle Division Offices 6310 SE Convenience Blvd. Ankeny, Iowa	December 28, 2017 10 a.m. (If requested)

The following list will be updated as changes occur.

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

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

Other autonomous agencies are included alphabetically in SMALL CAPITALS at the left-hand margin.

ADMINISTRATIVE SERVICES DEPARTMENT[11]
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ARC 3516C

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 1, “Organization and Operation,” Iowa Administrative Code.

The proposed amendment reflects changes made to the bylaws of the Iowa College Student Aid Commission during the Commission’s September 15, 2017, meeting. Bylaws are required under Iowa Code section 261.3. The proposed amendment clarifies when special meetings may be held and how affirmative votes are recorded.

Interested persons may submit comments orally or in writing by 4:30 p.m. on January 9, 2018, 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 email to julie.leeper@iowa.gov, or via the Iowa administrative rules website at 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.

The following amendment is proposed.

Amend subrule 1.2(3) as follows:

1.2(3) Meetings. The commission shall meet at regular intervals at least six times annually. The commission may hold additional regular meetings from time to time during the year as deemed necessary and with proper notice to the public. Additional meetings also may be called at the discretion of the chairperson.

a. The chairperson of the commission presides at each meeting. Members of the public may be recognized at the discretion of the chairperson. All meetings are open to the public in accordance with the open meetings law, Iowa Code chapter 21.

b. The commission shall give advance public notice of the time and place of each commission meeting. The notice will include the specific date, time, and place of the meeting.

c. A quorum shall consist of two-thirds of the voting members of the commission. When a quorum is present, a position is carried by an affirmative vote of the majority of commission members eligible to vote. A commissioner who is present at a meeting of the commission at which action on any matter is taken shall be presumed to have assented to the action taken unless the commissioner’s dissent or abstention is recorded in the minutes of the meeting or unless, before adjournment of the meeting, the commissioner files written dissent to such action with the person who is acting as the secretary of the meeting. The right to dissent shall not apply to a commissioner who voted in favor of an action.

d. A specific time is set aside at each meeting for the public to address the commission. As a general guideline, a limit of five minutes will be allocated for each of these presentations. If a large group seeks to address a specific issue, the chairperson may limit the number of speakers. Members of the public who wish to address the commission during this portion of the meeting are required to notify the commission’s administrative secretary prior to the meeting. The person’s name and the subject of the person’s remarks must be provided. To accommodate maximum public participation, members of the public are encouraged to submit requests at least 72 hours in advance of the meeting.

ARC 3517C**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 37, “Student Loan Debt Collection,” Iowa Administrative Code.

The proposed amendments clarify procedures that apply to offset against state income tax refunds or rebates and administrative wage garnishment.

Interested persons may submit comments orally or in writing by 4:30 p.m. on January 9, 2018, 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 email to julie.leeper@iowa.gov, or via the Iowa administrative rules website at 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.

The following amendments are proposed.

ITEM 1. Amend rule 283—37.4(261), introductory paragraph, as follows:

283—37.4(261) Administrative wage garnishment procedures. The commission shall apply administrative wage garnishment procedures established under the federal Higher Education Act of 1965, as amended and codified in 20 U.S.C. § 1071 et seq., in the collection of all defaulted student loans owed to the commission, including the procedures outlined in subrules 37.4(1) to 37.4(4). The commission may enter into an agreement with the Iowa department of revenue or another state agency to administer administrative wage garnishment to collect other defaulted debt owed to the commission.

ITEM 2. Amend subrule 37.5(1) as follows:

37.5(1) General. A claim against a defaulted borrower’s state income tax refund or rebate will be made to receive payment against any defaulted student loan owed to the commission. The commission may enter into an agreement with the Iowa department of revenue or another state agency to administer tax refunds or rebates.

ARC 3520C**ENVIRONMENTAL PROTECTION COMMISSION[567]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission (Commission) hereby gives Notice of Intended Action to amend Chapter 20, “Scope of Title—Definitions,” Chapter 22, “Controlling Pollution,” Chapter 23, “Emission Standards for Contaminants,” Chapter 25, “Measurement of Emissions,” Chapter 30, “Fees,” Chapter 33, “Special

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Regulations and Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD) of Air Quality,” and Chapter 34, “Provisions for Air Quality Emissions Trading Programs,” Iowa Administrative Code.

The purposes of this proposed rule making are to:

1. Rescind unnecessary rules and update other rules to provide regulatory certainty and flexibility. The amendments implement a portion of the Department of Natural Resources’ (Department’s) five-year review of rules plan to accomplish the requirements of Iowa Code section 17A.7(2).

2. Offer uniform rules by making changes that match federal regulations and eliminate inconsistencies between federal regulations and state rules. By adopting federal updates into state administrative rules, the Commission is ensuring that Iowa’s air quality rules are no more stringent than federal regulations. Additionally, the updates allow the Department, rather than the U.S. Environmental Protection Agency (EPA), to be the primary agency to implement the air quality requirements in Iowa, thereby allowing the Department to provide compliance assistance and outreach to affected facilities.

Item 1 amends rule 567—20.2(455B), definition of “EPA reference method,” to adopt the most current EPA methods for measuring air pollutant emissions (stack testing and continuous monitoring). On August 30, 2016, EPA revised the reference methods in 40 Code of Federal Regulations (CFR) Parts 51, 60, 61 and 63 to eliminate outdated procedures, add alternative testing methods, make technical corrections, and correct typographical and grammatical errors. Several of the updated test methods in Parts 51, 60, 61 and 63 are adopted by reference in 40 CFR Part 75 for the Acid Rain Program. Adopting EPA’s updates ensures that state reference methods match current federal reference methods and are no more stringent than the federal methods. Further, the alternative test methods offer regulatory flexibility to affected facilities. The amendments in Items 6, 10, 11, 12, 13, 14, 15 and 16 are proposed concurrently with this amendment to similarly reflect updates to EPA testing and monitoring methods as the methods apply to specific air quality programs.

Item 1 also updates the definition of “volatile organic compounds” (VOC) to reflect recent changes that EPA made to the Federal definition of VOC. On August 1, 2016, a final regulation was published in the Federal Register to exclude the compound 1,1,2,2-tetrafluoro-1-(2,2,2-trifluoroethoxy) Ethane (HFE-347pcf2) from the federal definition because this compound makes a negligible contribution to tropospheric ozone formation. In Item 19, an amendment to subrule 33.3(1) is proposed concurrently with the amendment in Item 1 to similarly update the definition of “volatile organic compounds” for the specific air quality programs.

Item 2 amends paragraph 22.1(2)“i” to correct a cross reference to a definition. The current cross reference is to paragraph 22.5(1)“f,” which no longer exists. All provisions that were previously included in rule 567—22.5(455B) are now in Chapter 31. The cross reference is revised to refer to the correct definition included in subrule 31.3(1).

Item 3 amends paragraph 22.1(2)“r” to make updates to the exemption for internal combustion engines with a brake horsepower rating of less than 400. The amendment clarifies that owners and operators of engines that are not required to submit to the Department an engine registration may qualify for this exemption. The revision provides certainty to affected facilities and reduces the regulatory burden of completing an unneeded engine registration to qualify for this exemption.

Item 4 amends subparagraph 22.1(2)“w”(1) to correct an error in the eligibility criteria for the “small unit” exemption. The small unit exemption is available as an alternative to obtaining a construction permit for owners and operators of emission units that emit less than certain thresholds of specific air pollutants. For an emission unit to qualify for the small unit exemption, the unit must emit less than the emission thresholds for each of the pollutants listed. However, the list of criteria has the word “or” between the last two items in the list, which could lead affected owners and operators to conclude that an emission unit does not need to meet all of the criteria in the list.

The intent of the small unit exemption is that the emission unit must emit less than each of the emission thresholds included in the list. Further, the Department has implemented the exemption in this manner since its adoption. It is therefore appropriate to revise this exemption to include the word “and” rather than “or” between the provision for “PM_{2.5}” and the one for “hazardous air pollutants” in the list of air

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pollutants. This amendment reflects the original intent and ongoing implementation of the small unit exemption and provides clarity to owners and operators that may wish to use this exemption.

Item 5 amends the provisions for permit by rule for spray booths specified in paragraph 22.8(1)“a.” The amendment allows powder coat material to be used in paint booths without being considered “sprayed material,” provided the powder coating is applied in an indoor-vented spray booth equipped with filters or an overspray powder recovery system. The Department has evaluated the particulate emissions from powder coating and has determined that emissions occurring under the conditions specified in the permit by rule would not contribute to exceedances of the ambient air quality standards for particulate matter. The amendment excludes powder coatings from the definition of “sprayed material” for purposes of the permit by rule.

Item 6 amends rule 567—22.100(455B) to update the definition of “EPA reference method” for the Title V operating permit (Title V) program to adopt the most current federal reference methods for stack tests and continuous emissions monitoring in the same manner as described above for Item 1. This amendment implements a portion of the Department’s five-year review of rules plan by ensuring that the state rules for the Title V program, specifically the test methods, are consistent with federal requirements and are no more stringent than federal requirements.

Item 7 amends subparagraph 22.103(2)“b”(6) to revise the criteria for an emergency engine rated at less than 400 horsepower to be considered an insignificant activity for the Title V program. The proposed amendment clarifies that engines subject to federal new source performance standards (NSPS) or national emission standards for hazardous air pollutants (NESHAP) are not considered insignificant activities for purposes of the Title V program because the federal standards impose applicable requirements for emergency engines.

Item 8 updates the provisions for Title V emissions inventories in subrule 22.106(2) to eliminate the requirement to submit specific forms for the inventory and to state instead that the emissions inventory shall be submitted on forms specified by the Department. The amendment provides needed flexibility for the Department to streamline the emissions inventory forms and submittal methods.

Item 9 amends subrule 22.107(6) to update the public notice requirements for the Title V program to reflect changes to federal regulations that EPA finalized on October 18, 2016. Previously, EPA required that public notice be given by publication in a newspaper of general circulation where the source being permitted is located or in a state publication. EPA revised the public notice provisions to allow for posting of the public comment period on a website identified by the permitting authority (the Department). EPA’s revisions also require that permitting authorities be consistent in the method of providing public notice, although other means to provide adequate notice may be used if necessary. To reflect EPA’s changes, this amendment specifies that the Department will provide public notice by posting on a public website identified by the Department, while using other means if necessary to ensure adequate notice to the affected public.

Item 10 amends rule 567—22.120(455B) to update the test methods specified in 40 CFR Part 74 for the Acid Rain Program in the same manner as described above for Item 1.

Items 11, 12, 13 and 14 affect new source performance standards, hazardous air pollutant standards, and emission standards for existing sources. The U.S. Clean Air Act (CAA) obligates the EPA to issue standards to control air pollution. Two categories of standards, the NSPS and NESHAP, set standards and deadlines for industrial, commercial or institutional facilities to meet uniform standards for equipment operation and air pollutant emissions.

NESHAP regulations differ depending on whether a facility is a “major source” or an “area source.” Major sources are typically larger facilities and have potential emissions of 10 tons or more per year of any single hazardous air pollutant (also known as “HAP” or “air toxics”) or 25 tons or more of any combination of HAPs. Area sources have potential air toxics emissions at less than the major source thresholds. Although area sources generally emit less air toxics than major sources, area sources are more numerous and may collectively cause adverse impacts to public health.

Because the NSPS and NESHAP proposed for adoption by reference are federal regulations, affected sources are subject to the federal requirements regardless of whether the Commission adopts the standards into state rules. However, the CAA allows a state or local agency to implement NSPS and

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NESHAP as a “delegated authority.” Upon state adoption of the standards, the Department becomes the delegated authority for the specific NSPS or NESHAP and is the primary implementation agency in Iowa. Two local agencies, Polk County and Linn County, implement these standards within their counties. Iowa’s rules, including all compliance deadlines, are identical to the federal NSPS and NESHAP as of a specific date. With implementation authority, the state and local agencies have the ability to make applicability determinations for facilities, rather than referring these decisions to EPA.

Emission standards for existing sources (known as Emission Guidelines) are similar to NSPS, but direct states to set emission standards by certain deadlines for specific existing sources. EPA’s Emission Guidelines provide “model rules” that states may adopt by reference in setting the requirements for existing sources. EPA requires states to establish Emission Guidelines that are at least as rigorous as EPA’s model rules. As it does with NSPS and NESHAP, the Commission adopts Emission Guidelines by reference so that the requirements are no more or less stringent than federal requirements. If the Commission does not adopt the Emission Guidelines, EPA will impose a federal plan with emission standards for affected facilities. Because EPA may set standards with compliance deadlines that are earlier than those allowed under state plans, it is generally advantageous for the state to adopt these guidelines.

Stakeholders affected by NSPS, NESHAP and Emission Guidelines typically prefer for the Department, rather than the EPA, to be the primary implementation authority in Iowa. Upon adoption of the new and amended standards, the Department will work with affected facilities to provide compliance assistance, as needed. Additionally, affected area sources that are small businesses are eligible for free assistance from the small business assistance technical program.

Item 11 amends subrule 23.1(2) to adopt new and revised NSPS, as described below.

The text in parentheses in each section heading below indicates the applicable subpart(s) in 40 CFR Part 60 and the corresponding paragraph(s) in subrule 23.1(2).

Municipal Solid Waste Landfills (Subpart WWW; paragraph 23.1(2)“rrr”)

The Commission is proposing to revise the NSPS for municipal solid waste (MSW) landfills to make clear that, because of current litigation filed in the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit), Iowa is not adopting the recent federal amendments published in the Federal Register on August 29, 2016. Consequently, the proposed revision will specify the publication date for the federal NSPS that is currently adopted into the Iowa Administrative Code in 23.1(2)“rrr” for MSW landfills. (See also Item 14.)

Commercial and Industrial Solid Waste Incineration (Subpart CCCC; paragraph 23.1(2)“vvv”)

The Commission is proposing to adopt by reference several amendments that EPA made over a five-year period to the NSPS for commercial and industrial solid waste incinerators (CISWI). The Commission is now proposing adoption of these federal amendments because EPA’s reconsiderations and the litigation of the amendments have recently been resolved. The updated NSPS requirements affect CISWI that commenced construction after June 4, 2010, or CISWI that commenced modification or reconstruction after August 7, 2013. Incinerators constructed, reconstructed or modified prior to the dates EPA specified in Subpart CCCC are covered under the Emission Guidelines in Subpart DDDD. (See Item 14.)

Background: On March 21, 2011, EPA issued revisions to Subparts CCCC and DDDD to control emissions of mercury, dioxin/furans, lead, cadmium, particulate matter, and other pollutants from CISWI units. EPA’s revisions specify that commercial or industrial incinerators or boilers that burn solid waste are subject to the NSPS and Emission Guidelines for CISWI.

On February 7, 2013, EPA further revised the CISWI regulations in conjunction with amending the solid waste regulations for nonhazardous secondary materials. EPA’s updates in 2013 provided revised criteria for determining whether materials must be classified as fuel or as solid waste. EPA also streamlined the process for petitioning for classification of materials as fuel (for materials not already designated as fuel in the standard).

On May 15, 2014, the D.C. Circuit granted EPA’s request for a partial voluntary remand of the NSPS so that EPA could justify the statistical analyses used in setting the standards. EPA then granted reconsideration on January 21, 2015, of several aspects of the 2013 final amendments.

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On June 23, 2016, EPA issued final amendments to the CISWI NSPS and Emission Guidelines to address the remaining reconsideration issues. The recent amendments address four issues:

1. Revision of the definition of “CEMS data during startup and shutdown periods”: EPA revised the definition to be specific to each subcategory of affected units, including boilers, cement kilns and small remote incinerators, and to be consistent with requirements for similar units that are covered under other NSPS or NESHAP.

2. Particulate matter limit for the waste-burning kiln subcategory: EPA revised the emission limits to be based on the average of the stack testing results, rather than the previously used individual test results, which resulted in lower emission standards for both new and existing waste-burning kilns.

3. Fuel variability factor (FVF) for coal-burning energy recovery units: EPA incorporated a fuel variability factor to determine the emission limits for several pollutants.

4. Definition of “kiln”: EPA revised the definition of “kiln” to be consistent with the definition in the NESHAP for Portland cement manufacturing. The revisions include changes to compliance demonstrations and monitoring requirements to be consistent with those in the Portland cement manufacturing NESHAP.

The final federal amendments, published on June 23, 2016, are not subject to further petitions for reconsideration or judicial review. Consequently, the Commission is proposing to adopt by reference the federal amendments to the CISWI NSPS, as finalized and currently in effect, that occurred from March 21, 2011, through June 23, 2016. (See Item 14 for the proposed adoption of the CISWI Emission Guidelines.)

Affected facilities: The Department is aware of one facility that is considered “new” under the NSPS and subject to the NSPS requirements. Under the NSPS, compliance is required upon start-up of the CISWI unit. Existing facilities may potentially be affected by the amended NSPS, should they undergo reconstruction or modification and continue to combust solid waste.

Stationary Compression Ignition Internal Combustion Engines (Subpart IIII, paragraph 23.1(2)“yyy”)

On July 7, 2016, EPA finalized amendments to the NSPS to allow manufacturers to design engines so that operators can override performance inducements related to the emission control system for stationary compression ignition internal combustion engines. The amendments apply only to engines operating during emergencies in which the operation of the engine or equipment is needed to protect human life. The amendments also require that the engine comply with federal Tier 1 emission standards during such emergencies. These federal amendments are adopted by reference through revision of the adoption date specified in the introductory paragraph of subrule 23.1(2).

Test Methods (Amendments throughout Part 60)

The amendment in Item 11 also adopts the changes EPA made to the NSPS test methods, as explained in the description above for Item 1. The federal amendments are adopted by reference through revision of the adoption date specified in the introductory paragraph of subrule 23.1(2).

Item 12 amends subrule 23.1(3) to adopt revisions to the NESHAP standards in 40 CFR Part 61 for EPA’s updates to test methods, as explained above for Item 1. The federal amendments are adopted by reference through revision of the adoption date specified in the introductory paragraph of subrule 23.1(3).

Item 13 amends subrule 23.1(4) to adopt, and in one case, to rescind adoption of, federal amendments to the NESHAP for source categories, as described below.

The text in parentheses in each section heading below indicates the applicable subpart(s) in 40 CFR Part 63 and the corresponding paragraph(s) in subrule 23.1(4).

Ferroalloys Production (Subpart XXX; paragraph 23.1(4)“bx”) - Rescission

This NESHAP applies to new and existing major sources of ferroalloys production of ferromanganese and silicomanganese. Iowa has no facilities affected by this NESHAP and is unlikely to have any affected facilities in the future. The Commission is therefore proposing to rescind adoption of this NESHAP.

The rescission will accomplish the Department’s goal of eliminating unnecessary rules and will implement a portion of the Department’s five-year review of rules plan to meet the requirements of Iowa Code section 17A.7(2). Removing unnecessary provisions makes the rules more accessible and

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understandable for regulated entities and for the public. If an affected facility should plan to locate to Iowa in the future, the Department will evaluate at that time whether to request adoption of the standard.

Industrial, Commercial and Institutional Boilers at Area Sources (Subpart JJJJJ; paragraph 23.1(4)“ej”)

The Commission is proposing to adopt by reference the original NESHAP and subsequent amendments that EPA finalized over a five-year period that affect new and existing industrial, commercial and institutional (ICI) boilers located at area sources. The Commission is now proposing adoption of these federal amendments because EPA’s reconsiderations and the litigation of the amendments have recently been resolved.

Background: EPA published the NESHAP for ICI boilers at area sources on March 21, 2011, and subsequently revised the NESHAP on February 1, 2013, and on September 14, 2016. The NESHAP, also known as the Area Source Boiler Rule, exempts from this rule all boilers meeting the definition of natural gas-fired boilers, temporary boilers, and residential boilers. Additionally, new and existing boilers burning solid or liquid fuels that are very small, have limited or seasonal use, or burn only ultra-low-sulfur liquid fuel or burn primarily biomass, are not subject to emission limits and have only work practice standards, such as a one-time energy assessment and a one-time or periodic tune up (every five years). Other new and existing boilers burning coal, biomass or liquid fuels may need to meet numeric emission limits for some air toxics and have required testing or monitoring, depending on the type of boiler and specific fuel burned. Additionally, EPA’s revised standards provide alternative compliance methods and more flexible monitoring for some boilers.

Prior to issuing the final amendments in September 2016, EPA requested a voluntary remand (without vacatur) of some provisions of the Area Source Boiler Rule. On July 26, 2016, the D.C. Circuit granted EPA’s request and issued a remand without vacatur. The remand requires that EPA provide data to justify certain decisions that resulted in some requirements in the final federal regulations.

Affected facilities and compliance dates: Based on required initial notifications submitted to the Department, the Department estimates that 13 facilities in Iowa have boilers affected by the Area Source Boiler Rule. All of these facilities are required to comply only with work practice standards (rather than emission limits) by the NESHAP compliance date of March 21, 2014, or upon start-up of the affected boiler, whichever date occurs later. At this time, the Department is not aware of any new or existing boilers subject to emission limits and associated monitoring specified in the NESHAP.

Justification for proceeding with adoption despite the current remand: None of the provisions in the final rules are stayed or delayed. Further, although the remand may impact emission standards and monitoring requirements in the NESHAP, none of the facilities in Iowa currently subject to the NESHAP are affected by emissions limits or monitoring requirements. Lastly, the compliance date for affected existing facilities to comply with work practice standards was March 21, 2014, so facilities have already been required to apply with the NESHAP for over three years.

Upon adoption of the Area Source Boiler Rule, the Department will work with affected facilities to provide compliance assistance as needed. Additionally, affected area sources that are small businesses are eligible for free assistance from the small business technical assistance program.

Test Methods (Amendments throughout Part 63)

The amendment to subrule 23.1(4) also adopts the changes EPA made to the NESHAP test methods, as explained in the description above for Item 1. The federal amendments are adopted by reference through revision of the adoption date specified in the introductory paragraph of the subrule.

Item 14 amends subrule 23.1(5) to revise adoption of the federal Emission Guidelines. As explained in more detail above, EPA’s Emission Guidelines are set forth in 40 CFR Part 60 and direct states to set emission standards by certain deadlines for specific existing sources. EPA’s Emission Guidelines provide “model rules” that states may adopt by reference in setting the requirements for existing sources. As with the NSPS and NESHAP, the Commission proposes to adopt EPA’s Emission Guidelines by reference so that the requirements are no more or less stringent than federal requirements.

Municipal Solid Waste Landfills (Subparts Cc and WWW; paragraph 23.1(5)“a”)

As with the proposed amendment to the NSPS for MSW landfills as described in Item 11, the Commission is proposing to revise the Emission Guidelines for existing MSW landfills to make clear

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that Iowa is not adopting the recent federal amendments published in the Federal Register on August 29, 2016. As with the NSPS, the recent amendments to the Emission Guidelines for existing MSW landfills are being litigated in the D.C. Circuit. Consequently, the proposed amendment will specify the publication date for the federal Emission Guidelines that are currently adopted into the Iowa Administrative Code in 23.1(5)“a” for existing MSW landfills.

Commercial and Industrial Solid Waste Incineration Units (CISWI) (Subpart DDDD; paragraph 23.1(5)“c”)

Similar to its proposed adoption of amendments in Item 11 as described above, the Commission is proposing to adopt by reference several amendments that EPA made over a five-year period to the Emission Guidelines for existing CISWI. Concurrently with publishing the final amendments for the NSPS described in Item 11, EPA published similar amendments to the Emission Guidelines. As noted for adoption of the NSPS, the Commission is now proposing adoption of these amendments because EPA’s reconsiderations and the litigation of the amended Emission Guidelines were recently resolved. The updated Emission Guidelines affect existing CISWI that commenced construction after November 30, 1999, but no later than June 4, 2010, or that commenced reconstruction or modification on or after June 1, 2001, but no later than August 7, 2013.

Background: The chronology, final amendments, court actions, and rule requirements for the federal Emission Guidelines for CISWI (Subpart DDDD) are the same as those described above in Item 11 for the NSPS (Subpart CCCC), with the exception of the applicability dates for affected units and the compliance deadlines. The applicability dates denoting “existing units” are described at the end of the preceding paragraph. The compliance deadline for existing CISWI under the Emission Guidelines, if adopted into the Iowa Administrative Code, is February 7, 2018.

The final federal amendments to Subpart DDDD published on June 23, 2016, are not subject to further petitions for reconsideration or judicial review. Consequently, the Commission is proposing to adopt by reference the federal amendments to the Emission Guidelines for CISWI, as finalized and currently in effect, that occurred from March 21, 2011, through June 23, 2016. If the Commission does not adopt the Emission Guidelines for CISWI, EPA will impose a Federal Plan and affected CISWI will still be required to comply with the same requirements specified in the Emission Guidelines by February 7, 2018, as implemented and enforced by EPA.

Affected facilities: The Department is currently aware of nine facilities that are subject or potentially subject to the Emission Guidelines. However, only one facility has definitively indicated that it will continue to combust solid waste after February 7, 2018. The other facilities either have idled the affected units, are considering ceasing the burning of solid waste, or may permanently decommission the affected units.

Test Methods (Amendments throughout Part 60)

The amendment in Item 14 adopts the changes EPA made to the Part 60 test methods, as explained in the description above for Item 1, which are applicable to the Emission Guidelines adopted in subrule 23.1(5). The federal amendments are adopted by reference through revision of the adoption date specified in the introductory paragraph of subrule 23.1(5).

Item 15 amends subrule 25.1(9) to adopt the revised federal methods for emissions testing and monitoring, as described above for Item 1. The updates will make certain that only current federal test methods are used to demonstrate compliance with permit conditions and that required test methods are no more stringent than federal methods.

Item 16 amends rule 567—25.2(455B) to adopt federal updates for monitoring methods under the Acid Rain Program, as noted above for Item 1. This update ensures that state air quality rules for testing and monitoring are consistent and match federal regulations.

Item 17 amends paragraph 30.4(2)“b” to update the provisions for Title V emissions fees and documentation to eliminate the requirement that specific forms be submitted with the fees and to instead state that the fees shall be submitted on forms specified by the Department. The revision is consistent with the changes proposed in Item 8 for submitting emissions inventory forms and provides needed flexibility for the Department to streamline the fee and form submittal methods.

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Item 18 amends the introductory paragraph of rule 567—33.1(455B) to reflect recent changes that EPA made to the federal requirements for the PSD program. The specific changes are set forth in Items 19, 20 and 21.

Item 19 amends subrule 33.3(1) to update the definition of “volatile organic compounds” in the same manner as describe above for Item 1.

Item 20 amends subrule 33.3(17) to revise the public participation requirements for the PSD program. The changes reflect updates to federal regulations that EPA finalized on October 18, 2016, to allow for posting of the public comment period on a website identified by the permitting authority (the Department). EPA’s revisions also require that permitting authorities be consistent in the method of providing public notice, although other means to provide adequate notice may be used if necessary. To reflect EPA’s changes, this amendment specifies that the Department will provide public notice by posting on a public website identified by the Department, while using other means if necessary to ensure adequate notice to the affected public.

Item 21 amends subrule 33.3(22) to allow for rescission of PSD permits to match changes that EPA made on October 18, 2016, to the public notice requirements in 40 CFR 52.21 as explained above in the description of Item 20.

Item 22 rescinds rules 567—34.200(455B) to 567—34.229(455B), which include Table 1A, Table 1B, Table 2A and Table 2B, to reflect EPA’s rescission of the Clean Air Interstate Rule (CAIR). EPA replaced the federal CAIR regulations that were adopted by reference in Chapter 34 with the Cross States Air Pollution Rule (CSAPR) promulgated in 40 CFR 52.38 through 52.39 and 40 CFR Part 97. (The rescission of the CAIR provisions is explained in 40 CFR 51.123(ff) and 51.124(s).) Because CSAPR is primarily implemented by EPA, CSAPR in Iowa will be implemented through a federal implementation plan (FIP) rather than through a state-developed SIP.

Anyone may make written suggestions or comments on the proposed amendments no later than 4:30 p.m. on January 22, 2018. Written comments should be directed to Christine Paulson, Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319; fax (515)725-9501; or by email to Christine.Paulson@dnr.iowa.gov.

The Department will hold a public hearing on Monday, January 22, 2018, at 1 p.m. at the Department’s offices located at the Wallace State Office Building at 502 East 9th Street, Des Moines, Iowa. (Upon arrival to the Wallace Building, attendees should proceed to the fourth floor to check in at the DNR reception desk to receive a visitor’s badge and be directed to the hearing location.)

Any person who intends to attend the public hearing and has special requirements, such as those related to hearing or mobility impairments, should contact Christine Paulson at (515)725-9510 or by email at Christine.Paulson@dnr.iowa.gov to advise of specific needs.

Jobs Impact Statement

The following is a summary of the jobs impact statement. The complete jobs impact statement is available from the Department upon request.

After analysis and review of this rule making, the Commission has determined that the amendments specified in Items 1 through 10 and 15 through 22 will have either a positive or neutral impact on private sector jobs. These amendments rescind unnecessary rules, update other rules, and streamline the rules to provide regulatory certainty and, in some cases, regulatory relief. These amendments also implement a portion of the Department’s five-year review of rules plan as required under Iowa Code section 17A.7(2). Additionally, most of these amendments make changes that match federal regulations and eliminate inconsistencies between federal regulations and state rules. By adopting federal updates into state rules, the Commission is ensuring that Iowa’s air quality rules are no more stringent than federal regulations.

For the amendments specified in Items 11, 12, 13 and 14, the Commission has determined that there may be fiscal impacts to Iowa businesses. However, the amendments are only implementing federally mandated regulations. The amendments are identical to the federal regulations and would not impose any regulations on Iowa businesses not already required by federal law. In some cases, the revised federal standards being adopted provide more flexibility and potential cost savings for affected businesses, offering a positive impact on private sector jobs. Further, the amendments allow

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the Department, rather than EPA, to be the primary agency to implement the standards in Iowa, thereby allowing the Department to provide compliance assistance to affected facilities.

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

The following amendments are proposed.

ITEM 1. Amend rule **567—20.2(455B)**, definitions of “EPA reference method” and “Volatile organic compounds,” as follows:

“EPA reference method” means the following methods used for performance tests and continuous monitoring systems:

1. Performance test (stack test). A stack test shall be conducted according to EPA reference methods specified in 40 CFR 51, Appendix M (as amended through ~~April 2, 2014~~ August 30, 2016); 40 CFR 60, Appendix A (as amended through ~~February 27, 2014~~ August 30, 2016); 40 CFR 61, Appendix B (as amended through ~~February 27, 2014~~ August 30, 2016); and 40 CFR 63, Appendix A (as amended through ~~February 27, 2014~~ August 30, 2016).

2. Continuous monitoring systems. Minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are as specified in 40 CFR 60, Appendix B (as amended through ~~February 27, 2014~~ August 30, 2016); 40 CFR 60, Appendix F (as amended through ~~February 27, 2014~~ August 30, 2016); 40 CFR 75, Appendix A (as amended through ~~January 18, 2012~~ August 30, 2016); 40 CFR 75, Appendix B (as amended through ~~March 28, 2011~~ August 30, 2016); and 40 CFR 75, Appendix F (as amended through ~~January 18, 2012~~ August 30, 2016).

“Volatile organic compounds” or “VOC” means any compound included in the definition of “volatile organic compounds” found at 40 CFR Section 51.100(s) as amended through ~~March 27, 2014~~ August 1, 2016.

ITEM 2. Amend paragraph **22.1(2)“i,”** introductory paragraph, as follows:

i. Initiation of construction, installation, reconstruction, or alteration (modification) to equipment (as defined in rule 567—20.2(455B)) on or before October 23, 2013, which will not result in a net emissions increase (as defined in ~~paragraph 22.5(1)“f”~~ 567—subrule 31.3(1)) of more than 1.0 lb/hr of any regulated air pollutant (as defined in rule 567—22.100(455B)). Emission reduction achieved through the installation of control equipment, for which a construction permit has not been obtained, does not establish a limit to potential emissions.

ITEM 3. Amend paragraph **22.1(2)“r”** as follows:

r. An internal combustion engine with a brake horsepower rating of less than 400 measured at the shaft, provided that the owner or operator meets all of the conditions in this paragraph. For the purposes of this exemption, the manufacturer’s nameplate rated capacity at full load shall be defined as the brake horsepower output at the shaft. The owner or operator of an engine that was manufactured, ordered, modified or reconstructed after March 18, 2009, may use this exemption only if the owner or operator, prior to installing, modifying or reconstructing the engine, submits to the department a completed registration, on forms provided by the department (unless the engine is exempted from registration, as specified in this paragraph or on the registration form), certifying that the engine is in compliance with the following federal regulations:

(1) New source performance standards (NSPS) for stationary compression ignition internal combustion engines (40 CFR Part 60, Subpart IIII); or

(2) New source performance standards (NSPS) for stationary spark ignition internal combustion engines (40 CFR Part 60, Subpart JJJJ); and

(3) National emission standards for hazardous air pollutants (NESHAP) for reciprocating internal combustion engines (40 CFR Part 63, Subpart ZZZZ).

Use of this exemption does not relieve an owner or operator from any obligation to comply with NSPS or NESHAP requirements. An engine that meets the definition of a nonroad engine as specified in 40 CFR 1068.30 is exempt from the registration requirements of this paragraph (22.1(2)“r”).

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ITEM 4. Amend subparagraph **22.1(2)“w”(1)** as follows:

(1) “Small unit” means any emission unit and associated control (if applicable) that emits less than the following:

1. 2 pounds per year of lead and lead compounds expressed as lead (40 pounds per year of lead or lead compounds for equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013);
2. 5 tons per year of sulfur dioxide;
3. 5 tons per year of nitrogen oxides;
4. 5 tons per year of volatile organic compounds;
5. 5 tons per year of carbon monoxide;
6. 5 tons per year of particulate matter (particulate matter as defined in 40 CFR Part 51.100(pp));
7. 2.5 tons per year of PM₁₀;
8. 0.52 tons per year of PM_{2.5} (does not apply to equipment for which ~~initiation~~ initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013); ~~or and~~
9. 5 tons per year of hazardous air pollutants (as defined in rule 567—22.100(455B)).

For the purposes of this exemption, “emission unit” means any part or activity of a stationary source that emits or has the potential to emit any pollutant subject to regulation under the Act. This exemption applies to existing and new or modified “small units.”

An emission unit that emits hazardous air pollutants (as defined in rule 567—22.100(455B)) is not eligible for this exemption if the emission unit is required to be reviewed for compliance with 567—subrule 23.1(3), emission standards for hazardous air pollutants (40 CFR 61, NESHAP), or 567—subrule 23.1(4), emission standards for hazardous air pollutants for source categories (40 CFR 63, NESHAP).

An emission unit that emits air pollutants that are not regulated air pollutants as defined in rule 567—22.100(455B) shall not be eligible to use this exemption.

ITEM 5. Amend paragraph **22.8(1)“a”** as follows:

a. Definition. “Sprayed material” is material ~~sprayed from~~ applied by spray equipment when used in ~~the a~~ surface coating process in ~~the a~~ spray booth, including but not limited to paint, solvents, and mixtures of paint and solvents. Powder coatings applied in an indoor-vented spray booth equipped with filters or overspray powder recovery systems are not considered sprayed material for purposes of this rule (567—22.8(455B)).

ITEM 6. Amend rule **567—22.100(455B)**, definition of “EPA reference method,” as follows:

“EPA reference method” means the following methods used for performance tests and continuous monitoring systems:

1. Performance test (stack test). A stack test shall be conducted according to EPA reference methods specified in 40 CFR 51, Appendix M (as amended through ~~April 2, 2014~~ August 30, 2016); 40 CFR 60, Appendix A (as amended through ~~February 27, 2014~~ August 30, 2016); 40 CFR 61, Appendix B (as amended through ~~February 27, 2014~~ August 30, 2016); and 40 CFR 63, Appendix A (as amended through ~~February 27, 2014~~ August 30, 2016).

2. Continuous monitoring systems. Minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are as specified in 40 CFR 60, Appendix B (as amended through ~~February 27, 2014~~ August 30, 2016); 40 CFR 60, Appendix F (as amended through ~~February 27, 2014~~ August 30, 2016); 40 CFR 75, Appendix A (as amended through ~~January 18, 2012~~ August 30, 2016); 40 CFR 75, Appendix B (as amended through ~~March 28, 2011~~ August 30, 2016); and 40 CFR 75, Appendix F (as amended through ~~January 18, 2012~~ August 30, 2016).

ITEM 7. Amend subparagraph **22.103(2)“b”(6)** as follows:

(6) Internal combustion engines that are used for emergency response purposes with a brake horsepower rating of less than 400 measured at the shaft. The manufacturer’s nameplate rating at full load shall be defined as the brake horsepower output at the shaft. Emergency engines that are subject

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to any of the following federal regulations are not considered to be insignificant activities for purposes of this rule (567—22.103(455B)):

1. New source performance standards (NSPS) for stationary compression ignition internal combustion engines (40 CFR Part 60, Subpart IIII);
2. New source performance standards (NSPS) for stationary spark ignition internal combustion engines (40 CFR Part 50, Subpart JJJJ); or
3. National emission standards for hazardous air pollutants (NESHAP) for reciprocating internal combustion engines (40 CFR Part 63, Subpart ZZZZ).

ITEM 8. Amend subrule 22.106(2) as follows:

22.106(2) *Emissions inventory and documentation due dates.* The emissions inventory shall be submitted with forms specified by the department. For emissions located in Polk County or Linn County, three copies of the ~~following~~ forms documenting actual emissions for the previous calendar year shall be submitted annually by March 31 ~~documenting actual emissions for the previous calendar year.~~ For emissions in all other counties, two copies of the ~~following~~ forms documenting actual emissions for the previous calendar year shall be submitted annually by March 31, ~~documenting actual emissions for the previous calendar year.~~

- ~~a. Form 1.0, "Facility Identification";~~
- ~~b. Form 4.0, "Emission Unit—Actual Operations and Emissions" for each emission unit;~~
- ~~c. Form 5.0, "Title V Annual Emissions Summary/Fee"; and~~
- ~~d. Part 3, "Application Certification."~~

Alternatively, an owner or operator may submit the required emissions inventory information through the electronic submittal format specified by the department.

If there are any changes to the emission calculation form, the department shall make revised forms available to the public by January 1. If revised forms are not available by January 1, forms from the previous year may be used and the year of emissions documented changed. The department shall calculate the total statewide Title V emissions for the prior calendar year and make this information available to the public no later than April 30 of each year.

ITEM 9. Amend subrule 22.107(6) as follows:

22.107(6) *Public notice and public participation.*

a. The permitting authority shall provide public notice and an opportunity for public comments, including an opportunity for a hearing, before taking any of the following actions: issuance, denial or renewal of a permit; or significant modification or revocation or reissuance of a permit.

b. Notice shall be given by ~~publication in a newspaper of general circulation in the area where the source is located or in a state publication~~ posting of the notice, including the draft permit, for the duration of the public comment period on a public website identified by the permitting authority and designed to give general public notice. Notice also shall be given to persons on a mailing list developed by the permitting authority, including those who request in writing to be on the list. The department may use other means if necessary to ensure adequate notice to the affected public.

c. to g. No change.

ITEM 10. Amend rule **567—22.120(455B)**, definition of "40 CFR Part 75," as follows:

"40 CFR Part 75," or any cited provision therein, shall mean 40 Code of Federal Regulations Part 75, or the cited provision therein, as amended through ~~January 18, 2012~~ August 30, 2016.

ITEM 11. Amend subrule 23.1(2) as follows:

23.1(2) *New source performance standards.* The federal standards of performance for new stationary sources, as defined in 40 Code of Federal Regulations Part 60 as amended or corrected through ~~September 11, 2015~~ September 14, 2016, are adopted by reference, except § 60.530 through § 60.539b (Part 60, Subpart AAA), and shall apply to the following affected facilities. The corresponding 40 CFR Part 60 subpart designation is in parentheses. An earlier date for adoption by reference may be included with the subpart designation in parentheses. Reference test methods (Appendix A), performance specifications (Appendix B), determination of emission rate change (Appendix C), quality

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assurance procedures (Appendix F) and the general provisions (Subpart A) of 40 CFR Part 60 also apply to the affected facilities.

a. to qqq. No change.

rrr. Municipal solid waste landfills, as defined by 40 CFR 60.751. Each municipal solid waste landfill that commenced construction, reconstruction or modification or began accepting waste on or after May 30, 1991, must comply. (Subpart WWW as amended through April 10, 2000)

sss. to uuu. No change.

vvv. Commercial and industrial solid waste incineration. Unless exempted, this standard applies to ~~units for which construction is commenced after November 30, 1999, or for which modification or reconstruction is commenced on or after June 1, 2001~~ sources that began construction on or after June 4, 2010, or commenced reconstruction or modification after August 7, 2013. (Part 60, Subpart CCC; ~~as amended through December 1, 2000~~)

www. to bbbb. No change.

ITEM 12. Amend subrule 23.1(3), introductory paragraph, as follows:

23.1(3) Emission standards for hazardous air pollutants. The federal standards for emissions of hazardous air pollutants, 40 Code of Federal Regulations Part 61 as amended or corrected through ~~February 27, 2014~~ August 30, 2016, and 40 CFR Part 503 as adopted on August 4, 1999, are adopted by reference, except 40 CFR §61.20 to §61.26, §61.90 to §61.97, §61.100 to §61.108, §61.120 to §61.127, §61.190 to §61.193, §61.200 to §61.205, §61.220 to §61.225, and §61.250 to §61.256, and shall apply to the following affected pollutants and facilities and activities listed below. The corresponding 40 CFR Part 61 subpart designation is in parentheses. Reference test methods (Appendix B), compliance status information requirements (Appendix A), quality assurance procedures (Appendix C) and the general provisions (Subpart A) of Part 61 also apply to the affected activities or facilities.

ITEM 13. Amend subrule 23.1(4) as follows:

23.1(4) Emission standards for hazardous air pollutants for source categories. The federal standards for emissions of hazardous air pollutants for source categories, 40 Code of Federal Regulations Part 63 as amended or corrected through ~~July 25, 2016~~ September 14, 2016, are adopted by reference, except those provisions which cannot be delegated to the states. The corresponding 40 CFR Part 63 subpart designation is in parentheses. An earlier date for adoption by reference may be included with the subpart designation in parentheses. 40 CFR Part 63, Subpart B, incorporates the requirements of Clean Air Act Sections 112(g) and 112(j) and does not adopt standards for a specific affected facility. Test methods (Appendix A), sources defined for early reduction provisions (Appendix B), and determination of the fraction biodegraded (F_{bio}) in the biological treatment unit (Appendix C) of Part 63 also apply to the affected activities or facilities. For the purposes of this subrule, “hazardous air pollutant” has the same meaning found in 567—22.100(455B). For the purposes of this subrule, a “major source” means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless a lesser quantity is established, or in the case of radionuclides, where different criteria are employed. For the purposes of this subrule, an “area source” means any stationary source of hazardous air pollutants that is not a “major source” as defined in this subrule. Paragraph 23.1(4) “a,” general provisions (Subpart A) of Part 63, shall apply to owners or operators who are subject to subsequent subparts of 40 CFR Part 63 (except when otherwise specified in a particular subpart or in a relevant standard) as adopted by reference below.

a. to bw. No change.

~~*bx. Emission standards for hazardous air pollutants for ferroalloys production: ferromanganese and silicomanganese.* These standards apply to all new and existing major sources of ferroalloys production of ferromanganese and silicomanganese. Affected processes include, but are not limited to, submerged arc furnaces, metal oxygen refining (MOR) processes, crushing and screening operations, and fugitive dust sources. (Subpart XXX) Reserved.~~

by. to ei. No change.

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ej. Emission standards for hazardous air pollutants for area sources: industrial, commercial, and institutional boilers. This standard applies to new and existing industrial, commercial and institutional boilers that are area sources for hazardous air pollutant emissions. (Part 63, Subpart JJJJJ)

ek. to fd. No change.

ITEM 14. Amend subrule 23.1(5) as follows:

23.1(5) Emission guidelines. The emission guidelines and compliance times for existing sources, as defined in 40 Code of Federal Regulations Part 60 as amended through ~~June 9, 2006,~~ June 23, 2016, shall apply to the following affected facilities. The corresponding 40 CFR Part 60 subpart designation is in parentheses. An earlier date for adoption by reference may be included with the subpart designation in parentheses. The control of the designated pollutants will be in accordance with federal standards established in Sections 111 and 129 of the Act and 40 CFR Part 60, Subpart B (Adoption and Submittal of State Plans for Designated Facilities), and the applicable subpart(s) for the existing source. Reference test methods (Appendix A), performance specifications (Appendix B), determination of emission rate change (Appendix C), quality assurance procedures (Appendix F) and the general provisions (Subpart A) of 40 CFR Part 60 also apply to the affected facilities.

a. Emission guidelines for municipal solid waste landfills (Subpart Cc). Emission guidelines and compliance times for the control of certain designated pollutants from designated municipal solid waste landfills shall be in accordance with federal standards established in Subparts Cc (Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills) and WWW (Standards of Performance for Municipal Solid Waste Landfills) of 40 CFR Part 60 as amended through April 10, 2000.

(1) to (6) No change.

b. No change.

c. Emission guidelines and compliance schedules for existing commercial and industrial solid waste incineration units ~~that commenced construction on or before November 30, 1999.~~ Emission guidelines and compliance schedules for the control of designated pollutants from affected commercial and industrial solid waste incinerators that commenced construction ~~on or before~~ after November 30, 1999, but no later than June 4, 2010, or that commenced reconstruction or modification after June 1, 2001, but no later than August 7, 2013, shall be in accordance with ~~federal plan~~ requirements established in ~~Subpart III of 40 CFR Part 62~~ 40 CFR Part 60, Subpart DDDD, and shall comply with all such requirements no later than February 7, 2018.

d. No change.

ITEM 15. Amend subrule 25.1(9) as follows:

25.1(9) Methods and procedures. Stack sampling and associated analytical methods used to evaluate compliance with emission limitations of 567—Chapter 23 or a permit condition are as follows:

a. Performance test (stack test). A stack test shall be conducted according to EPA reference methods as specified in 40 CFR 51, Appendix M (as amended through ~~April 2, 2014~~ August 30, 2016); 40 CFR 60, Appendix A (as amended through ~~February 27, 2014~~ August 30, 2016); 40 CFR 61, Appendix B (as amended through ~~February 27, 2014~~ August 30, 2016); and 40 CFR 63, Appendix A (as amended through ~~February 27, 2014~~ August 30, 2016). The owner of the equipment or the owner's authorized agent may use an alternative methodology if the methodology is approved by the department in writing before testing. Each test shall consist of at least three separate test runs. Unless otherwise specified by the department, compliance shall be assessed on the basis of the arithmetic mean of the emissions measured in the three test runs.

b. Continuous monitoring systems. Minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are as specified in 40 CFR 60, Appendix B (as amended through ~~February 27, 2014~~ August 30, 2016); 40 CFR 60, Appendix F (as amended through ~~February 27, 2014~~ August 30, 2016); 40 CFR 75, Appendix A (as amended through ~~January 18, 2012~~ August 30, 2016); 40 CFR 75, Appendix B (as amended through ~~March 28, 2011~~ August 30, 2016); and 40 CFR 75, Appendix F (as amended through ~~January 18, 2012~~ August 30, 2016). The owner of the equipment or the owner's authorized agent may use an alternative methodology for

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continuous monitoring systems if the methodology is approved by the department in writing before the minimum performance specification and quality assurance procedure is conducted.

c. No change.

ITEM 16. Amend rule 567—25.2(455B) as follows:

567—25.2(455B) Continuous emission monitoring under the acid rain program. The continuous emission monitoring requirements for affected units under the acid rain program as provided in 40 CFR Part 75, including Appendices A, B, F and K as amended through ~~January 18, 2012~~ August 30, 2016, are adopted by reference.

ITEM 17. Amend paragraph **30.4(2)“b”** as follows:

b. *Fee and documentation due dates.* The fee shall be submitted annually by July 1 with forms specified by the department. ~~The fee shall be submitted with a copy of the following forms:~~

- ~~(1) Form 1.0, “Facility Identification”;~~
- ~~(2) Form 5.0, “Title V Annual Emissions Summary/Fee”;~~ and
- ~~(3) Part 3, “Application Certification.”~~

ITEM 18. Amend rule 567—33.1(455B), introductory paragraph, as follows:

567—33.1(455B) Purpose. This chapter implements the major New Source Review (NSR) program contained in Part C of Title I of the federal Clean Air Act as amended on November 15, 1990, and as promulgated under 40 CFR 51.166 and 52.21 as amended through ~~August 19, 2015~~ October 18, 2016. This is a preconstruction review and permitting program applicable to new or modified major stationary sources of air pollutants regulated under Part C of the Clean Air Act as amended on November 15, 1990. In areas that do not meet the national ambient air quality standards (NAAQS), the nonattainment major program applies. The requirements for the nonattainment major NSR program are set forth in 567—22.5(455B), 567—22.6(455B), 567—31.20(455), and 567—31.3(455B). In areas that meet the NAAQS, the PSD program applies. Collectively, the nonattainment major and PSD programs are referred to as the major NSR program. An owner or operator required to apply for a construction permit under 567—Chapter 33 shall submit fees as required in 567—Chapter 30.

ITEM 19. Amend subrule **33.3(1)**, definition of “Volatile organic compounds,” as follows:

“Volatile organic compounds” or “VOC” means any compound included in the definition of “volatile organic compounds” found at 40 CFR 51.100(s) as amended through ~~March 27, 2014~~ August 1, 2016.

ITEM 20. Amend subrule 33.3(17) as follows:

33.3(17) Public participation.

a. The department shall notify all applicants within 30 days as to the completeness of the application or any deficiency in the application or information submitted. In the event of such a deficiency, the date of receipt of the application shall be the date on which the department received all required information.

b. Within one year after receipt of a complete application, the department shall:

(1) Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved.

(2) Make available in at least one location in each region in which the proposed source would be constructed a copy of all materials the applicant submitted, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.

(3) Notify the public, by ~~advertisement in a newspaper of general circulation in each region in which the proposed source would be constructed~~, posting on a publicly available website identified by the department, of the application, of the preliminary determination, of the degree of increment consumption that is expected from the source or modification, and of the opportunity for comment at a public hearing as well as written public comment. The electronic notice shall be available for the duration of the public comment period and shall include the notice of public comment, the draft permit(s), information on how

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to access the administrative record for the draft permit(s) and how to request or attend a public hearing on the draft permit(s). The department may use other means if necessary to ensure adequate notice to the affected public. At least 30 days shall be provided for public comment and for notification of any public hearing.

(4) to (8) No change.

c. No change.

ITEM 21. Amend subrule 33.3(22) as follows:

33.3(22) Permit rescission. Any permit issued under 40 CFR 52.21 or this chapter or any permit issued under rule 567—22.4(455B) shall remain in effect unless and until it is rescinded. The department will consider requests for rescission that meet the conditions specified under paragraphs “a” and “b” of this subrule. If the department rescinds a permit or a condition in a permit issued under 40 CFR 52.21, this chapter, or rule 567—22.4(455B), the public shall be given adequate notice of the proposed rescission. ~~Publication~~ Posting of an announcement of rescission ~~in a newspaper of general circulation in the affected region~~ on a publicly available website identified by the department 60 days prior to the proposed date for rescission shall be considered adequate notice.

a. and b. No change.

ITEM 22. Rescind and reserve rules ~~567—34.200(455B)~~ to ~~567—34.229(455B)~~.

ARC 3514C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby gives Notice of Intended Action to amend Chapter 73, “Managed Care,” Iowa Administrative Code.

These proposed amendments update the Iowa Administrative Code to reflect revised federal standards for the resolution of appeals to managed care organizations (MCOs).

1. The revised federal regulations (42 C.F.R. § 438.408(b)(2)) require nonexpedited appeals to be resolved within 30 calendar days of the plan’s receipt of the request (unless an extension is requested), whereas paragraph 73.12(2)“d” currently requires resolution within 45 calendar days.

2. The revised federal regulations (42 C.F.R. § 438.408(b)(3)) require that expedited appeals be resolved within 72 hours, whereas paragraph 73.12(2)“e” currently requires resolution within three business days.

Any interested person may make written comments on the proposed amendments on or before January 9, 2018. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by email to policyanalysis@dhs.state.ia.us.

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

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

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

The following amendments are proposed.

ITEM 1. Amend paragraph **73.12(2)“d”** as follows:

d. Provide for resolution of nonexpedited appeals to be concluded within ~~45~~ 30 calendar days of receipt of the request unless an extension is requested.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 2. Amend paragraph **73.12(2)“e”** as follows:

e. Provide for resolution of expedited appeals where the standard time period could seriously jeopardize the member's health or ability to maintain or regain maximum function to be within ~~three business days~~ 72 hours of receipt of the notice pursuant to federal funding requirements, including 42 CFR 438.402 as amended to October 16, 2015.

ARC 3515C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 217.6 and 2017 Iowa Acts, House File 547, the Department of Human Services hereby gives Notice of Intended Action to amend Chapter 119, “Record Check Evaluations for Certain Employers and Educational Training Programs,” Iowa Administrative Code.

This proposed amendment adds a new element to the definition of “requesting entity.” The change is required in relation to federal legislation requiring background checks on any employee with access to federal tax information used for Department purposes.

The Department may conduct background checks and subsequently conduct evaluations on employees who have access to federal tax information pursuant to Iowa Code section 217.45. The record check evaluation unit will complete the evaluations upon an employee's hire and again every ten years. The Department will defer to the employee handbook for requirements related to reporting allegations of an employee's being a perpetrator of abuse or an employee's alleged criminal charges between the initial date of hire and the ten-year background check.

Any interested person may make written comments on the proposed amendment on or before January 9, 2018. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by email to policyanalysis@dhs.state.ia.us.

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

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

This amendment is intended to implement Iowa Code section 217.6 and 2017 Iowa Acts, House File 547.

The following amendment is proposed.

Amend rule **441—119.1(135B,135C)**, definition of “Requesting entity,” as follows:

“*Requesting entity*” means an entity covered by these rules that is requesting an evaluation to determine if the person being evaluated can be employed by the entity or participate in an educational training program and includes the following:

1. Health care facilities as defined in Iowa Code section 135C.1.
2. Programs in which the provider is regulated by the state or receives any state or federal funding and the employee being evaluated provides direct services to consumers including but not limited to programs that employ homemakers or home health aides, programs that provide adult day services, hospices, federal home- and community-based services waiver providers, elder group homes, and assisted living programs.
3. Substance abuse programs for juveniles as described in Iowa Code section 125.14A.

HUMAN SERVICES DEPARTMENT[441](cont'd)

4. Hospitals as defined in Iowa Code section 135B.1.
5. Psychiatric medical institutions for children as defined in Iowa Code section 135H.1.
6. The department as described in Iowa Code section 217.44.
7. Department institutions as defined in Iowa Code section 218.13.
8. Child foster care facilities as defined in Iowa Code section 237.1.
9. Medicaid home- and community-based services waiver providers as defined in Iowa Code section 249A.29.
10. Certified nurse aide training programs as defined in Iowa Code section 135C.33(8).
11. Nursing training programs as described in Iowa Code chapter 152.
12. The department as described in Iowa Code section 217.45.

ARC 3503C**LABOR SERVICES DIVISION[875]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 89A.3, the Elevator Safety Board hereby gives Notice of Intended Action to amend Chapter 71, “Administration of the Conveyance Safety Program,” Chapter 72, “Conveyances Installed On or After January 1, 1975,” and Chapter 73, “Conveyances Installed Prior to January 1, 1975,” Iowa Administrative Code.

Items 1, 2, and 3 are the result of a petition for rule making filed with the Elevator Safety Board by a representative of the wind tower industry. The proposed amendments would eliminate obsolete language and reduce expenses for the wind tower industry while maintaining safety.

Items 4 through 7 propose to update codes adopted by reference to the most current national safety standards. These amendments would facilitate installation of the most modern equipment in Iowa.

The purposes of these amendments are to protect the health and safety of the public, update the rules, reduce compliance costs, and implement legislative intent.

If requested in accordance with Iowa Code section 17A.4(1)“b” by the close of business on January 9, 2018, a public hearing will be held on January 10, 2018, at 1:30 p.m. at 150 Des Moines St., Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendments. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)725-5615 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted no later than January 10, 2018, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iwd.iowa.gov.

No variance procedures are included in this rule. Applicable variance procedures are set forth in 875—Chapter 66.

After analysis and review of this rule making, no adverse impact on jobs is expected.

These amendments are intended to implement Iowa Code chapter 89A.

The following amendments are proposed.

ITEM 1. Amend paragraph **71.11(3)“a”** as follows:

a. The labor commissioner’s designee shall inspect altered conveyances, construction elevators, CPHs, previously dormant conveyances being returned to service, ~~wind tower lifts exempted from ASME A17.1 by rule 875—72.12(89A)~~, relocated conveyances, and new conveyances.

LABOR SERVICES DIVISION[875](cont'd)

ITEM 2. Amend subrule 71.11(4) as follows:

71.11(4) Inspection standards. Inspections shall be performed in accordance with applicable safety codes or documents such as:

- a. CCD;
- b. ASME A17.1, Sections 8.10 and 8.11, except Section 8.11.1.1;
- c. ANSI A10.4-2007;
- d. ~~Rule 875-72.12(89A) for wind tower lifts exempted from ASME A17.1 by rule 875-72.12(89A); or~~
- e. ~~d.~~ ASME A18.1.

ITEM 3. Amend paragraph **71.14(1)“b,”** introductory paragraph, as follows:

b. Category 1 safety tests of wind turbine tower elevators shall be conducted after two years of operation, and category 5 safety tests of wind turbine tower elevators shall be performed after ten years of operation. Safety tests shall be made on all other conveyances pursuant to the schedules and procedures set forth in:

ITEM 4. Amend subrule 72.1(10), introductory paragraph, as follows:

72.1(10) For installations ~~on or after~~ between January 14, 2015, and January 24, 2018:

ITEM 5. Adopt the following **new** subrule 72.1(11):

72.1(11) For installations on or after January 24, 2018:

- a. ASME A17.1 shall mean ASME A17.1-2016/CSA B44-16;
- b. ASME A17.7 shall mean ASME A17.7-2012/CSA B44.7-12;
- c. ASME A17.8 shall mean ASME A17.8-2016/CSA B44.8-16;
- d. ASME A18.1 shall mean ASME A18.1 (2014), except Chapters 4, 5, 6, and 7;
- e. ANSI A117.1 shall mean ANSI A117.1 (2017), except for requirement 407.4.7.1.2; and
- f. ANSI/NFPA 70 shall mean ANSI/NFPA 70 (2016).

ITEM 6. Amend subrule 72.13(2) as follows:

72.13(2) Exemption for button renumbering. All maintenance, repairs and alterations to devices covered by ANSI A117.1 shall comply with ANSI A117.1 ~~(2003), except for Rule 407.4.6.2.2 (2017),~~ except for requirement 407.4.7.1.2.

ITEM 7. Amend subrule 73.8(2) as follows:

73.8(2) Exemption for button numbering. All maintenance, repairs and alterations to devices covered by ANSI A117.1 shall comply with ANSI A117.1 ~~(2003), except for Rule 407.4.6.2.2 (2017),~~ except for requirement 407.4.7.1.2.

ARC 3504C

LABOR SERVICES DIVISION[875]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 89.14, the Boiler and Pressure Vessel Board hereby gives Notice of Intended Action to amend Chapter 81, “Waivers or Variances from Administrative Rules by the Boiler and Pressure Vessel Board,” Chapter 82, “Boiler and Pressure Vessel Board Petitions for Rule Making,” Chapter 83, “Declaratory Orders by the Boiler and Pressure Vessel Board,” Chapter 84, “Contested Cases Before the Boiler and Pressure Vessel Board,” Chapter 85, “Public Records and Fair Information Practices of the Boiler and Pressure Vessel Board,” Chapter 90, “Administration of the

LABOR SERVICES DIVISION[875](cont'd)

Boiler and Pressure Vessel Program,” Chapter 91, “General Requirements for All Objects,” and Chapter 93, “Miniature Power Boilers Installed Prior to September 20, 2006,” Iowa Administrative Code.

Pursuant to Iowa Code subsection 89.14(7), the Boiler and Pressure Vessel Board is required to review all administrative rules adopted by the Board every three years. The proposed amendments in this Notice of Intended Action are a result of that review. Several of the amendments update contact information. The amendment in Item 9 more clearly sets forth the applicable code for miniature power boilers installed prior to September 20, 2006.

The purposes of these amendments are to update obsolete provisions, make the rules more clear, protect the safety of the public, and implement legislative intent.

If requested in accordance with Iowa Code section 17A.4(1)“b” by the close of business on January 9, 2018, a public hearing will be held on January 10, 2018, at 10:30 a.m. at 150 Des Moines Street, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendments. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)725-5615 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted by interested persons no later than January 10, 2018, to the Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iwd.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 chapter 89.

The following amendments are proposed.

ITEM 1. Amend rule 875—81.5(17A,89), introductory paragraph, as follows:

875—81.5(17A,89) Content of petition. The required form for a petition for waiver or variance is available on the board’s ~~Web site~~ website at <http://www.iowaworkforce.org/labor/boilerboard.htm> iowaboilers.gov. A petition for waiver shall include the following information where applicable and known to the petitioner:

ITEM 2. Amend rule 875—82.1(17A,89), introductory paragraph, as follows:

875—82.1(17A,89) Petitions for rule making. Any person or agency may file a petition for rule making with the board requesting the adoption, amendment or repeal of a rule. The required form for a petition for rule making is available on the board’s ~~Web site~~ website at <http://www.iowaworkforce.org/labor/boilerboard.htm> iowaboilers.gov. The petition shall be filed at the location specified in rule 875—80.5(89). A petition is deemed filed when it is received by the board office. The board office 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 in writing and provide the following information where applicable and known to the petitioner:

ITEM 3. Amend subrule 83.1(1), introductory paragraph, as follows:

83.1(1) The required form for a petition for declaratory order is available on the board’s ~~Web site~~ website at <http://www.iowaworkforce.org/labor/boilerboard.htm> iowaboilers.gov. The petition must be in writing and provide the following information where applicable and known to the petitioner:

ITEM 4. Amend subrule 84.1(1), introductory paragraph, as follows:

84.1(1) A petition for reconsideration shall be in writing and must be signed by the requesting party or a representative of that party. The required form for a petition for reconsideration is available on the board’s ~~Web site~~ website at <http://www.iowaworkforce.org/labor/boilerboard.htm> iowaboilers.gov. A petition for reconsideration shall specify:

ITEM 5. Amend subrule 85.3(1) as follows:

85.3(1) Location of record Address. ~~A request for access to a record should be directed to the board at the~~ The board’s mailing address is Boiler and Pressure Vessel Board, Department of Workforce

LABOR SERVICES DIVISION[875](cont'd)

Development, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. The board's staff is located at 150 Des Moines Street, Des Moines, Iowa.

ITEM 6. Amend paragraph **90.15(1)“a,”** introductory paragraph, as follows:

a. The owner shall provide to the labor commissioner written notice of intent to convert a power boiler to a low-pressure boiler prior to conversion. The required form for a notice of conversion is available at http://www.iowaworkforce.org/labor/boiler_inspection.htm iowaboilers.gov. At a minimum the notice shall contain the following:

ITEM 7. Rescind and reserve subrule **91.1(2)**.

ITEM 8. Amend paragraph **91.13(3)“b”** as follows:

b. Existing objects. An adequate supply of combustion air shall be maintained for all objects while in operation. Compliance with the current edition of NFPA 31, NFPA 54, NFPA 58, NFPA 85, or IMC as adopted at rule 875—91.1(89) or with subrule 91.13(4) constitutes compliance with this rule. Compliance with an earlier edition of NFPA 31, NFPA 54, NFPA 58, NFPA 85, or IMC constitutes compliance with this rule. However, compliance with one of the listed NFPA codes constitutes compliance with this rule only if the object burns the fuel covered by the NFPA. Compliance with an earlier version of Iowa's combustion air rule constitutes compliance with this rule. Earlier versions of Iowa's combustion air rule are available ~~for reference at~~ http://www.iowaworkforce.org/labor/boiler_inspection.htm from the board's staff upon request.

ITEM 9. Amend rule 875—93.2(89) as follows:

875—93.2(89) Codes Code adopted by reference. ~~The codes listed in 875—Chapter 91~~ current edition of the National Board Inspection Code adopted by reference in rule 875—91.1(89) shall apply to objects covered by this chapter.

ARC 3506C**PHARMACY BOARD[657]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 1, “Purpose and Organization,” Chapter 3, “Pharmacy Technicians,” Chapter 4, “Pharmacist-Interns,” Chapter 5, “Pharmacy Support Persons,” Chapter 10, “Controlled Substances,” Chapter 17, “Wholesale Drug Licenses,” Chapter 19, “Nonresident Pharmacy Practice,” and Chapter 41, “Outsourcing Facilities,” Iowa Administrative Code.

These amendments were approved at the November 1, 2017, regular meeting of the Board of Pharmacy.

During the 2017 Legislative Session of the 87th General Assembly, 2017 Iowa Acts, chapter 145, section 23, repealed Iowa Code chapter 124A relating to imitation controlled substances. These proposed amendments strike references in Board rules to the repealed Iowa Code chapter.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on January 19, 2018. 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 email at terry.witkowski@iowa.gov.

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

PHARMACY BOARD[657](cont'd)

After analysis and review of this rule making, no impact on jobs has been found. These amendments are intended to implement 2017 Iowa Acts, chapter 145, section 23. The following amendments are proposed.

ITEM 1. Amend rule 657—1.2(17A,147,272C) as follows:

657—1.2(17A,147,272C) Description and organization of board. The board is comprised of five pharmacist members and two representatives of the general public, all appointed by the governor. An administrative staff headed by a board-appointed executive director assists board members.

The board's authority for regulating the practice of pharmacy and the legal distribution and dispensing of prescription drugs and devices and of precursor substances in the state of Iowa is found in Iowa Code chapters 124, ~~124A~~, 124B, 126, 147, 155A, 205, and 272C.

ITEM 2. Amend rule 657—3.29(155A) as follows:

657—3.29(155A) Denial of registration. The executive director or designee may deny an application for registration as a certified pharmacy technician or pharmacy technician trainee for any violation of the laws of this state, another state, or the United States relating to prescription drugs, controlled substances, or nonprescription drugs or for any violation of Iowa Code chapter 124, ~~124A~~, 124B, 126, 147, 155A, or 205 or any rule of the board.

An individual whose application for registration as a certified pharmacy technician or pharmacy technician trainee is denied pursuant to this rule may, within 30 days after issuance of the notice of denial, appeal to the board for reconsideration of the application.

ITEM 3. Amend subrule 3.30(1) as follows:

3.30(1) Violations. The board may impose discipline for any violation of the laws of this state, another state, or the United States relating to prescription drugs, controlled substances, or nonprescription drugs, or for any violation of Iowa Code chapter 124, ~~124A~~, 124B, 126, 147, 155A, or 205 or any rule of the board.

ITEM 4. Amend rule 657—4.10(155A) as follows:

657—4.10(155A) Denial of pharmacist-intern registration. The board may deny an application for registration as a pharmacist-intern for any violation of the laws of this state, another state, or the United States relating to prescription drugs, controlled substances, or nonprescription drugs, or for any violation of Iowa Code chapter 124, ~~124A~~, 124B, 126, 147, 155A or 205, or any rule of the board.

ITEM 5. Amend subrule 4.11(1) as follows:

4.11(1) Grounds for discipline. The board may impose discipline for any violation of the laws of this state, another state, or the United States relating to prescription drugs, controlled substances, or nonprescription drugs or for any violation of Iowa Code chapter 124, ~~124A~~, 124B, 126, 147, 155A, or 205, or any rule of the board.

ITEM 6. Amend rule 657—5.24(155A) as follows:

657—5.24(155A) Denial of registration. The board may deny an application for registration as a pharmacy support person for any violation of the laws of this state, another state, or the United States relating to prescription drugs, controlled substances, or nonprescription drugs or for any violation of Iowa Code chapter 124, ~~124A~~, 124B, 126, 147, 155A, or 205 or any rule of the board.

ITEM 7. Amend subrule 5.26(1) as follows:

5.26(1) Violations. The board may impose discipline for any violation of the laws of this state, another state, or the United States relating to prescription drugs, controlled substances, or nonprescription drugs or for any violation of Iowa Code chapter 124, ~~124A~~, 124B, 126, 147, 155A, or 205 or any rule of the board.

PHARMACY BOARD[657](cont'd)

ITEM 8. Amend rule 657—10.44(124) as follows:

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. to 4. No change.
5. Any violation of Iowa Code ~~chapters~~ chapter 124, ~~124A~~, 124B, 126, 155A, or 205, or any rule of the board, including the disciplinary grounds set forth in 657—Chapter 36.

ITEM 9. Amend rule 657—17.18(155A) as follows:

657—17.18(155A) Discipline. Pursuant to 657—Chapters 35 and 36, the board may deny, suspend, or revoke a wholesale drug license for any violation of Iowa Code chapter 124, ~~124A~~, 124B, 126, 155A, or 205 or a rule of the board promulgated thereunder.

ITEM 10. Amend rule 657—19.11(155A) as follows:

657—19.11(155A) Discipline. Pursuant to 657—Chapter 36, the board may fine, suspend, revoke, or impose other disciplinary sanctions on a nonresident pharmacy license or pharmacist in charge registration for any of the following:

1. to 4. No change.
5. Any violation of Iowa Code chapter 124, ~~124A~~, 124B, 126, 155A, or 205 or any rule of the board.

ITEM 11. Amend rule 657—41.6(155A) as follows:

657—41.6(155A) Discipline. Pursuant to 657—Chapter 36, the board may fine, suspend, revoke, or impose other disciplinary sanctions on an outsourcing facility license for any of the following:

1. to 4. No change.
5. Any violation of Iowa Code chapter 155A, 124, ~~124A~~, 124B, 126, or 205 or any rule of the board, including the disciplinary grounds set forth in 657—Chapter 36.

ARC 3509C

PHARMACY BOARD[657]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 4, “Pharmacist-Interns,” Chapter 8, “Universal Practice Standards,” Chapter 13, “Telepharmacy Practice,” Chapter 18, “Centralized Prescription Filling and Processing,” and Chapter 19, “Nonresident Pharmacy Practice,” and to adopt new Chapter 39, “Expanded Practice Standards,” Iowa Administrative Code.

The proposed amendments were approved at the November 1, 2017, regular meeting of the Board of Pharmacy.

Pursuant to Iowa Code section 17A.7(2), the Board has engaged in a complete review of all administrative rules. The proposed amendments create a new chapter for rules relating to some areas of pharmacy practice that are not required of all pharmacies, such as provision of immunizations or participation in collaborative practice agreements, but for which the Board has established minimum practice standards. The purpose of moving these rules to a separate chapter is to narrow the scope of Chapter 8 to those minimum standards that are required of every pharmacy licensed in Iowa.

PHARMACY BOARD[657](cont'd)

The proposed amendments clarify rules where needed, reorganize rules where appropriate, remove a pharmacy's requirement to maintain a refrigerator when the pharmacy does not handle refrigerated items, incorporate language to implement two pieces of legislation from the 2017 Legislative Session (regarding electronic prescriptions and biological products), increase to quarterly the frequency of pharmacy review of its continuous quality improvement (CQI) program data, update licensure renewal language to be consistent with other Board action, and generalize language for collaborative practice agreements to allow for agreements with other prescribing practitioners as allowed by the prescribing practitioner's professional licensing authority.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on January 19, 2018. 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 email at terry.witkowski@iowa.gov.

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

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

These amendments are intended to implement Iowa Code sections 124.101, 124.301, 124.306, 124.308, 126.10, 126.11, 126.16, 135C.33, 147.7, 147.55, 147.72, 147.74, 147.76, 147A.18, 155A.2 through 155A.4, 155A.6, 155A.10, 155A.12 through 155A.15, 155A.19, 155A.20, 155A.27 through 155A.29, 155A.32, 155A.33, and 155A.44.

The following amendments are proposed.

ITEM 1. Amend paragraph 4.6(2)“d” as follows:

d. Administration of vaccines pursuant to rule 657—8.33(155A) 657—39.10(155A).

ITEM 2. Amend rule 657—8.1(155A) as follows:

657—8.1(155A) Purpose and scope. The purpose of this chapter is to establish the minimum standards of pharmacy practice for the activities identified in this chapter. The requirements of these rules shall apply to all Iowa-licensed pharmacists, other registered pharmacy personnel, and to all pharmacies, including owners, providing the services addressed in this chapter to patients in Iowa and. These rules are in addition to rules of the board relating to specific types of pharmacy licenses issued by the board unless otherwise indicated by rule.

ITEM 3. Rescind rule 657—8.2(155A) and adopt the following **new** rule in lieu thereof:

657—8.2(155A) Definitions. For the purpose of this chapter, the following definitions shall apply:

“Board” means the Iowa board of pharmacy.

“Confidential information” means information accessed or maintained by the pharmacy in the patient's or the pharmacy's records which contains personally identifiable information that could be used to identify the patient. “Confidential information” includes but is not limited to patient name, address, telephone number, and social security number; prescriber name and address; and prescription and drug or device information such as therapeutic effect, diagnosis, allergies, disease state, pharmaceutical services rendered, medical information, and drug interactions.

“DEA” means the United States Department of Justice, Drug Enforcement Administration.

“Pharmacy support person” or “PSP” means a person, other than a member of the professional pharmacy staff, registered with the board who may perform nontechnical duties assigned by a supervising pharmacist under the pharmacist's responsibility and supervision.

“Professional pharmacy staff” shall mean the professional employees of the pharmacy, including pharmacists, pharmacy technicians, and pharmacist-interns.

This rule is intended to implement Iowa Code chapter 155A.

ITEM 4. Amend rule 657—8.3(155A) as follows:

657—8.3(155A) Responsible parties.

8.3(1) No change.

PHARMACY BOARD[657](cont'd)

8.3(2) Pharmacy. Each pharmacy, by and through its owner or license holder, shall work cooperatively with the pharmacist in charge and with all staff pharmacists to ensure the legal operation of the pharmacy, including meeting all inspection and other requirements of state and federal laws, rules, and regulations governing the practice of pharmacy. The pharmacy, by and through its owner or license holder, shall be responsible for employing a professionally competent, legally qualified pharmacist in charge. The pharmacy, by and through its owner or license holder, may be held responsible for unethical conduct or practices of any of the pharmacy staff.

8.3(3) Pharmacy and pharmacist in charge. The pharmacist in charge and the pharmacy, by and through its owner or license holder, shall share responsibility for, at a minimum, the following:

a. to c. No change.

d. Ensuring that the license, registration, or certification of each professional pharmacy staff member and the registration of each pharmacy support person are maintained in current and active status.

8.3(4) Pharmacist in charge and staff pharmacists. The pharmacist in charge and staff pharmacists shall share responsibility for, at a minimum, the following:

a. No change.

b. Ensuring that a pharmacist or pharmacist-intern provides patient counseling as specified in rule 657—6.14(155A).

c. to j. No change.

8.3(5) and 8.3(6) No change.

~~**8.3(7) Pharmacist documented verification.** The pharmacist shall provide, document, and retain a record of the final verification for the accuracy, validity, completeness, and appropriateness of the patient's prescription or medication order prior to the delivery of the medication to the patient or the patient's representative.~~

ITEM 5. Amend rule 657—8.4(155A) as follows:

657—8.4(155A) Pharmacist identification and staff logs.

8.4(1) Display of pharmacist license. During any period ~~the~~ a pharmacist is working in a pharmacy, each pharmacist shall display, in a position visible to the public, an original license to practice pharmacy in Iowa. A current license renewal certificate, which may be a photocopy of an original renewal certificate, shall be displayed with the original license.

8.4(2) Registration maintained of pharmacy personnel. Each pharmacist-intern, pharmacy technician, and pharmacy support person shall maintain current registration with the board. The registration certificate or a copy of the registration certificate shall be maintained in each pharmacy where the individual is practicing.

~~**8.4(2) 8.4(3) Identification codes.** A permanent log of the initials or identification codes~~ code identifying by name each ~~dispensing~~ pharmacist, pharmacist-intern, pharmacy technician, and pharmacy support person shall be maintained for a minimum of two years and shall be available for inspection and copying by the board or its representative. The initials or identification code shall be unique to the individual to ensure that each pharmacist, pharmacist-intern, pharmacy technician, and pharmacy support person can be identified.

~~**8.4(3) 8.4(4) Temporary or intermittent pharmacy staff.** The pharmacy shall maintain a log of all pharmacists, pharmacist-interns, pharmacy technicians, and pharmacy support persons who have worked at that pharmacy and who are not regularly staffed at that pharmacy. Such log shall include the dates and shifts worked by each pharmacist, pharmacist-intern, pharmacy technician, and pharmacy support person and shall be available for inspection and copying by the board or its representative for a minimum of two years following the date of the entry.~~

~~**8.4(4) 8.4(5) Identification badge.** A pharmacist~~ While on duty, pharmacy personnel shall wear a visible identification badge while on duty that clearly identifies the person as a pharmacist by licensed or registered title and includes at least the pharmacist's the person's first name.

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ITEM 6. Amend rule 657—8.5(155A) as follows:

657—8.5(155A) Environment and equipment requirements. There shall be adequate space, equipment, and supplies for the professional and administrative functions of the pharmacy pursuant to rule 657—8.3(155A). Space and equipment in an amount and type to provide secure, environmentally controlled storage of drugs shall be available.

8.5(1) Refrigeration. The pharmacy shall maintain one or more refrigeration units, unless the pharmacy does not stock refrigerated items. The pharmacy shall document verification that the temperature of the refrigerator ~~shall be~~ is maintained within a range compatible with the proper storage of drugs requiring refrigeration, ~~and a thermometer shall be maintained in the refrigerator to verify the temperature.~~ If the temperature is manually or visually verified, a record of minimum daily verification shall be maintained.

8.5(2) No change.

8.5(3) Secure barrier. A pharmacy department shall be closed and secured in the absence of the pharmacist except as provided in rule 657—6.7(124,155A) or 657—7.6(124,155A). To ensure that secure closure, the pharmacy department shall be surrounded by a physical barrier capable of being securely locked to prevent entry when the department is closed. A secure barrier may be constructed of other than a solid material with a continuous surface if the openings in the material are not large enough to permit removal of items from the pharmacy department by any means. Any material used in the construction of the barrier shall be of sufficient strength and thickness that it cannot be readily or easily removed, penetrated, or bent. ~~The plans and specifications of the barrier shall be submitted to the board for approval at least 30 days prior to the start of construction. The pharmacy may be subject to inspection as provided in subrule 8.5(4).~~

8.5(4) to 8.5(8) No change.

8.5(9) Authorized collection program. A pharmacy that is registered with the ~~United States Department of Justice, Drug Enforcement Administration,~~ DEA to administer an authorized collection program shall provide adequate space, equipment, and supplies for such collection program pursuant to 657—Chapter 10 and federal regulations for authorized collection programs, which can be found at http://deadiversion.usdoj.gov/drug_disposal/.

8.5(10) Health of personnel. The pharmacist in charge or supervising pharmacist shall ensure that pharmacy personnel experiencing any health condition that may have an adverse effect on drug products or may pose a health or safety risk to others be prohibited from working in the pharmacy until such health condition is sufficiently resolved. All personnel who normally assist the pharmacist shall report to the pharmacist any health conditions that may have an adverse effect on drug products or may pose a health or safety risk to others.

ITEM 7. Rescind and reserve rule **657—8.6(155A)**.

ITEM 8. Amend rule 657—8.7(155A) as follows:

657—8.7(155A) Procurement, storage, and recall of drugs and devices.

8.7(1) Source. Procurement of prescription drugs and devices shall be from a ~~drug wholesaler licensed by the board to distribute to Iowa pharmacies~~ Iowa-licensed distributor or, on a limited basis, from another licensed pharmacy or licensed practitioner located in the United States.

8.7(2) Sufficient stock. ~~A pharmacy shall maintain sufficient stock of drugs and devices to fulfill the foreseeable needs of the patients served by the pharmacy.~~

8.7(3) 8.7(2) Manner of storage. Drugs and devices shall be stored in a manner to protect their identity and integrity.

8.7(4) 8.7(3) Storage temperatures. All drugs and devices shall be stored at the proper temperature as provided in manufacturer labeling. In the absence of a specific temperature range, as defined by the following terms shall be used to determine appropriate storage temperatures:

a. “Controlled room temperature” means temperature maintained thermostatically between ~~45~~ 20 degrees and ~~30~~ 25 degrees Celsius (~~59~~ 68 degrees and ~~86~~ 77 degrees Fahrenheit);

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b. and c. No change.

d. “Freeze” means temperature maintained thermostatically between ~~-20~~ -25 degrees and -10 degrees Celsius (-4 ~~-13~~ degrees and 14 degrees Fahrenheit).

~~8.7(5)~~ 8.7(4) *Product recall*. There shall be a system for removing from use, including unit dose, any drugs and devices subjected to a product recall.

8.7(5) *Outdated drugs or devices*. Any drug or device bearing an expiration date shall not be dispensed for use beyond the expiration date of the drug or device. Outdated drugs or devices shall be removed from dispensing stock and shall be quarantined until such drugs or devices are properly disposed of.

8.7(6) *Records*. All pharmacies shall maintain supplier invoices of prescription drugs and controlled substances upon which the actual date of receipt of the drugs by the pharmacist or other responsible individual is clearly recorded. All pharmacies shall maintain supplier credit memos. Pharmacy records of invoices and credit memos shall be maintained for at least two years from the date of the record. If the original supplier invoice or credit memo is received electronically, a hard copy record is not required.

ITEM 9. Rescind and reserve rule ~~657—8.8(124,155A)~~.

ITEM 10. Amend rule ~~657—8.9(124,155A)~~ as follows:

~~657—8.9(124,155A)~~ **Records storage**. Every ~~inventory or other~~ record required to be maintained by a pharmacy pursuant to board rules or Iowa Code chapters 124 and 155A shall be maintained and be available for inspection and copying by the board or its representative for at least two years from the date of such ~~inventory or record~~ or the date of last activity on the record unless a longer retention period is specified for the particular record ~~or inventory~~. ~~Original hard-copy prescription and other pharmacy records more than 12 months old may be maintained in a secure storage area outside the licensed pharmacy department unless such remote storage is prohibited under federal law. A remote storage area shall be located within the same physical structure containing the licensed pharmacy department. The following records shall be maintained for at least two years.~~

~~8.9(1)~~ *Drug supplier invoices* Records less than 12 months old. ~~All pharmacies shall maintain supplier invoices of prescription drugs and controlled substances upon which the actual date of receipt of the controlled substances by the pharmacist or other responsible individual is clearly recorded. Records shall be maintained within the licensed pharmacy department for a minimum of 12 months, except as provided herein. Pharmacy records less than 12 months old may be stored in a secure storage area outside the licensed pharmacy department, including at a remote location, if the pharmacy has retained electronic copies of the records in the pharmacy that are immediately available and if the original records are available within 48 hours of a request by the board or its authorized agent, unless such remote storage is prohibited under federal law.~~

~~8.9(2)~~ *Drug supplier credits* Records more than 12 months old. ~~All pharmacies shall maintain supplier credit memos for controlled substances and prescription drugs. Records more than 12 months old may be maintained in a secure storage area outside the licensed pharmacy department, including at a remote location, if the records are retrievable within 48 hours of a request by the board or its authorized agent, unless such remote storage is prohibited under federal law.~~

ITEM 11. Amend rule ~~657—8.11(147,155A)~~ as follows:

~~657—8.11(147,155A)~~ **Unethical conduct or practice**. The provisions of this rule apply to licensed pharmacies, licensed pharmacists, registered pharmacy technicians, registered pharmacy support persons, and registered pharmacist-interns.

8.11(1) *Misrepresentative deeds*. A pharmacy, pharmacist, technician, support person, or pharmacist-intern shall not make any statement intended to deceive, misrepresent or mislead anyone, or be a party to or an accessory to any fraudulent or deceitful practice or transaction in pharmacy or in the operation or conduct of a pharmacy.

8.11(2) *Undue influence* Unethical conduct.

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~~a. A pharmacist shall not accept professional employment or share or receive compensation in any form arising out of, or incidental to, the pharmacist's professional activities from a prescriber of prescription drugs or any other person or corporation in which one or more such prescribers have a proprietary or beneficial interest sufficient to permit them to directly or indirectly exercise supervision or control over the pharmacist in the pharmacist's professional responsibilities and duties or over the pharmacy wherein the pharmacist practices. A pharmacy, pharmacist, pharmacist-intern, technician, or support person shall not participate in any of the following types of unethical conduct:~~

~~(1) Any activity that negates a patient's freedom of choice of pharmacy services.~~

~~(2) Providing prescription blanks or forms bearing the pharmacy's name or other means of identification to any person authorized to prescribe, except that a hospital may make prescription blanks or forms bearing the hospital pharmacy's name or other means of identification available to hospital staff prescribers, emergency department prescribers, and prescribers granted hospital privileges for the prescribers' use during practice at or in the hospital.~~

~~(3) Any financial arrangement or transaction that would violate federal healthcare fraud, waste, and abuse laws, including but not limited to the Stark Law, the False Claims Act, and the Anti-Kickback Statute.~~

~~b. A prescriber may employ a pharmacist to provide nondispensing, drug information, or other cognitive services. A purchasing pharmacist or pharmacy shall not engage in any activity or include in any agreement with a selling pharmacist or pharmacy any provision that would prevent or prohibit the prior notifications required in subrule 8.35(7).~~

~~**8.11(3) Lease agreements.** A pharmacist shall not lease space for a pharmacy under any of the following conditions:~~

~~a.—From a prescriber of prescription drugs or a group, corporation, association, or organization of such prescribers on a percentage of income basis;~~

~~b.—From a group, corporation, association, or organization in which prescribers have majority control or have directly or indirectly a majority beneficial or proprietary interest on a percentage of income basis; or~~

~~c.—If the rent is not reasonable according to commonly accepted standards of the community in which the pharmacy will be located.~~

~~**8.11(4) Nonconformance with law.** A pharmacist, technician, support person, or pharmacist intern shall not knowingly serve in a pharmacy which is not operated in conformance with law, or which engages in any practice which if engaged in by a pharmacist would be unethical conduct.~~

~~**8.11(5) Freedom of choice/solicitation/kickbacks/fee-splitting and imprinted prescription blanks or forms.** A pharmacist or pharmacy shall not enter into any agreement which negates a patient's freedom of choice of pharmacy services. A purchasing pharmacist or pharmacy shall not engage in any activity or include in any agreement with a selling pharmacist or pharmacy any provision that would prevent or prohibit the prior notifications required in subrule 8.35(7). A pharmacist or pharmacy shall not participate in prohibited agreements with any person in exchange for recommending, promoting, accepting, or promising to accept the professional pharmaceutical services of any pharmacist or pharmacy. "Person" includes an individual, corporation, partnership, association, firm, or other entity. "Prohibited agreements" includes an agreement or arrangement that provides premiums, "kickbacks," fee-splitting, or special charges as compensation or inducement for placement of business or solicitation of patronage with any pharmacist or pharmacy. "Kickbacks" includes, but is not limited to, the provision of medication carts, facsimile machines, any other equipment, or preprinted forms or supplies for the exclusive use of a facility or practitioner at no charge or billed below reasonable market rate. A pharmacist shall not provide, cause to be provided, or offer to provide to any person authorized to prescribe prescription blanks or forms bearing the pharmacist's or pharmacy's name, address, or other means of identification, except that a hospital may make available to hospital staff prescribers, emergency department prescribers, and prescribers granted hospital privileges for the prescribers' use during practice at or in the hospital generic prescription blanks or forms bearing the name, address, or telephone number of the hospital pharmacy.~~

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~~8.11(6)~~ **8.11(3) Discrimination.** ~~It is unethical to unlawfully~~ A pharmacy, pharmacist, pharmacist-intern, technician, or pharmacy support person shall not discriminate between patients or groups of patients for reasons of religion, race, creed, color, gender, gender identity, sexual orientation, marital status, age, national origin, physical or mental disability, or disease state when providing pharmaceutical services.

~~8.11(7) Claims of professional superiority.~~ A pharmacist shall not make a claim, assertion, or inference of professional superiority in the practice of pharmacy which cannot be substantiated, or claim an unusual, unsubstantiated capacity to supply a drug or professional service to the community.

~~8.11(8)~~ **8.11(4) Unprofessional conduct or behavior.** A pharmacy, pharmacist, pharmacist-intern, technician, or pharmacy support person shall not exhibit engage in unprofessional behavior in connection with the practice of pharmacy ~~or refuse to provide reasonable information or answer reasonable questions for the benefit of the patient.~~ Unprofessional behavior shall include, but not be limited to, the following acts: verbal abuse, coercion, intimidation, harassment, sexual advances, threats, degradation of character, indecent or obscene conduct, ~~and theft, and the refusal to provide reasonable information or answer reasonable questions for the benefit of the patient.~~

ITEM 12. Amend rule 657—8.12(126,147) as follows:

~~657—8.12(126,147) Advertising.~~ Prescription drug ~~price and nonprice~~ information, including price, may be provided to the public by a pharmacy so long as the information is not false or misleading and is not in violation of any federal or state laws applicable to the advertisement of such articles generally and if all of the following conditions are met:

1. All charges for services to the consumer ~~must~~ shall be stated.
2. The effective dates for the prices listed shall be stated.
3. No reference shall be made to controlled substances listed in Schedules II through V of the latest revision of the Iowa uniform controlled substances Act and the rules of the Iowa board of pharmacy.

ITEM 13. Amend rule 657—8.13(135C,155A) as follows:

~~657—8.13(135C,155A) Personnel histories.~~ Pursuant to the requirements of Iowa Code section 135C.33, the provisions of this rule shall apply to any pharmacy employing any person to provide patient care services in a patient's home. For the purposes of this rule, "employed by the pharmacy" shall include any individual who is paid to provide treatment or services to any patient in the patient's home, whether the individual is paid by the pharmacy or by any other entity such as a corporation, a temporary staffing agency, or an independent contractor. Specifically excluded from the requirements of this rule are individuals such as delivery persons or couriers who do not enter the patient's home for the purpose of instructing the patient or the patient's caregiver in the use or maintenance of the equipment, device, or drug being delivered, or who do not enter the patient's home for the purpose of setting up or servicing the equipment, device, or drug used to treat the patient in the patient's home.

8.13(1) Applicant acknowledgment. The pharmacy shall ask the following question of each person seeking employment in a position that will provide in-home services: "Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime, in this state or any other state?" The applicant shall also be informed that a criminal history and child and dependent adult abuse record check checks will be conducted. The applicant shall indicate, by signed acknowledgment, that the applicant has been informed that such record checks will be conducted.

8.13(2) Criminal history check. Prior to the employment of any person to provide in-home services as described by this rule, the pharmacy shall ~~submit to request that the department of public safety a form specified by the department of public safety and receive the results of~~ perform a criminal history check.

8.13(3) Abuse history checks. Prior to the employment of any person to provide in-home services as described by this rule, the pharmacy shall ~~submit to request that the department of human services a form specified by the department of human services and receive the results of~~ perform a child and dependent adult abuse record check checks. ~~The pharmacy may submit to the department of human services a form specified by the department of human services to request a child abuse history check.~~

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a. and b. No change.

ITEM 14. Amend rule 657—8.14(155A) as follows:

657—8.14(155A) Training and utilization of registered pharmacy technicians or pharmacy support persons staff. Pursuant to rule 657—8.3(155A), all Iowa-licensed pharmacies utilizing pharmacist-interns, pharmacy technicians, or pharmacy support persons shall have written policies and procedures for the training and utilization of pharmacist-interns, pharmacy technicians, and pharmacy support persons appropriate to the practice of pharmacy at that licensed location. ~~Pharmacy technician and pharmacy support person training~~ Training shall be documented and maintained by the pharmacy for the duration of employment at least two years from the last date of employment or internship and shall be available for inspection by the board or its authorized agent. ~~Policies and procedures and documentation of pharmacy technician and pharmacy support person training shall be available for inspection by the board or an agent of the board.~~

ITEM 15. Amend subparagraph **8.15(1)“e”(3)** as follows:

(3) The pharmacy shall ensure the security of confidential information as defined in subrule 8.16(1).

ITEM 16. Amend subrule 8.15(2) as follows:

8.15(2) Policies and procedures required. Pursuant to rule 657—8.3(155A), every pharmacy shipping or otherwise delivering prescription drugs or devices to Iowa patients shall have policies and procedures to ensure accountability, safe delivery, and compliance with temperature requirements as defined by subrule ~~8.7(4)~~ 8.7(3).

ITEM 17. Amend rule 657—8.16(124,155A) as follows:

657—8.16(124,155A) Confidential information.

8.16(1) Definition. “Confidential information” means information accessed or maintained by the pharmacy in the patient’s records which contains personally identifiable information that could be used to identify the patient. This includes but is not limited to patient name, address, telephone number, and social security number; prescriber name and address; and prescription and drug or device information such as therapeutic effect, diagnosis, allergies, disease state, pharmaceutical services rendered, medical information, and drug interactions, regardless of whether such information is communicated to or from the patient, is in the form of paper, is preserved on microfilm, or is stored on electronic media.

8.16(2) 8.16(1) Release of confidential information. Confidential information in the patient record may be released only as follows:

a. to e. No change.

8.16(3) 8.16(2) Exceptions. Nothing in this rule shall prohibit pharmacists a pharmacist from releasing confidential patient information as follows:

a. Transferring a prescription to another pharmacy upon the request of the patient or the patient’s authorized representative or pursuant to subrule 8.35(7) when the pharmacy is discontinuing operations.

b. Providing the patient with a copy of a nonrefillable prescription to the person for whom the prescription was issued which that is clearly marked as a copy and not to be filled.

c. Providing drug therapy information to physicians or other authorized prescribers practitioners for their patients.

d. Disclosing information necessary for the processing of third-party payer claims for payment of health care operations or services on behalf of the patient.

e.—Transferring, subject to the provisions of subrule 8.35(7), prescription and patient records of a pharmacy that discontinues operation as a pharmacy to another licensed pharmacy that is held to the same standards of confidentiality and that agrees to act as custodian of the transferred records.

8.16(4) System security and safeguards. To maintain the integrity and confidentiality of patient records and prescription drug orders, any system or computer utilized shall have adequate security including system safeguards designed to prevent and detect unauthorized access, modification, or manipulation of patient records and prescription drug orders.

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~~8.16(5)~~ **8.16(3)** *Record disposal.* Disposal of any materials containing or including patient-specific or confidential information shall be conducted in a manner to preserve patient confidentiality.

ITEM 18. Amend rule 657—8.19(124,126,155A) as follows:

657—8.19(124,126,155A) Manner of issuance of a prescription drug or medication order. A prescription drug order or medication order may be transmitted from a prescriber or a prescriber's agent to a pharmacy in written form, orally including telephone voice communication, by facsimile transmission as provided in rule 657—21.9(124,155A), or by electronic transmission in accordance with applicable federal and state laws, rules, and regulations. Any prescription drug order or medication order provided to a patient in written or printed form shall include the original, handwritten signature of the prescriber except as provided in rule 657—21.7(124,155A).

8.19(1) Requirements for a prescription. A valid prescription drug order shall be based on a valid patient-prescriber relationship except as provided in subrule 8.19(7) for epinephrine auto-injectors and in subrule 8.19(8) for opioid antagonists.

a. Written, electronic, or facsimile prescription. In addition to the electronic prescription application and pharmacy prescription application requirements of this rule, a written, electronic, or facsimile prescription shall include:

- (1) No change.
- (2) The name and address of the patient except as provided in subrule 8.19(7) for epinephrine auto-injectors and in subrule 8.19(8) for opioid antagonists.

(3) to (5) No change.

b. and c. No change.

d. Electronic prescription. In addition to the requirements of paragraph 8.19(1)"a," an electronically prepared prescription for a controlled or noncontrolled prescription drug or device that is electronically transmitted to a pharmacy shall include the prescriber's electronic signature, except as provided herein.

(1) to (3) No change.

(4) An electronic prescription for a noncontrolled prescription drug or device that is transmitted by an authorized agent shall not be required to contain the prescriber's electronic signature.

8.19(2) Verification. The pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of any prescription drug order or medication order consistent with federal and state laws, rules, and regulations. In exercising professional judgment, the ~~prescribing practitioner~~ prescriber and the pharmacist shall take adequate measures to guard against the diversion of prescription drugs and controlled substances through prescription forgeries.

8.19(3) Transmitting agent. The ~~prescribing practitioner~~ prescriber may authorize an agent to transmit to the pharmacy a prescription drug order or medication order orally, by facsimile transmission, or by electronic transmission provided that the first and last names and title of the transmitting agent are included in the order.

a. New order. A new written or electronically prepared and transmitted prescription drug or medication order shall be manually or electronically signed by the prescriber, except as provided in paragraph 8.19(1)"d." If transmitted by the prescriber's agent, the first and last names and title of the transmitting agent shall be included in the order. If the prescription is for a controlled substance and is written or printed from an electronic prescription application, the prescription shall be manually signed by the prescriber ~~prior to delivery of the prescription to the patient or prior to facsimile transmission of the prescription to the pharmacy.~~ An electronically prepared prescription shall not be electronically transmitted to the pharmacy if the prescription has been printed prior to the electronic transmission. An electronically prepared and electronically transmitted prescription that is printed following the electronic transmission shall be clearly labeled as a copy, not valid for dispensing.

b. Refill order or renewal order. An authorization to refill a prescription drug or medication order, or to renew or continue an existing drug therapy, may be transmitted to ~~a pharmacist~~ professional pharmacy staff through oral communication, in writing, by facsimile transmission, or by electronic transmission initiated by or directed by the prescriber.

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(1) and (2) No change.

8.19(4) Receiving agent. Regardless of the means of transmission to a pharmacy, only a ~~pharmacist, a pharmacist intern, or a certified pharmacy technician~~ professional pharmacy staff shall be authorized to receive a new prescription drug or medication order from a ~~practitioner~~ prescriber or the ~~practitioner's~~ prescriber's agent. ~~In addition to a pharmacist, a pharmacist intern, and a certified pharmacy technician,~~ A technician trainee or an uncertified pharmacy technician may receive a refill or renewal order from a ~~practitioner~~ prescriber or the ~~practitioner's~~ prescriber's agent only if the technician's supervising pharmacist has authorized that function.

8.19(5) Legitimate purpose. The ~~pharmacist~~ pharmacy and professional pharmacy staff shall ensure that the prescription drug or medication order, regardless of the means of transmission, has been issued for a legitimate medical purpose by ~~an authorized practitioner~~ a prescriber acting in the usual course of the ~~practitioner's~~ prescriber's professional practice. A pharmacist shall not dispense a prescription drug if the pharmacist knows or should have known that the prescription was issued solely on the basis of an Internet-based questionnaire, an Internet-based consultation, or a telephonic consultation and without a valid preexisting ~~patient-practitioner~~ patient-prescriber relationship except as provided in subrule 8.19(7) for epinephrine auto-injectors and in subrule 8.19(8) for opioid antagonists.

8.19(6) and 8.19(7) No change.

8.19(8) Opioid antagonist prescription issued to law enforcement, fire department, or service program. A physician, an advanced registered nurse practitioner, or a physician assistant may issue a prescription for one or more opioid antagonists in the name of a law enforcement agency, fire department, or service program pursuant to Iowa Code section 147A.18 and rule ~~657—8.31(135,147A)~~ 657—39.7(135,147A). The prescription shall comply with all requirements of subrule 8.19(1) as applicable to the form of the prescription except that the prescription shall be issued in the name and address of the law enforcement agency, fire department, or service program in lieu of the name and address of a patient. Provisions requiring a preexisting patient-prescriber relationship shall not apply to a prescription issued pursuant to this subrule.

a. and b. No change.

ITEM 19. Amend rule 657—8.21(155A) as follows:

657—8.21(155A) Prospective drug use review. For purposes of promoting therapeutic appropriateness and ensuring rational drug therapy, a pharmacist shall review the patient record, information obtained from the patient, and each prescription drug or medication order to identify:

1. to 8. No change.

Upon recognizing any of the above, the pharmacist shall take appropriate steps to avoid or resolve the problem and shall, if necessary, include consultation with the prescriber. The review and assessment of patient records shall not be delegated to ~~staff assistants~~ pharmacy technicians or pharmacy support persons but may be delegated to registered pharmacist-interns under the direct supervision of the pharmacist.

ITEM 20. Adopt the following new rule 657—8.22(155A):

657—8.22(155A) Notification of interchangeable biological product selection. Pursuant to Iowa Code section 155A.32, when a pharmacist substitutes a biological product that is an interchangeable biological product for the biological product prescribed, the pharmacist or pharmacist's designee shall, within five business days of dispensing the biological product, communicate to the prescriber the name and manufacturer of the biological product dispensed unless the prescription information has been entered into an electronic record system, such as an electronic medical record, electronic prescribing system, pharmacy benefit management system, or a pharmacy record to which the prescriber has access. The manner of communication to the prescriber may be via telephone, facsimile, electronic transmission, or other prevailing means.

This rule is intended to implement Iowa Code section 155A.32.

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ITEM 21. Adopt the following **new** rule 657—8.23(124,155A):

657—8.23(124,155A) Individuals qualified to administer. Any person specifically authorized under pertinent sections of the Iowa Code to administer prescription drugs shall construe nothing in this rule to limit that authority. The board designates the following as qualified individuals to whom a prescriber may delegate the administration of prescription drugs.

1. Persons who have successfully completed a medication administration course.
2. Licensed pharmacists.

This rule is intended to implement Iowa Code section 155A.44.

ITEM 22. Adopt the following **new** rule 657—8.24(155A):

657—8.24(155A) Documented verification. The pharmacist shall provide, document, and retain a record of the final verification for the accuracy, validity, completeness, and appropriateness of the patient's prescription or medication order prior to the delivery of the medication to the patient or the patient's representative. In an approved tech-check-tech program, the checking technician shall provide, document, and retain a record of the final verification for the accuracy of the patient's prescription or medication order prior to the delivery of the medication to the patient or the patient's representative.

ITEM 23. Amend subrule 8.26(3) as follows:

8.26(3) Policies and procedures. Pursuant to rule 657—8.3(155A), each pharmacy shall have written policies and procedures for the operation and management of the pharmacy's CQI program. A copy of the pharmacy's CQI program description and policies and procedures shall be maintained and readily available to all pharmacy personnel. The policies and procedures shall address, at a minimum, a planned process to:

a. to e. No change.

f. Periodically, but at least ~~annually~~ quarterly, meet with appropriate pharmacy personnel to review findings and inform personnel of changes that have been made to pharmacy policies, procedures, systems, or processes as a result of CQI program findings.

ITEM 24. Rescind and reserve rule **657—8.31(135,147A)**.

ITEM 25. Rescind and reserve rule **657—8.32(124,155A)**.

ITEM 26. Rescind and reserve rule **657—8.33(155A)**.

ITEM 27. Rescind and reserve rule **657—8.34(155A)**.

ITEM 28. Rescind rule 657—8.35(155A) and adopt the following **new** rule in lieu thereof:

657—8.35(155A) Pharmacy license. A pharmacy license issued by the board is required for all sites where prescription drugs are offered for sale or dispensed under the supervision of a pharmacist. The current pharmacy license certificate shall be displayed in a position visible to the public. The board may issue any of the following types of pharmacy licenses: a general pharmacy license, a hospital pharmacy license, a limited use pharmacy license, a telepharmacy license, or a nonresident pharmacy license. Nonresident pharmacy license applicants shall comply with board rules regarding nonresident pharmacy practice except when a waiver has been granted. Applicants for general or hospital pharmacy practice shall comply with board rules regarding general or hospital pharmacy practice except when a waiver has been granted. Any pharmacy that dispenses controlled substances to Iowa residents must also register pursuant to 657—Chapter 10.

8.35(1) Limited use pharmacy license. A limited use pharmacy license may be issued for nuclear pharmacy practice, correctional facility pharmacy practice, veterinary pharmacy practice, telepharmacy practice, and other limited use practice settings. Applications for a limited use pharmacy license shall be considered on a case-by-case basis.

8.35(2) Application. Applicants for initial licensure, license renewal, license reactivation, or license changes pursuant to subrule 8.35(6) shall complete the relevant pharmacy license application and shall include all required information and attachments. All pharmacy license applications require

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submission of a nonrefundable \$135 license fee plus applicable penalty fees. The application shall include the signature of the pharmacy owner's authorized representative and shall require at a minimum the following:

- a. Disclosure of pharmacy ownership information, including information about the pharmacy's registered agent;
- b. Identification and signature of the pharmacist in charge;
- c. The identification of and average number of hours worked by all pharmacists, pharmacist-interns, pharmacy technicians, and pharmacy support persons working in the pharmacy;
- d. Criminal and disciplinary history information; and
- e. Description of the scope of services provided by the pharmacy.

8.35(3) License renewal. A pharmacy license shall be renewed before January 1 of each year. An initial pharmacy license issued between November 1 and December 31 shall not require renewal until the following calendar year. The nonrefundable fee for a timely license renewal shall be \$135.

a. *Delinquent license grace period.* A pharmacy license renewal application that is postmarked or hand-delivered to the board after January 1 but prior to February 1 following expiration shall be considered delinquent and shall require the nonrefundable payment of the renewal fee plus a penalty fee of \$135. A pharmacy that submits a completed license renewal application, application fee, and penalty fee postmarked or delivered to the board office by January 31 shall not be subject to disciplinary action for continuing to operate in the month of January.

b. *Delinquent license reactivation beyond grace period.* If a pharmacy license is not renewed prior to the expiration of the one-month grace period identified in paragraph 8.35(3) "a," the pharmacy may not operate or provide pharmacy services to patients in the state of Iowa until the license is reactivated. A pharmacy without a current license may apply for license reactivation by submitting an application for reactivation and a nonrefundable \$540 reactivation fee. As part of the reactivation application, the pharmacy shall disclose the prescriptions dispensed and the services, if any, that were provided to Iowa patients while the license was delinquent. A pharmacy that continues to operate or provide pharmacy services in Iowa without a current license may be subject to disciplinary sanctions.

8.35(4) Inspection of new pharmacy location. A new pharmacy location in Iowa shall require an on-site inspection by an authorized agent of the board. Application for a pharmacy license and other required registrations shall be submitted to the board at least 14 days prior to the anticipated inspection. Any deficiencies identified during the inspection shall be corrected and verified by an authorized agent of the board prior to the issuance of the pharmacy license. Prescription drugs, including controlled substances, may not be delivered to a new pharmacy location prior to the delivery of the pharmacy license and registration certificates.

8.35(5) Failure to complete licensure. An application for a pharmacy license, including any other required registration applications, will become null and void if the applicant fails to complete the licensure process within six months of acceptance by the board of the required applications. The licensure process shall be complete upon the pharmacy's opening for business at the licensed location following a satisfactory inspection by an agent of the board pursuant to this rule. When an applicant fails to timely complete the licensure process, fees submitted with applications will not be transferred or refunded. If the applicant intends to proceed with a pharmacy license, a new application and fee shall be required.

8.35(6) Pharmacy license changes. When a pharmacy changes its name, location, ownership, or pharmacist in charge, a completed pharmacy license application with a nonrefundable \$135 fee shall be submitted to the board. Upon receipt of the completed application and fee, the board shall issue an updated pharmacy license certificate unless the board identifies any ground for denial of the license. Any restrictions or disciplinary history associated with the previous pharmacy shall remain unchanged. A pharmacy wishing to disassociate itself from the previously licensed pharmacy restrictions or disciplinary history may petition the board for such disassociation. The burden is on the pharmacy to demonstrate that the current pharmacy is not associated with or responsible for the pharmacy as it previously existed. The old license certificate shall be returned to the board within ten days of receiving the updated license certificate.

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a. Name. A change of the name under which the pharmacy is doing business shall require submission of a pharmacy license application and appropriate fee prior to the change of name.

b. Location. A change of pharmacy location shall require submission of a pharmacy license application and appropriate fee prior to the change of location. A pharmacy undergoing a change in location is required to notify patients of the change in accordance with paragraph 8.35(6)“d.” A change of pharmacy location in Iowa may require an on-site inspection of the new location as provided in subrule 8.35(4).

c. Ownership. A change in ownership of a pharmacy shall require submission of a pharmacy license application and appropriate fee prior to the change in ownership. A pharmacy undergoing a change in ownership is required to notify the pharmacist in charge and patients of the change in accordance with subrule 8.35(7). If the pharmacy owner is a corporation, the sale or transfer of stock wherein the pharmacy continues to exist and the corporate owner continues to own the pharmacy does not constitute a change in ownership for the purpose of these rules. A change of ownership effectively consists of closing a pharmacy and opening a new pharmacy.

d. Pharmacist in charge. In addition to the requirements of this paragraph, a change of pharmacist in charge for a nonresident pharmacy shall require registration of the new permanent pharmacist in charge if the pharmacist in charge is not currently registered by the board or licensed to practice pharmacy in Iowa.

(1) If a permanent pharmacist in charge has been identified by the time of the vacancy, a pharmacy license application identifying the new pharmacist in charge, along with the appropriate fee, shall be submitted to the board within ten days of the change.

(2) If a permanent pharmacist in charge has not been identified by the time of the vacancy, a temporary pharmacist in charge shall be identified. Written notification identifying the temporary pharmacist in charge shall be submitted to the board within ten days of the vacancy.

(3) If a permanent pharmacist in charge was not identified within ten days of the vacancy, the pharmacy shall, within 90 days of the vacancy, identify a permanent pharmacist in charge. A pharmacy license application identifying the permanent pharmacist in charge, along with appropriate fee, shall be submitted to the board within ten days of the appointment of a permanent pharmacist in charge. The pharmacy license application and the pharmacist in charge registration application, if needed, including appropriate fees, shall be received by the board within 90 days of the original vacancy of the permanent pharmacist in charge position.

8.35(7) Closing or sale of a pharmacy. A closing pharmacy shall ensure that all pharmacy records are transferred to another licensed pharmacy that agrees to act as custodian of the records for at least two years. A pharmacy shall not execute a sale or closing of a pharmacy unless there exists an adequate period of time prior to the pharmacy’s closing for delivery of the notifications to the pharmacist in charge, the board, the DEA, and pharmacy patients as required by this subrule. However, the provisions of this subrule regarding prior notifications to the board, the DEA, and patients shall not apply in the case of a board-approved emergency or unforeseeable closure, including but not limited to emergency board action, foreclosure, fire, or natural disaster.

a. Pharmacist in charge notification. At least 40 days prior to the effective date of the sale or closing of a pharmacy, the pharmacist in charge of the closing pharmacy shall be notified of the proposed sale or closing. Information regarding the pending sale or closure of the pharmacy may be kept confidential until public notifications, which are required 30 days prior to the pharmacy’s closing. The pharmacist in charge of the closing pharmacy shall provide input and direction to the pharmacy owner regarding the responsibilities of the closing pharmacy, including the notifications, deadlines, and timelines established by this subrule. The pharmacist in charge of the purchasing or receiving pharmacy shall be notified of the pending transaction at least 30 days prior to the sale or closure of the pharmacy.

b. Board and DEA notifications. At least 30 days prior to the closing of a pharmacy, a written notice shall be sent to the board. Notification to the DEA shall be pursuant to federal regulation. Notification to the board shall include:

(1) The anticipated date of closing or transfer of prescription drugs or records.

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(2) The name, address, DEA registration number, Iowa pharmacy license number, and Iowa controlled substances Act (CSA) registration number of the closing pharmacy and of the pharmacy to which prescription drugs will be transferred.

(3) The name, address, DEA registration number, Iowa pharmacy license number, and CSA registration number of the location at which records will be maintained.

c. Terms of sale or purchase. If the closing is due to the sale of the pharmacy, a copy of the sale or purchase agreement, not including information regarding the monetary terms of the transaction, shall be submitted to the board upon the request of the board. The agreement shall include a written assurance from the closing pharmacy to the purchasing pharmacy that the closing pharmacy has given or will be giving notice to its patients as required by this subrule.

d. Patient notification. At least 30 days prior to closing, a closing pharmacy shall make a reasonable effort to notify all patients who had a prescription filled by the closing pharmacy within the last 18 months that the pharmacy intends to close, including the anticipated closing date.

(1) Written notification shall identify the pharmacy that will be receiving the patient's records. The notification shall advise patients that all patient records will be transferred to the identified pharmacy and that patients may contact the closing pharmacy to request the transfer of remaining refills to a pharmacy of the patient's choice. The notification shall also advise patients that after the date of closing, patients may contact the pharmacy to which the records have been transferred.

(2) Written notification shall be delivered to each patient at the patient's last address on file with the closing pharmacy by direct mail or personal delivery. A pharmacy shall not be required to provide written notice to more than one patient within the same household.

(3) Public notice shall be provided in a location and manner clearly visible to patients in the pharmacy pickup locations including drive-through prescription pickup lanes, on pharmacy or retail store entry and exit doors, and at pharmacy prescription counters.

e. Patient communication by receiving pharmacy. A pharmacy receiving the patient records of another pharmacy shall not contact the patients of the closing pharmacy until after the transfer of those patient records from the closing pharmacy to the receiving pharmacy and after the closure of the closing pharmacy.

f. Prescription drug inventory. A complete inventory of all prescription drugs being transferred shall be taken as of the close of business. The inventory shall serve as the ending inventory for the closing pharmacy as well as a record of additional or starting inventory for the pharmacy to which the drugs are transferred. A copy of the inventory shall be maintained in the records of the purchasing pharmacy for at least two years.

(1) DEA Form 222 is required for transfer of Schedule II controlled substances.

(2) The inventory of controlled substances shall be completed pursuant to the requirements in rule 657—10.19(124).

(3) The inventory of all noncontrolled prescription drugs shall include the name, strength, dosage form, and quantity, which may be estimated.

(4) Controlled substances and prescription drugs 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 drugs.

g. Return of certificates and forms. The pharmacy license certificate and CSA registration certificate of the closing or selling pharmacy shall be returned to the board within ten days of closing or sale. The pharmacy shall be responsible for complying with federal DEA regulations for the cancellation and return of DEA forms and certificates.

h. Signs at closed pharmacy location. A location that no longer houses a licensed pharmacy shall not display any sign, placard, or other notification, visible to the public, which identifies the location as a pharmacy. A sign or other public notification that cannot feasibly be removed shall be covered so as to conceal the identification as a pharmacy. Nothing in this paragraph shall prohibit the display of a public notice to patients, as required in paragraph 8.35(7) "d," for a reasonable period not to exceed six months following the pharmacy closing.

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8.35(8) Reporting discipline and criminal convictions. A pharmacy shall, no later than 30 days after the final action, provide written notice to the board of any discipline imposed by any licensing authority on any license or registration held by the pharmacy. Discipline may include, but is not limited to, fine or civil penalty, citation or reprimand, probationary period, suspension, revocation, or voluntary surrender. A pharmacy shall, no later than 30 days after a conviction, provide written notice to the board of any criminal conviction of the pharmacy or of any pharmacy owner when that conviction is related to prescription drugs or to the operation of the pharmacy. The term criminal conviction includes instances when the judgment of conviction or sentence is deferred.

ITEM 29. Rescind and reserve rule **657—8.40(155A,84GA,ch63)**.

ITEM 30. Amend **657—Chapter 8**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 124.101, 124.301, 124.306, 124.308, 126.10, 126.11, 126.16, 135C.33, 147.7, 147.55, 147.72, 147.74, 147.76, 155A.2 through 155A.4, 155A.6, 155A.10, 155A.12 through 155A.15, 155A.19, 155A.20, 155A.27 through 155A.29, ~~155A.32, and 155A.33~~ 155A.31 through 155A.35, and 2013 Iowa Acts, Senate File 353 155A.41.

ITEM 31. Amend subrule 13.17(3) as follows:

13.17(3) Location change. A telepharmacy site that intends to move to and to provide telepharmacy services from a new location that is outside the community wherein the telepharmacy site has been located shall comply with the requirements of subrule 13.17(2) for closing a pharmacy and shall submit applications and supporting information as provided in rule 657—13.16(124,155A). A managing pharmacy that intends to move to a new location shall comply with the requirements of 657—subrules ~~8.35(5)~~ 8.35(4), 8.35(6), and 8.35(7), as appropriate.

ITEM 32. Amend rule **657—18.2(155A)**, definition of “Medication therapy management,” as follows:

“*Medication therapy management*” means the review of drug therapy regimens of a patient by a pharmacist for the purpose of evaluating and rendering advice to a practitioner, or for the purpose of evaluating and modifying the drug regimen in accordance with a collaborative drug therapy management protocol pursuant to rule ~~657—8.34(155A)~~ 657—39.13(155A).

ITEM 33. Amend subrule 19.2(1), introductory paragraph, as follows:

19.2(1) Inspection requirements. In lieu of the inspection requirement identified in 657—subrule ~~8.35(5)~~ 8.35(4), a nonresident pharmacy submitting any application for licensure, except when related to a change in location, shall submit with its application and fee an inspection report that satisfies the following requirements:

ITEM 34. Amend paragraph **19.2(4)“c”** as follows:

c. Pharmacist in charge. A change in the pharmacist in charge shall require submission of a pharmacy license application and fee within ten days of the identification of a permanent pharmacist in charge pursuant to 657—subrule 8.35(6). If a temporary pharmacist in charge is identified, written notification shall be provided to the board pursuant to 657—paragraph ~~8.35(6)“c.”~~ 8.35(6)“d.” The temporary pharmacist in charge shall not be required to be registered pursuant to rule 657—19.3(155A).

ITEM 35. Amend paragraph **19.4(1)“c”** as follows:

c. A “limited use pharmacy” as described in 657—subrule ~~8.35(2)~~ 8.35(1) shall comply with all requirements of the limited use pharmacy practice.

ITEM 36. Adopt the following **new** 657—Chapter 39:

CHAPTER 39 EXPANDED PRACTICE STANDARDS

657—39.1(155A) Purpose and scope. The purpose of this chapter is to establish the minimum standards for the programs and activities identified in this chapter. These rules shall apply to all licensed pharmacists, other registered pharmacy personnel, and all pharmacies, including owners, engaged in

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the state of Iowa in the programs and activities identified in this chapter. These rules are in addition to rules of the board relating to the practice of pharmacy unless otherwise indicated by rule.

657—39.2 and 39.3 Reserved.

657—39.4(155A) Pharmaceutical care. Pharmaceutical care is a comprehensive, patient-centered, outcomes-oriented pharmacy practice in which the pharmacist accepts responsibility for assisting the prescriber and the patient in optimizing the patient's drug therapy plan and works to promote health, to prevent disease, and to optimize drug therapy. Pharmaceutical care does not include the prescribing of drugs without the consent of the prescriber.

39.4(1) Drug therapy problems. In providing pharmaceutical care, the pharmacist shall strive to identify, resolve, and prevent drug therapy problems.

39.4(2) Drug therapy plan. In providing pharmaceutical care, the pharmacist shall access and evaluate patient-specific information, identify drug therapy problems, and utilize that information in a documented plan of therapy that assists the patient or the patient's caregiver in achieving optimal drug therapy. In concert with the patient, the patient's prescribing practitioner, and the patient's other health care providers, the pharmacist shall assess, monitor, and suggest modifications of the drug therapy plan as appropriate.

657—39.5 and 39.6 Reserved.

657—39.7(135,147A) Opioid antagonist dispensing by pharmacist—standing order. An authorized pharmacist may dispense an opioid antagonist pursuant to a standing order established by the department, which standing order can be found via the board's website, or pursuant to a standing order authorized by an individual licensed health care professional in compliance with the requirements of this rule. An authorized pharmacist may only delegate the dispensing of an opioid antagonist to an authorized pharmacist-intern under the direct supervision of an authorized pharmacist. Nothing in this rule prohibits a prescriber or facility from establishing and implementing standing orders or protocols under the authority granted to the prescriber or facility.

39.7(1) Definitions. For the purposes of this rule, the following definitions shall apply:

"Authorized pharmacist" means an Iowa-licensed pharmacist who has completed the training requirements of this rule. "Authorized pharmacist" also includes an Iowa-registered pharmacist-intern who has completed the training requirements of this rule and is working under the direct supervision of an authorized Iowa-licensed pharmacist.

"Department" means the Iowa department of public health.

"First responder" means an emergency medical care provider, a registered nurse staffing an authorized service program under Iowa Code section 147A.12, a physician assistant staffing an authorized service program under Iowa Code section 147A.13, a firefighter, or a peace officer as defined in Iowa Code section 801.4 who is trained and authorized to administer an opioid antagonist.

"Licensed health care professional" means a person licensed under Iowa Code chapter 148 to practice medicine and surgery or osteopathic medicine and surgery, an advanced registered nurse practitioner licensed under Iowa Code chapter 152 or 152E and registered with the board of nursing, or a physician assistant licensed to practice under the supervision of a physician as authorized in Iowa Code chapters 147 and 148C.

"Opioid antagonist" means the same as defined in Iowa Code section 147A.1.

"Opioid-related overdose" means the same as defined in Iowa Code section 147A.1.

"Person in a position to assist" means a family member, friend, caregiver, health care provider, employee of a substance abuse treatment facility, or other person who may be in a position to render aid to a person at risk of experiencing an opioid-related overdose.

"Recipient" means an individual at risk of an opioid-related overdose or a person in a position to assist an individual at risk of an opioid-related overdose.

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“*Standing order*” means a preauthorized medication order with specific instructions from the licensed health care professional to dispense a medication under clearly defined circumstances.

39.7(2) *Authorized pharmacist training.* An authorized pharmacist shall document successful completion of an ACPE-approved continuing education program of at least one-hour duration related to opioid antagonist utilization prior to dispensing opioid antagonists pursuant to a standing order.

39.7(3) *Additional supply.* Notwithstanding a standing order to the contrary, an authorized pharmacist shall only dispense an opioid antagonist after completing an eligibility assessment and providing training and education to the recipient.

39.7(4) *Assessment.* An authorized pharmacist shall assess an individual for eligibility to receive an opioid antagonist pursuant to a standing order. In addition to the criteria identified in a standing order, an authorized pharmacist shall also take into consideration the following criteria to determine the eligibility of the recipient to receive and possess an opioid antagonist:

a. The person at risk of an opioid-related overdose for which the opioid antagonist is intended to be administered has no known sensitivity or allergy to naloxone, unless the person at risk is not known to the recipient, including but not limited to a first responder or member of law enforcement.

b. The recipient is oriented to person, place, and time and able to understand and learn the essential components of opioid-related overdose, appropriate response, and opioid antagonist administration.

39.7(5) *Recipient training and education.* Upon assessment and determination that an individual is eligible to receive and possess an opioid antagonist pursuant to a standing order, an authorized pharmacist shall, prior to dispensing an opioid antagonist pursuant to a standing order, provide training and education to the recipient including, but not limited to, the information identified in this subrule. An authorized pharmacist shall require the recipient to attest that, if the product will be accessible to any other individual for administration, the recipient will make available to such individual all received training and education materials. An authorized pharmacist may provide to the recipient written materials that include, but may not be limited to, the information identified in this subrule, but the written materials shall not be in lieu of direct pharmacist consultation with the recipient.

a. The signs and symptoms of opioid-related overdose as described in the standing order.

b. The importance of calling 911 as soon as possible and the potential need for rescue breathing.

c. The appropriate use and directions for administration of the opioid antagonist to be dispensed pursuant to the standing order.

d. Adverse reactions of the opioid antagonist as well as reactions resulting from opioid withdrawal following administration.

e. The proper storage conditions, including temperature excursions, of the opioid antagonist being dispensed.

f. The expiration date of the opioid antagonist being dispensed and the appropriate disposal of the opioid antagonist upon expiration.

g. The prohibition of the recipient from further distributing the opioid antagonist to another individual, unless that individual has received appropriate training and education.

h. Information about substance abuse or behavioral health treatment programs.

39.7(6) *Labeling.* Upon the determination that a recipient is eligible to receive and possess an opioid antagonist, an authorized pharmacist shall label the product pursuant to rule 657—6.10(126,155A) and 657—subrule 8.19(8). An authorized pharmacist shall ensure that the labeling does not render the expiration date of the product illegible. The medication shall be dispensed in the name of the eligible recipient.

39.7(7) *Reporting.* A copy of the assessment form shall be submitted to the department as provided on the assessment form within seven days of the dispensing of the opioid antagonist or within seven days of a denial of eligibility.

39.7(8) *Records.* An authorized pharmacist shall create and maintain an original record of each individual assessment on forms provided by the board, regardless of the eligibility determination following assessment, and dispensing of opioid antagonists pursuant to a standing order. These records shall be available for inspection and copying by the board or its authorized agent for at least two years.

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657—39.8 and 39.9 Reserved.

657—39.10(155A) Vaccine administration by pharmacists. An authorized pharmacist may administer vaccines pursuant to protocols established by the CDC in compliance with the requirements of this rule. An authorized pharmacist may only delegate the administration of a vaccine to an authorized pharmacist-intern under the direct supervision of the authorized pharmacist.

39.10(1) Definitions. For the purposes of this rule, the following definitions shall apply:

“*ACIP*” means the CDC Advisory Committee on Immunization Practices.

“*ACPE*” means the Accreditation Council for Pharmacy Education.

“*Authorized pharmacist*” means an Iowa-licensed pharmacist who has met the requirements identified in subrule 39.10(2).

“*Authorized pharmacist-intern*” means an Iowa-registered pharmacist-intern who has met the requirements for an authorized pharmacist identified in paragraphs 39.10(2)“*a*” and “*c*.”

“*CDC*” means the United States Centers for Disease Control and Prevention.

“*Immunization*” shall have the same meaning as, and shall be interchangeable with, the term “vaccine.”

“*Protocol*” means a standing order for a vaccine to be administered by an authorized pharmacist.

“*Vaccine*” means a specially prepared antigen administered to a person for the purpose of providing immunity.

39.10(2) Authorized pharmacist training and continuing education. An authorized pharmacist shall document successful completion of the requirements in paragraph 39.10(2)“*a*” and shall maintain competency by completing and maintaining documentation of the continuing education requirements in paragraph 39.10(2)“*b*.”

a. Initial qualification. An authorized pharmacist shall have successfully completed an organized course of study in a college or school of pharmacy or an ACPE-accredited continuing education program on vaccine administration that:

(1) Requires documentation by the pharmacist of current certification in the American Heart Association or the Red Cross Basic Cardiac Life Support Protocol for health care providers.

(2) Is an evidence-based course that includes study material and hands-on training and techniques for administering vaccines, requires testing with a passing score, complies with current CDC guidelines, and provides instruction and experiential training in the following content areas:

1. Standards for immunization practices;
2. Basic immunology and vaccine protection;
3. Vaccine-preventable diseases;
4. Recommended immunization schedules;
5. Vaccine storage and management;
6. Informed consent;
7. Physiology and techniques for vaccine administration;
8. Pre- and post-vaccine assessment, counseling, and identification of contraindications to the vaccine;
9. Immunization record management; and
10. Management of adverse events, including identification, appropriate response, documentation, and reporting.

b. Continuing education. During any pharmacist license renewal period, an authorized pharmacist who engages in the administration of vaccines shall complete and document at least one hour of continuing education related to vaccines.

c. Certification maintained. During any period within which the pharmacist may engage in the administration of vaccines, the pharmacist shall maintain current certification in the American Heart Association or the Red Cross Basic Cardiac Life Support Protocol for health care providers.

39.10(3) Protocol requirements. A pharmacist may administer vaccines pursuant to a protocol based on CDC recommendations. A protocol shall be unique to a pharmacy. The pharmacy shall comply with the parameters of the protocol. The prescriber who signs a protocol shall identify within the protocol,

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by name or category, those pharmacists or other qualified health professionals that the prescriber is authorizing to administer vaccines pursuant to the protocol. A protocol:

- a. Shall be signed by an Iowa-licensed prescriber practicing in Iowa.
- b. Shall expire no later than one year from the effective date of the signed protocol.
- c. Shall be effective for patients who wish to receive a vaccine administered by an authorized pharmacist, who meet the CDC recommended criteria, and who have no contraindications as published by the CDC.
- d. Shall require the authorized pharmacist to notify the prescriber who signed the protocol within 24 hours of a serious complication, and the pharmacist shall submit a Vaccine Advisory Event Reporting System (VAERS) report.
- e. Shall specifically indicate whether the authorizing prescriber agrees that the administration of vaccines may be delegated by the authorized pharmacist to an authorized pharmacist-intern under the direct supervision of the authorized pharmacist.

39.10(4) *Influenza and other emergency vaccines.* An authorized pharmacist shall only administer via protocol, to patients six years of age and older, influenza vaccines and other emergency vaccines in response to a public health emergency.

39.10(5) *Other adult vaccines.* An authorized pharmacist shall only administer via protocol, to patients 18 years of age and older, the following vaccines:

- a. A vaccine on the ACIP-approved adult vaccination schedule.
- b. A vaccine recommended by the CDC for international travel.

39.10(6) *Vaccines administered via prescription.* An authorized pharmacist may administer any vaccine pursuant to a prescription or medication order for an individual patient. In case of a serious complication, the authorized pharmacist shall notify the prescriber who authorized the prescription within 24 hours and shall submit a VAERS report.

39.10(7) *Verification and reporting.* The requirements of this subrule do not apply to influenza and other emergency vaccines administered via protocol pursuant to subrule 39.10(4). An authorized pharmacist shall:

- a. Prior to administering a vaccine identified in subrule 39.10(5) or 39.10(6), consult the statewide immunization registry or health information network.
- b. Within 30 days following administration of a vaccine identified in subrule 39.10(5) or 39.10(6), report the vaccine administration to the statewide immunization registry or health information network and to the patient's primary health care provider, if known.

657—39.11 and 39.12 Reserved.

657—39.13(155A) Collaborative drug therapy management. An authorized pharmacist may only perform collaborative drug therapy management pursuant to protocol with an authorized provider pursuant to the requirements of this rule. The authorized provider retains the ultimate responsibility for the care of the patient. The pharmacist is responsible for all aspects of drug therapy management performed by the pharmacist.

39.13(1) *Definitions.* For the purpose of this rule, the following definitions shall apply:

"Authorized pharmacist" means an Iowa-licensed pharmacist whose license is in good standing and who meets the drug therapy management criteria defined in this subrule.

"Authorized provider" means an Iowa-licensed prescribing practitioner who is authorized by the practitioner's professional licensing authority to participate in a collaborative practice agreement with an authorized pharmacist pursuant to these rules and the rules of the practitioner's professional licensing authority. An authorized provider who executes a written protocol with an authorized pharmacist shall supervise the pharmacist's activities involved in the overall management of patients receiving medications or disease management services under the protocol. The authorized provider may delegate only drug therapies that are in areas common to the authorized provider's practice.

"Board" means the board of pharmacy.

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“Collaborative drug therapy management” means participation by an authorized pharmacist and an authorized provider in the management of drug therapy pursuant to a written community practice protocol or a written hospital practice protocol.

“Collaborative practice” means that an authorized provider may delegate aspects of drug therapy management for the authorized provider’s patients to an authorized pharmacist through a community practice protocol. *“Collaborative practice”* also means that a P&T committee may authorize hospital pharmacists to perform drug therapy management for inpatients and hospital clinic patients through a hospital practice protocol.

“Community practice protocol” means a written, executed agreement entered into voluntarily between an authorized pharmacist and an authorized provider establishing drug therapy management for one or more of the pharmacist’s and authorized provider’s patients residing in a community setting. A community practice protocol shall comply with the requirements of subrule 39.13(2).

“Community setting” means a location outside a hospital inpatient, acute care setting or a hospital clinic setting. A community setting may include, but is not limited to, a home, group home, assisted living facility, correctional facility, hospice, or long-term care facility.

“Drug therapy management criteria” means one or more of the following:

1. Graduation from a recognized school or college of pharmacy with a doctor of pharmacy (Pharm.D.) degree;
2. Certification by the Board of Pharmaceutical Specialties (BPS);
3. Certification by the Commission for Certification in Geriatric Pharmacy (CCGP);
4. Successful completion of a National Institute for Standards in Pharmacist Credentialing (NISPC) disease state management examination and credentialing by the NISPC;
5. Successful completion of a pharmacy residency program accredited by the American Society of Health-System Pharmacists (ASHP); or
6. Approval by the board of pharmacy.

“Hospital clinic” means an outpatient care clinic operated and affiliated with a hospital and under the direct authority of the hospital’s P&T committee.

“Hospital pharmacist” means an Iowa-licensed pharmacist who meets the requirements for participating in a hospital practice protocol as determined by the hospital’s P&T committee.

“Hospital practice protocol” means a written plan, policy, procedure, or agreement that authorizes drug therapy management between hospital pharmacists and authorized providers within a hospital and the hospital’s clinics as developed and determined by the hospital’s P&T committee. Such a protocol may apply to all pharmacists and authorized providers at a hospital or the hospital’s clinics or only to those pharmacists and authorized providers who are specifically recognized. A hospital practice protocol shall comply with the requirements of subrule 39.13(3).

“P&T committee” means a committee of the hospital composed of physicians, pharmacists, and other health professionals that evaluates the clinical use of drugs within the hospital, develops policies for managing drug use and administration in the hospital, and manages the hospital drug formulary system.

“Therapeutic interchange” means an authorized exchange of therapeutic alternate drug products in accordance with a previously established and approved written protocol.

39.13(2) Community practice protocol.

a. An authorized pharmacist shall engage in collaborative drug therapy management with an authorized provider only under a written protocol that has been identified by topic. Protocols shall be made available upon request of the board or the licensing board of the authorized provider.

b. The community practice protocol shall include:

(1) The name, signature, date, and contact information for each authorized pharmacist who is a party to the protocol and is eligible to manage the drug therapy of a patient. If more than one authorized pharmacist is a party to the agreement, the pharmacists shall work for a single licensed pharmacy and a principal authorized pharmacist shall be designated in the protocol.

(2) The name, signature, date, and contact information for each authorized provider who may prescribe drugs and is responsible for supervising a patient’s drug therapy management. The authorized

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provider who initiates a protocol shall be considered the main caregiver for the patient respective to that protocol and shall be noted in the protocol as the principal authorized provider.

(3) The name and contact information of the principal authorized provider and the principal authorized pharmacist who are responsible for development, training, administration, and quality assurance of the protocol.

(4) A detailed written protocol pursuant to which the authorized pharmacist will base drug therapy management decisions for patients. The protocol shall authorize one or more of the following:

1. Prescription drug orders. The protocol may authorize therapeutic interchange or modification of drug dosages based on symptoms or laboratory or physical findings defined in the protocol. The protocol shall include information specific to the dosage, frequency, duration, and route of administration of the drug authorized by the patient's authorized provider. The protocol shall not authorize the pharmacist to change a Schedule II drug or to initiate a drug not included in the established protocol.

2. Laboratory tests. The protocol may authorize the pharmacist to obtain or to conduct specific laboratory tests as long as the tests relate directly to the drug therapy management.

3. Physical findings. The protocol may authorize the pharmacist to check certain physical findings, e.g., vital signs, oximetry, or peak flows, that enable the pharmacist to assess and adjust the drug therapy, detect adverse drug reactions, or determine if the patient should be referred back to the patient's authorized provider for follow-up.

4. Patient activities. The protocol may authorize the pharmacist to monitor specific patient activities.

(5) Procedures for securing the patient's written consent. If the patient's consent is not secured by the authorized provider, the authorized pharmacist shall secure such and notify the patient's authorized provider within 24 hours.

(6) Circumstances that shall cause the authorized pharmacist to initiate communication with the authorized provider including but not limited to the need for new prescription orders and reports of the patient's therapeutic response or adverse reaction.

(7) A detailed statement identifying the specific drugs, laboratory tests, and physical findings upon which the authorized pharmacist shall base drug therapy management decisions.

(8) A provision for the collaborative drug therapy management protocol to be reviewed, updated, and reexecuted or discontinued at least every two years.

(9) A description of the method the pharmacist shall use to document the pharmacist's decisions or recommendations for the authorized provider.

(10) A description of the types of reports the authorized pharmacist is to provide to the authorized provider and the schedule by which the pharmacist is to submit these reports. The schedule shall include a time frame within which a pharmacist shall report any adverse reaction to the authorized provider.

(11) A statement of the medication categories and the type of initiation and modification of drug therapy that the provider authorizes the pharmacist to perform.

(12) A description of the procedures or plan that the pharmacist shall follow if the pharmacist modifies a drug therapy.

(13) Procedures for record keeping, record sharing, and long-term record storage.

(14) Procedures to follow in emergency situations.

(15) A statement that prohibits the authorized pharmacist from delegating drug therapy management to anyone other than another authorized pharmacist who has signed the applicable protocol.

(16) A statement that prohibits an authorized provider from delegating collaborative drug therapy management to any unlicensed or licensed person other than another authorized provider or an authorized pharmacist.

(17) A description of the mechanism for the pharmacist and the authorized provider to communicate with each other and for documentation by the pharmacist of the implementation of collaborative drug therapy.

c. Collaborative drug therapy management is valid only when initiated by a written protocol executed by at least one authorized pharmacist and at least one authorized provider.

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d. The collaborative drug therapy protocol shall be kept on file in the pharmacy and be made available upon request of the board or the authorized provider's licensing board.

e. An authorized provider may terminate or amend the collaborative drug therapy management protocol with an authorized pharmacist if the authorized provider notifies the authorized pharmacist in writing. Notification shall include the name of the authorized pharmacist, the desired change, and the proposed effective date of the change. Written notification shall be maintained in the pharmacy and be made available upon request of the board or the authorized provider's licensing board.

f. The authorized provider or pharmacist who initiates a protocol with a patient is responsible for securing the patient's written consent to participate in drug therapy management and for transmitting a copy of the consent to the other party within 24 hours. The consent shall indicate which protocol is involved. Any variation in the protocol for a specific patient shall be communicated to the other party at the time of securing the patient's consent. The patient's authorized provider shall maintain the patient consent in the patient's medical record.

39.13(3) Hospital practice protocol.

a. A hospital's P&T committee shall determine the scope and extent of collaborative drug therapy management practices that may be conducted by the hospital's pharmacists.

b. Collaborative drug therapy management within a hospital setting or the hospital's clinic setting is valid only when approved by the hospital's P&T committee.

c. The hospital practice protocol shall include:

(1) The names or groups of pharmacists and providers who are authorized by the P&T committee to participate in collaborative drug therapy management.

(2) A plan for development, training, administration, and quality assurance of the protocol.

(3) A detailed written protocol pursuant to which the hospital pharmacist shall base drug therapy management decisions for patients. The protocol shall authorize one or more of the following:

1. Medication orders and prescription drug orders. The protocol may authorize therapeutic interchange or modification of drug dosages based on symptoms or laboratory or physical findings defined in the protocol. The protocol shall include information specific to the dosage, frequency, duration, and route of administration of the drug authorized by the authorized provider. The protocol shall not authorize the hospital pharmacist to change a Schedule II drug or to initiate a drug not included in the established protocol.

2. Laboratory tests. The protocol may authorize the hospital pharmacist to obtain or to conduct specific laboratory tests as long as the tests relate directly to the drug therapy management.

3. Physical findings. The protocol may authorize the hospital pharmacist to check certain physical findings, e.g., vital signs, oximetry, or peak flows, that enable the pharmacist to assess and adjust the drug therapy, detect adverse drug reactions, or determine if the patient should be referred back to the authorized provider for follow-up.

(4) Circumstances that shall cause the hospital pharmacist to initiate communication with the patient's authorized provider including but not limited to the need for new medication orders and prescription drug orders and reports of a patient's therapeutic response or adverse reaction.

(5) A statement of the medication categories and the type of initiation and modification of drug therapy that the P&T committee authorizes the hospital pharmacist to perform.

(6) A description of the procedures or plan that the hospital pharmacist shall follow if the hospital pharmacist modifies a drug therapy.

(7) A description of the mechanism for the hospital pharmacist and the patient's authorized provider to communicate and for the hospital pharmacist to document implementation of the collaborative drug therapy.

657—39.14 and 39.15 Reserved.

657—39.16(155A) Pharmacy pilot or demonstration research projects. The purpose of this rule is to specify the procedures to be followed in applying for approval of a pilot or demonstration research project for innovative applications in the practice of pharmacy as authorized by 2011 Iowa Acts, chapter 63,

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section 36 as amended by 2012 Iowa Acts, chapter 1113, section 31, and by 2013 Iowa Acts, chapter 138, section 128. In reviewing projects, the board will consider only projects that expand pharmaceutical care services that contribute to positive patient outcomes. The board will not consider any project intended only to provide a competitive advantage to a single applicant or group of applicants.

39.16(1) Definitions. For the purposes of this rule, the following definitions shall apply:

“Act” means Iowa Code chapter 155A, the Iowa pharmacy practice Act.

“Board” means the Iowa board of pharmacy.

“Practice of pharmacy” means the practice of pharmacy as defined in Iowa Code section 155A.3(34).

“Project” means a pilot or demonstration research project as described in this rule.

39.16(2) Scope of project. A project may not expand the definition of the practice of pharmacy. A project may include therapeutic substitution or substitution of medical devices used in patient care if such substitution is included under a collaborative drug therapy management protocol established pursuant to rule 657—39.13(155A).

39.16(3) Board approval of a project. Board approval of a project may include the grant of an exception to or a waiver of rules adopted under the Act or under any law relating to the authority of prescription verification and the ability of a pharmacist to provide enhanced patient care in the practice of pharmacy. Project approval, including exception to or waiver of board rules, shall initially be for a specified period of time not exceeding 18 months from commencement of the project. The board may approve the extension or renewal of a project following consideration of a petition that clearly identifies the project, that includes a report similar to the final project report described in paragraph 39.16(6) “a,” that describes and explains any proposed changes to the originally approved and implemented project, and that justifies the need for extending or renewing the term of the project.

39.16(4) Applying for approval of a project. A person who wishes the board to consider approval of a project shall submit to the board a petition for approval that contains at least the following information:

a. *Responsible pharmacist.* Name, address, telephone number, and pharmacist license number of each pharmacist responsible for overseeing the project.

b. *Location of project.* Name, address, and telephone number of each specific location and, if a location is a pharmacy, the pharmacy license number where the proposed project will be conducted.

c. *Project summary.* A detailed summary of the proposed project that includes at least the following information:

- (1) The goals, hypothesis, and objectives of the proposed project.
- (2) A full explanation of the project and how it will be conducted.
- (3) The time frame for the project including the proposed start date and length of study. The time frame may not exceed 18 months from the proposed start date of the project.
- (4) Background information or literature review to support the proposed project.
- (5) The rule or rules to be waived in order to complete the project and a request to waive the rule or rules.
- (6) Procedures to be used during the project to ensure that the public health and safety are not compromised as a result of the waiver.

39.16(5) Review and approval or denial of a proposed project.

a. *Staff review.* Upon receipt of a petition for approval of a project, board staff shall initially review the petition for completeness and appropriateness. If the petition is incomplete or inappropriate for board consideration, board staff shall return the petition to the requestor with a letter explaining the reason the petition is being returned. A petition that has been returned pursuant to this paragraph may be amended or supplemented as necessary and submitted for reconsideration.

b. *Board review.* Upon review by the board of a petition for approval of a project, the board shall either approve or deny the petition. If the board approves the petition, the approval:

- (1) Shall be specific for the project requested;
- (2) Shall approve the project for a specific time period; and
- (3) May include conditions or qualifications applicable to the project.

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c. Inspection. The project site and project documentation shall be available for inspection and review by the board or its representative at any time during the project review and the approval or denial processes and, if a project is approved, throughout the approved term of the project.

d. Documentation maintained. Project documentation shall be maintained and available for inspection, review, and copying by the board or its representative for at least two years following completion or termination of the project.

39.16(6) Presentation of reports. The pharmacist responsible for overseeing a project shall be responsible for submitting to the board any reports required as a condition of a project, including the final project report.

a. Final project report. The final project report shall include a written summary of the results of the project and the conclusions drawn from those results. The final project report shall be submitted to the board within three months after completion or termination of the project.

b. Board review. The board shall receive and review any report regarding the progress of a project and the final project report at a regularly scheduled meeting of the board. The report shall be an item on the open session agenda for the meeting.

These rules are intended to implement Iowa Code sections 135.190, 147.76, 147A.18, 155A.2, 155A.3, 155A.13, 155A.33, and 155A.44 and 2011 Iowa Acts, chapter 63, section 36 as amended by 2012 Iowa Acts, chapter 1113, section 31, and by 2013 Iowa Acts, chapter 138, section 128.

ARC 3511C**PHARMACY BOARD[657]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 10, “Controlled Substances,” and Chapter 23, “Long-Term Care Pharmacy Practice,” Iowa Administrative Code.

The proposed amendments were approved at the November 1, 2017, regular meeting of the Board of Pharmacy.

Pursuant to Iowa Code section 17A.7(2), the Board has conducted an overall review of Chapter 23 of the Board’s administrative rules. The proposed amendments to the chapter update language for consistency, remove redundant rules, combine and condense rules where appropriate, and clarify prescription requirements for controlled substances to be consistent with federal regulations. The proposed amendment to Chapter 10 updates a cross reference.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on January 19, 2018. 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 email at terry.witkowski@iowa.gov.

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

As this rule making neither removes nor creates new requirements for pharmacies, no impact on jobs is anticipated.

These amendments are intended to implement Iowa Code sections 124.301, 124.306, 124.308, 155A.2, 155A.13, 155A.15, 155A.21, 155A.27, 155A.28, 155A.33, 155A.35, and 155A.36.

The following amendments are proposed.

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ITEM 1. Amend rule 657—10.28(124) as follows:

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)~~ 657—23.9(124,155A), as applicable.

ITEM 2. Amend **657—Chapter 23**, title, as follows:

~~LONG-TERM CARE~~ FACILITY PHARMACY PRACTICE

ITEM 3. Rescind rule 657—23.1(155A) and adopt the following **new** rule in lieu thereof:

657—23.1(155A) Purpose and scope. The purpose of this chapter is to identify the minimum standards for licensed pharmacies in this state providing pharmacy services to care facilities.

ITEM 4. Rescind rule 657—23.2(124,155A) and adopt the following **new** rule in lieu thereof:

657—23.2(155A) 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 deadiversion.usdoj.gov/drug_disposal.

“*Care facility*” or “*facility*” means:

1. A facility licensed by the Iowa department of inspections and appeals under Iowa Code chapter 135C or 135H;
2. A hospital-based long-term care unit certified under 42 CFR, Part 483, Subpart B;
3. An inpatient hospice certified under 42 CFR, Part 418;
4. A group living facility wherein health care-related services are provided by the facility; or
5. A health care facility registered with the board under Iowa Code chapter 124.

“*Care facility pharmacy*” or “*provider pharmacy*” means a pharmacy that provides pharmacy services to a care facility.

“*Consultant pharmacist*” in a care facility means an Iowa-licensed pharmacist who is responsible for developing, coordinating, and supervising pharmaceutical services in a care facility on a regularly scheduled basis.

“*DEA*” means the United States Department of Justice, Drug Enforcement Administration.

“*Medication order*,” as used in these rules, means an order from a practitioner or the practitioner’s authorized agent for administration of a drug or device. For purposes of this chapter, “medication order” includes a prescription.

“*Provider pharmacist*” means a pharmacist licensed to engage in the practice of pharmacy who is employed by or contracted to a care facility pharmacy or a provider pharmacy and who is responsible for supervising the accurate dispensing and proper delivery of drugs and devices to a care facility located within this state. These services shall include, at a minimum, proper medication labeling, storage, transport, record keeping, and prospective drug utilization review in compliance with all federal and state laws and regulations.

“*Unit dose dispensing system*” means a drug distribution system utilizing unit dose packaging.

ITEM 5. Amend rule 657—23.3(124,155A) as follows:

657—23.3(124,155A) Freedom of choice. Pursuant to 657—subrule ~~8.11(5)~~ 8.11(2), no pharmacist or pharmacy shall participate in any agreement or plan that infringes on any resident’s right to freedom of choice as to the provider of pharmacy services. A resident in a ~~long-term care~~ facility shall have a choice of ~~long-term care~~ pharmacy so long as the pharmacy’s drug delivery system provides for the timely delivery of drugs compatible with the facility’s established system ~~currently used by the facility~~. ~~Determination of compatibility may consider medication administration, accessibility, and payment system.~~

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ITEM 6. Amend rule 657—23.4(124,155A) as follows:

657—23.4(124,155A) Responsibilities. The pharmacist in charge and staff pharmacists in any pharmacy providing pharmaceutical services to ~~long-term~~ care facility patients shall share responsibility for:

1. ~~Providing~~ Dispensing drugs pursuant to a medication order for an individual resident, that are properly labeled for that resident, as addressed in rule 657—22.1(155A) or 657—23.13(124,155A) and packaged in a manner consistent with the facility's established drug delivery system and in compliance with applicable board rules for the drug delivery system.

2. ~~Dispensing drugs for residents of long-term care facilities consistent with the drug distribution system described in the facility's policies and procedures.~~

3. ~~2.~~ Affixing labels to each container of drugs for residents in ~~long-term~~ care facilities, in compliance with rule 657—22.1(155A), 657—Chapter 22 or rule 657—6.10(126,155A), 657—23.13(124,155A), or 657—23.14(124,155A).

4. ~~3.~~ Maintaining records of all transactions of the ~~long-term care pharmacy~~ as may be required by law and maintaining accurate control over and accountability for all drugs and prescription devices.

5. ~~4.~~ Complying with a drug recall procedure, established pursuant to rule 657—8.3(155A), that protects the health and safety of residents including ~~immediate discontinuation of any recalled drug or device and subsequent notification of the prescriber and director of nursing of the facility.~~

6. ~~5.~~ Providing 24-hour emergency service either directly or by contract with another pharmacy.

7. ~~6.~~ Reviewing patient profiles to ensure the appropriateness of therapy for that resident and the compatibility of the drug and dosage for that resident when processing new medication orders. Conducting prospective drug use review pursuant to rule 657—8.21(155A) and subrule 23.5(1).

8. ~~7.~~ Providing sufficient and accurate information to facility staff regarding the appropriate administration and use of all dispensed drugs and devices.

9. ~~8.~~ Communicating with the consultant pharmacist and the facility staff regarding concerns and resolution thereof.

ITEM 7. Amend rule 657—23.5(124,155A) as follows:

657—23.5(124,155A) Emergency drugs. A supply of emergency drugs may be provided by one or more ~~long-term care provider~~ pharmacies to the facility pursuant to rule 657—22.7(124,155A).

23.5(1) No change.

23.5(2) Other emergency drugs and devices. In addition to ~~one or more~~ emergency boxes or ~~stat drug boxes~~ drug supplies, a ~~long-term care facility staffed by one or more persons licensed to administer drugs~~ may maintain a stock of intravenous fluids, irrigation fluids, heparin flush kits, medicinal gases, sterile water and saline, and prescription devices. Such stock shall be limited to a listing to be determined by the provider pharmacist in consultation with the consultant pharmacist and the medical director and director of nursing of the facility.

ITEM 8. Rescind and reserve rule **657—23.6(124,155A)**.

ITEM 9. Amend rule 657—23.7(124,155A) as follows:

657—23.7(124,155A) Policies and procedures. Pursuant to rule 657—8.3(155A), each pharmacy shall have policies and procedures related to all aspects of the pharmacy's packaging and dispensing responsibilities to the residents of ~~the long-term~~ a care facility. The policies and procedures shall be maintained at the provider pharmacy and shall be available to the facility and the consultant pharmacist. Policies and procedures shall include, at a minimum:

1. Methods used to dispense and deliver drugs and devices to the facility in a timely fashion;

2. Proper notification to the facility when a drug or device is not readily available;

3. Proper labeling requirements to meet the needs of the facility and which are consistent with state and federal laws and regulations;

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4. Appropriate drug destruction or return of unused drugs, or both, consistent with state and federal laws and regulations.
5. An automatic stop order policy to ensure that drug orders are not continued inappropriately.
6. Methods to ensure that all discontinued, outdated, deteriorated, or improperly labeled drugs and all containers with worn, illegible or missing labels are disposed of so as to render them unusable and protected from unauthorized possession or use.

ITEM 10. Amend rule 657—23.9(124,155A) as follows:

657—23.9(124,155A) Medication orders. Drugs and prescription devices may be dispensed only upon orders of an authorized prescriber or authorized pharmacist as part of a collaborative drug therapy management protocol pursuant to rule 657—39.13(155A).

23.9(1) Requirements for noncontrolled substances. New medication orders transmitted to the pharmacy for drugs for residents of the facility noncontrolled substances shall, at a minimum, contain resident name, drug name and strength, directions for use, date of order, and name of prescriber. Orders for Schedule II controlled substances shall comply with the requirements of rule 657—23.18(124,155A).

23.9(2) Abbreviations Requirements for controlled substances. Abbreviations or chemical symbols utilized in medication orders shall be only those abbreviations or symbols that are customarily used in the practice of medicine and pharmacy or those on a list of approved abbreviations developed by the appropriate committee or representative of the facility. New medication orders transmitted to the pharmacy for controlled substances, including Schedule II controlled substances, shall be in compliance with 657—Chapter 10, 657—Chapter 21, and federal regulations.

23.9(3) Who may transmit medication orders. An authorized prescriber or prescriber's agent or any person who is employed by a long-term care facility and who is authorized by the facility's policies and procedures may transmit to the long-term care pharmacy a medication order lawfully ordered by a practitioner an authorized to prescribe drugs and devices prescriber. An order transmitted by the prescriber's agent shall include the agent's first and last names and title. A member of the care facility staff is an agent of the prescriber only if the prescriber maintains an office in the facility or there exists an agent agreement between the prescriber and the care facility staff member.

23.9(4) Influenza and pneumococcal vaccines. As authorized by federal law, a written or verbal patient-specific medication administration order shall not be required prior to administration to an adult patient of influenza and pneumococcal vaccines pursuant to physician-approved facility policy and after the patient has been assessed for contraindications. Administration shall be recorded in the patient's record. The facility shall submit to the provider pharmacy a listing of those residents or staff members who have been immunized utilizing vaccine from each vial supplied by the provider pharmacy.

ITEM 11. Rescind and reserve rule **657—23.10(124,155A).**

ITEM 12. Amend rule 657—23.11(124,155A) as follows:

657—23.11(124,155A) Drugs dispensed—general requirements.

23.11(1) Labeling. All prescription containers, other than those dispensed pursuant to ~~rule 657—22.1(155A)~~ 657—Chapter 22, rule 657—23.13(124,155A), or rule 657—23.14(124,155A), shall be properly labeled in accordance with 657—subrule 6.10(1).

a. If a label change is required to reflect a change in directions, the ~~pharmacy pharmacist~~ Care facility pharmacist shall be responsible for affixing the correct label to the container. ~~Long-term care~~ Care facility personnel shall not be ~~authorized~~ directed by the pharmacy to affix such a label to the drug container.

b. Direction change labels that notify ~~long-term care~~ Care facility personnel that a change in directions for the drug has taken place may be used and affixed to the container by facility personnel so as not to deface the original label.

23.11(2) Medication order required. Dispensing of all drugs to the facility shall be pursuant to a medication order for an individual resident except as provided in rules 657—23.5(124,155A) and 657—23.14(124,155A) ~~and in subrule 23.9(4).~~

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23.11(3) Prescription containers. All prescription containers, ~~including but not limited to single unit, unit dose, and unit of issue containers~~ utilized for ~~distribution within~~ dispensing drugs to a long-term care facility, shall meet minimum requirements as established by the United States Pharmacopoeia and 657—Chapter 22. When applicable, light-resistant packaging shall be used.

23.11(4) Floor stock. Prescription drugs, as defined by Iowa Code section ~~155A.3(37)~~ 155A.3(38), shall not be floor-stocked in a ~~long-term~~ care facility except as provided in this subrule or in subrule 23.5(2). Bulk supplies of nonprescription drugs may be maintained as provided in subrule 23.13(3). Any pharmacy that utilizes a floor stock distribution system pursuant to this subrule shall develop and implement procedures to accurately establish proof of use of prescription drugs and shall maintain a perpetual inventory, whether by electronic or manual means, of all prescription drugs so dispensed. A floor stock distribution system for prescription drugs may be permitted only under the following circumstances:

a. and b. No change.

ITEM 13. Amend rule 657—23.13(124,155A) as follows:

657—23.13(124,155A) Labeling drugs under special circumstances.

23.13(1) *Insulin, ophthalmics, otic preparations, biologicals, and other injectables for individual patients* Drug products of insufficient size to accommodate pharmacy labeling. ~~These drugs~~ Drug products, such as insulin, ophthalmics, otic preparations, and injectables that are of insufficient size to accommodate a full pharmacy label, shall be dispensed with a label affixed to the immediate container showing at least the resident's name and location.

23.13(2) *Legend solutions—irrigation and infusion.* Legend irrigation solutions and infusion solutions supplied by a ~~licensed~~ pharmacy may be stored in the locked medication area of a ~~long-term~~ care facility provided that:

a. to c. No change.

d. The solution is stored appropriately after opening according to facility policy and manufacturer labeling.

23.13(3) *Floor-stocked, nonprescription drug containers.* All ~~such~~ nonprescription drugs ~~intended~~ for use within the facility shall be in appropriate containers and adequately labeled to identify, at a minimum, ~~brand name or generic~~ drug name and manufacturer, strength, lot number, and expiration date. ~~An internal code that centrally references manufacturer and lot number may be utilized.~~

23.13(4) and 23.13(5) No change.

ITEM 14. Amend rule 657—23.14(124,155A) as follows:

657—23.14(124,155A) ~~Labeling of biologicals and other injectables supplied~~ Provision of drugs to a facility for immunization or screening programs. ~~Labeling of biologicals and other injectables supplied to a~~ A pharmacy may provide drugs to be used in the care facility for a health immunization or ongoing screening program, such as influenza vaccine, tuberculin skin test, or hepatitis-B, and intended for use in the facility, shall include the following information in addition to the manufacturer's label.

23.14(1) *Labeling.* The pharmacy label shall be affixed so as not to obscure the manufacturer's label and shall include the following information.

- ~~1.~~ a. Identification of pharmacy;
- ~~2.~~ b. Name of facility;
- ~~3.~~ c. Name of biological or drug;
- ~~4.~~ d. Route of administration when necessary for clarification;
- ~~5.~~ e. Strength of biological or drug;
- ~~6.~~ f. Auxiliary labels as needed;
- ~~7.~~ g. Date dispensed.

23.14(2) *Influenza and pneumococcal vaccines.* A patient-specific medication order shall not be required prior to administration to an adult patient of influenza or pneumococcal vaccines pursuant to physician-approved facility policy and after the patient has been assessed for contraindications.

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23.14(3) Notification. The facility shall submit to the provider pharmacy a listing of those residents or staff members who have been immunized utilizing vaccine from each vial supplied by the provider pharmacy.

ITEM 15. Amend rule 657—23.15(124,155A) as follows:

657—23.15(124,155A) Return and reuse of drugs and devices. ~~Pharmacists and pharmacies~~ A pharmacy shall not accept from ~~residents or their agents~~ a patient or facility for reuse or resale any ~~drugs, prescribed drugs, chemicals, poisons or medical devices~~ drug or device unless, in the professional judgment of the pharmacist, the integrity of the ~~prescription drug or device~~ has not in any way been compromised. Under no circumstances shall a pharmacist accept from a patient or ~~patient's agent~~ facility any controlled substances for ~~return, exchange, or resale~~ except to for reuse by the same patient. Prescription drugs, excluding controlled substances, dispensed in a unit dose, ~~unit of issue, or single unit packaging~~ dispensing system pursuant to 657—22.1(155A) 657—Chapter 22 may, however, be returned and reused as authorized in 657—subrule 22.1(6). No items of a personal contact nature which have been removed from the original package or container after sale ~~dispensing~~ shall be accepted for return, exchanged, or resold by any pharmacist.

ITEM 16. Rescind and reserve rule 657—23.16(124,155A).

ITEM 17. Amend rule 657—23.17(124,155A) as follows:

657—23.17(124,155A) Accountability of controlled substances.

~~23.17(1) Proof of use.~~ Documentation of use Use of Schedule II controlled substances shall be ~~upon~~ proof of use forms documented. A committee or representative of the facility may also require that Schedule III, IV, or V controlled substances or any other drugs be accounted for on proof-of-use forms. ~~Proof of use forms~~ Documentation shall specify include at a minimum:

- ~~a. 1.~~ Name of drug;
- ~~b. 2.~~ Dose;
- ~~c. 3.~~ Name of ordering prescriber;
- ~~d. 4.~~ Name of resident;
- ~~e. 5.~~ Date and time of administration to resident;
- ~~f. 6.~~ Identification of individual administering;
- ~~g. 7.~~ Documentation of destruction, return to the pharmacy, or other disposition of all unused portions of single doses including the signatures of two individuals, at least one of whom is a licensed health care professional.

~~23.17(2) Container requirement.~~ Any drug required to be counted and accounted for with proof of use forms shall be dispensed in a container that allows visual verification of quantity. Containers for solid oral doses must allow visual identification of individual doses and individual accountability.

ITEM 18. Rescind and reserve rule 657—23.18(124,155A).

ITEM 19. Amend rule 657—23.21(124,155A) as follows:

657—23.21(124,155A) Disposal of previously dispensed controlled substances. Controlled substances dispensed to a resident in a long-term care facility and subsequently requiring disposal due to discontinuance of the drug, death of the resident, or other reasons necessitating disposal shall be disposed of by one of the following methods. Controlled substances shall not be returned to a pharmacy for disposal.

23.21(1) Disposal in the facility. ~~In facilities staffed by one or more persons licensed to administer drugs,~~ a licensed health care professional (pharmacist, registered nurse, licensed practical nurse) may dispose of controlled substances in witness of one other responsible adult. The professional disposing of the drug shall prepare and maintain a readily retrievable record of the disposition which shall be clearly marked to indicate the disposition of resident drugs. The record shall include, at a minimum, the following:

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a. to f. No change.

23.21(2) Authorized collection program within a facility. ~~Registrants~~ Pharmacies registered with DEA to administer an authorized collection program may install and maintain a collection receptacle in a ~~long-term~~ care facility for the purpose of disposal of prescription drugs, including controlled substances, pursuant to federal regulations, ~~which can be found at http://deadiversion.usdoj.gov/drug_disposal/.~~

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Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 124.301, 124.552, and 147.76, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 10, “Controlled Substances,” and Chapter 37, “Iowa Prescription Monitoring Program,” Iowa Administrative Code.

These proposed amendments were approved at the November 1, 2017, regular meeting of the Board of Pharmacy.

During the 2017 Legislative Session, the Iowa Legislature passed and the Governor signed 2017 Iowa Acts, chapters 152 and 162. 2017 Iowa Acts, chapter 162, requires the Board to adopt rules to administer new Iowa Code section 124.201A, which relates to cannabidiol investigational products and which requires the Board to reschedule a cannabidiol product upon being approved by FDA and rescheduled by DEA. 2017 Iowa Acts, chapter 152, allows the Board to provide information from the drug prescribing and dispensing information program (Iowa Prescription Monitoring Program) to a medical examiner investigator recognized by the State Medical Examiner’s office when the information relates to an investigation being conducted by the medical examiner or investigator.

The proposed amendments also increase the frequency of a dispenser’s reporting of controlled substance dispensing to the Iowa Prescription Monitoring Program (PMP) from “at least weekly” to “the next business day following dispensing.” The amendments increase the frequency of such reporting to provide prescribers and pharmacists more timely information when utilizing the data in their prescribing and dispensing decision making.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on January 19, 2018. 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 email 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 is anticipated.

These amendments are intended to implement 2017 Iowa Acts, chapters 152 and 162, and Iowa Code section 124.552.

The following amendments are proposed.

ITEM 1. Adopt the following **new** subrule 10.38(3):

10.38(3) Cannabidiol investigational product. If a cannabidiol investigational product approved as a prescription drug medication by the United States Food and Drug Administration is eliminated from or revised in the federal schedule of controlled substances by the DEA and notice of the elimination or revision is given to the board, the board shall similarly eliminate or revise the prescription drug medication in the schedule of controlled substances. Such action by the board shall be immediately

PHARMACY BOARD[657](cont'd)

effective upon the date of publication of the final regulation containing the elimination or revision in the Federal Register.

ITEM 2. Amend subrule 37.3(3) as follows:

37.3(3) Reporting periods. A record of each reportable prescription dispensed shall be submitted by each dispenser ~~at least weekly~~ no later than the next business day following dispensing. Records may be submitted with greater frequency than required by this subrule. ~~Records of reportable prescriptions dispensed between Sunday and Saturday each week shall be submitted no later than the following Wednesday. However, a pharmacy that is currently submitting prescription dispensing records to another state's PMP on an alternative weekly reporting schedule may request authority to submit records to the Iowa PMP pursuant to that established schedule. The request shall be submitted in writing via e-mail, fax, or regular mail to the PMP administrator. The request shall identify the pharmacy by name, address, and Iowa pharmacy license number and shall define the alternative reporting period and the reason for the requested alternative reporting period. The PMP administrator is hereby authorized to approve or deny the pharmacy's alternative weekly reporting schedule.~~

ITEM 3. Adopt the following **new** subrule 37.4(9):

37.4(9) Medical examiner or medical examiner investigator. A medical examiner or medical examiner investigator may obtain PMP information when the information requested by the examiner or investigator relates to an investigation being conducted by the examiner or investigator.

ARC 3507C

PHARMACY BOARD[657]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 11, “Drugs in Emergency Medical Service Programs,” Iowa Administrative Code.

This amendment was approved at the November 1, 2017, regular meeting of the Board of Pharmacy.

In recent rule making by the Board, emergency medical service programs were required to obtain registration with the Board under the Iowa Uniform Controlled Substances Act (CSA) as well as with the Drug Enforcement Administration (DEA). The Board has learned recently that DEA does not currently have a registration category for such service programs in Iowa, leaving service programs unable to comply with the Board rule as it currently exists. This proposed amendment would remove the requirement that service programs obtain DEA registration.

Any interested person may present written comments, data, views, and arguments on the proposed amendment not later than 4:30 p.m. on January 19, 2018. 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 email at terry.witkowski@iowa.gov.

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

After analysis and review of this rule making, the impact on jobs cannot be determined. The cost to a service program of a DEA registration would have been in excess of \$700 for a three-year registration and will be avoided for the approximately 100 service programs to which this rule applies.

This amendment is intended to implement Iowa Code section 124.301.

The following amendment is proposed.

PHARMACY BOARD[657](cont'd)

Amend subrule 11.3(1) as follows:

11.3(1) *Medical director-based service program.* In a medical director-based service program, CSA and DEA registrations shall be obtained for each primary program site in the name of the medical director. CSA and DEA registrations shall be obtained prior to procurement of any controlled substances for use in the service program. Separate registrations for program substations shall not be required. In a medical director-based service program, ~~the a CSA and DEA registrations~~ registration shall also be issued obtained in the name of the service program, shall secondarily name the medical director, and shall be issued for the address of the service program's primary program site.

ARC 3508C

PHARMACY BOARD[657]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 13, “Telepharmacy Practice,” Iowa Administrative Code.

This amendment was approved at the November 1, 2017, regular meeting of the Board of Pharmacy.

This proposed amendment would allow a telepharmacy to utilize the services of a delivery driver when that individual is registered as a pharmacy support person. The proposed amendment would only authorize the individual to engage in delivery activities and not in the entirety of other nontechnical functions for which a pharmacy support person is authorized.

Any interested person may present written comments, data, views, and arguments on the proposed amendment not later than 4:30 p.m. on January 19, 2018. 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 email at terry.witkowski@iowa.gov.

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

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

This amendment is intended to implement Iowa Code sections 155A.6B and 155A.13.

The following amendment is proposed.

Amend subrule 13.8(7) as follows:

13.8(7) *Prohibited activities.* In the physical absence of a pharmacist, the following activities are prohibited:

a. Practice of pharmacist-interns or pharmacy support persons at the telepharmacy site, except that a pharmacy support person may deliver prescriptions to patients outside the telepharmacy site but may not engage in prescription delivery or any other activities at the telepharmacy site.

b. to f. No change.

ARC 3512C**PHARMACY BOARD[657]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 18, “Centralized Prescription Filling and Processing,” Iowa Administrative Code.

These proposed amendments were approved at the November 1, 2017, regular meeting of the Board of Pharmacy.

Pursuant to Iowa Code section 17A.7(2), the Board has completed an overall review of this chapter of administrative rules. The proposed amendments clarify records requirements and update language to be consistent with other Board rules. The proposed amendments would remove the implication that central fill pharmacies can only enter into agreements with pharmacies that are in good standing. The proposed amendments also remove redundancies in rules that exist in other applicable chapters of Board rules.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on January 19, 2018. 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 email at terry.witkowski@iowa.gov.

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

After analysis and review of this rule making, no impact on jobs is anticipated.

These amendments are intended to implement Iowa Code sections 124.301, 124.306, 124.308, 155A.13, and 155A.28.

The following amendments are proposed.

ITEM 1. Amend rule 657—18.3(155A) as follows:

657—18.3(155A) General requirements.

18.3(1) Essential qualifications. An originating pharmacy may outsource prescription drug filling to a central fill pharmacy or prescription drug order processing to a central processing pharmacy provided the pharmacies:

a. Have the same owner or have entered into a written contract or agreement, which is available for inspection and copying by the board or its authorized agent, that outlines the services to be provided and the responsibilities and accountabilities of each pharmacy in compliance with federal and state laws, rules, and regulations; and

b. No change.

18.3(2) No change.

18.3(3) Originating pharmacy responsibility. Except as specifically provided by this subrule, the originating pharmacy shall be responsible for all dispensing functions as the term “dispense” is defined in rule 657—18.2(155A). An originating pharmacy contracting only for centralized filling shall retain responsibility for all processing functions, and an originating pharmacy contracting only for centralized processing shall retain responsibility for all filling functions.

a. No change.

b. A central fill or a central processing pharmacy that shares a common central processing unit with the originating pharmacy may perform prospective drug use review (DUR) pursuant to rule 657—8.21(155A). Only a pharmacist shall perform the DUR; ~~the~~, and such review shall not be

PHARMACY BOARD[657](cont'd)

delegated to a pharmacy technician, registered nurse, or other pharmacy support person. The pharmacist performing the DUR shall document in the shared patient record all concerns, recommendations, observations, and comments resulting from that review. The pharmacist at the originating pharmacy shall utilize the DUR notes in counseling the patient pursuant to rule 657—6.14(155A).

18.3(4) Central fill label requirements. The label affixed to the prescription container filled by a central fill pharmacy on behalf of an originating pharmacy shall include the following:

a. to h. No change.

i. The initials or other unique identification of the pharmacist in the originating pharmacy who performed drug use review and transmitted the prescription drug order to the central fill pharmacy.

ITEM 2. Amend subrule 18.5(2) as follows:

18.5(2) Exception. The provisions of this rule do not apply to a patient in a facility, such as a hospital or long-term care facility, where Iowa law requires that drugs be administered to the patient by a health care professional.

ITEM 3. Amend rule 657—18.10(155A) as follows:

657—18.10(155A) Policy and procedures.

18.10(1) Manual maintained. Pursuant to rule 657—8.3(155A), a policy and procedure manual relating to centralized filling or centralized processing activities shall be maintained at all pharmacies involved in centralized filling or centralized processing and shall be available for inspection and copying by the board or an its authorized agent of the board.

18.10(2) Manual contents. The manual shall:

~~*a. 1.*~~ Outline the responsibilities of each of the pharmacies;

~~*b. 2.*~~ Include a list of the names, addresses, telephone numbers, and all license and registration numbers of the pharmacies involved in centralized filling or centralized processing; and

~~*c.*~~ ~~Include evidence that all licenses and registrations have been verified to be current and in good standing, identifying the individual verifying license and registration status and the method used to verify status; and~~

~~*d. 3.*~~ Include, but not necessarily be limited to, policies and procedures for:

(1) ● Protecting the confidentiality and integrity of patient information;

(2) ● Protecting each patient's freedom of choice of pharmacy services;

(3) ● Maintaining appropriate records to identify the name, the initials or unique identification code, and the specific activities of each pharmacist or pharmacy technician who performed any centralized filling or centralized processing function; and

(4) ~~Complying with federal and state laws, rules, and regulations;~~

(5) ● Operating a continuous quality improvement program for pharmacy services designed to objectively and systematically monitor and evaluate the quality and appropriateness of patient care, pursue opportunities to improve patient care, and resolve identified problems; and

(6) ~~Reviewing, at least annually, the written policies and procedures and documenting that review.~~

ITEM 4. Amend rule 657—18.15(155A) as follows:

657—18.15(155A) Records. Central fill or central processing pharmacies shall maintain appropriate records that identify, by prescription drug order, the ~~name and~~ initials or unique identification code of each pharmacist or pharmacy technician who performs a centralized filling or centralized processing function for a prescription drug order. Originating pharmacies shall maintain appropriate records that identify, by prescription drug order, the ~~name and~~ initials or unique identification code of the pharmacist who performed drug use review and the pharmacist who transmitted the prescription drug order to the central fill or central processing pharmacy. These records may be maintained separately by each pharmacy or in a common electronic file as long as the data processing system is capable of producing a printout that lists the functions performed by each pharmacy and pharmacist or technician and identifies the pharmacist or technician who performed each function.

ARC 3510C**PHARMACY BOARD[657]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 22, “Unit Dose, Alternative Packaging, and Emergency Boxes,” Iowa Administrative Code.

This amendment was approved at the November 1, 2017, regular meeting of the Board of Pharmacy.

Patients within the Veterans Administration (VA) health care system are limited in where they may obtain their prescriptions drugs under the VA benefit, and VA pharmacies do not provide prescription drugs in unit dose drug distribution systems, which are usually required in care facilities. This amendment proposes to adopt a new rule that would allow pharmacies to repackage prescription drugs originally dispensed by a VA pharmacy for a patient residing in a care facility. In the care facility, drug security and accountability are better provided when drugs are packaged in unit dose drug distribution systems. This proposed rule identifies the minimum standard for such repackaging activities.

Any interested person may present written comments, data, views, and arguments on the proposed amendment not later than 4:30 p.m. on January 19, 2018. 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 email at terry.witkowski@iowa.gov.

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

After analysis and review of this rule making, no impact on jobs is anticipated.

This amendment is intended to implement Iowa Code sections 124.301, 126.11, 155A.13, 155A.28, 155A.35, and 155A.36.

The following amendment is proposed.

Adopt the following **new** rule 657—22.6(124,126,155A):

657—22.6(124,126,155A) Repackaging of VA medications. A pharmacy may repackage, for a specific patient residing in a care facility as defined in 657—Chapter 23, a supply of medications originally dispensed by a Veterans Administration (VA) pharmacy. A pharmacy that repackages VA medications for a patient residing in a care facility assumes liability for such service unless liability is waived by the patient or the patient’s caregiver.

22.6(1) Labeling. In addition to the labeling requirements of 657—subrule 6.10(1), rule 657—22.1(155A), or rule 657—22.5(126,155A), the labeling of medication pursuant to this rule shall include an appropriate beyond-use date.

22.6(2) Record. In addition to the record-keeping requirements of 657—subrule 8.3(7) or rule 657—22.5(126,155A), the pharmacy shall create and maintain a record that includes at a minimum:

- a. Name, address, and telephone number of the VA pharmacy which dispensed the medication; and
- b. The prescription number or unique identification assigned to the medication dispensed by the VA pharmacy.

This rule is intended to implement Iowa Code sections 124.301, 126.11, 155A.13, 155A.28, 155A.35, and 155A.36.

ARC 3519C**PUBLIC HEALTH DEPARTMENT[641]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 135.131 and 2017 Iowa Acts, Senate File 51, the Iowa Department of Public Health hereby gives Notice of Intended Action to amend Chapter 3, “Early Hearing Detection and Intervention (EHDI) Program,” Iowa Administrative Code.

Infants born to mothers infected with cytomegalovirus (CMV) during pregnancy may develop a congenital CMV infection, which may lead to hearing loss or other serious complications. The proposed amendments add definitions for “congenital cytomegalovirus” and “cytomegalovirus,” add testing for CMV to the rule that outlines the procedure to accommodate parental objection, and outline the procedure for documentation of parental refusal of newborn testing for CMV.

Any interested person may make written comments or suggestions on the proposed amendments on or before January 9, 2018. Such written comments should be directed to Kimberly Piper, Bureau of Family Health, Department of Public Health, 321 East 12th Street, Des Moines, Iowa 50319. Comments may be sent by email to kimberly.piper@idph.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 135.131 and 2017 Iowa Acts, Senate File 51.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definitions of “Congenital cytomegalovirus” and “Cytomegalovirus” in rule **641—3.1(135)**:

“*Congenital cytomegalovirus*” or “*cCMV*” means an infection where cytomegalovirus is transmitted to the fetus in the prenatal period.

“*Cytomegalovirus*” or “*CMV*” means a kind of herpes virus that usually produces very mild symptoms in an infected person but may cause severe neurological damage in a person with a weakened immune system and in a newborn.

ITEM 2. Amend rule 641—3.2(135) as follows:

641—3.2(135) Purpose. The overall purpose of this chapter is to establish administrative rules in accordance with Iowa Code section 135.131 relative to the following:

1. Universal hearing screening of all newborns and infants in Iowa.
2. Facilitating the transfer of data to the department to enhance the capacity of agencies and practitioners to provide services to children and their families.
3. Establishing procedures for infants who were not screened or do not pass their initial hearing screening to receive appropriate follow-up to determine if the infants have normal hearing or have hearing loss.
4. Establishing the procedure for distribution of funds to support the purchase of hearing aids and audiologic services for children.
5. Establishing the procedure for documentation of parent refusal of newborn testing for congenital cytomegalovirus.

ITEM 3. Amend rule 641—3.13(135) as follows:

641—3.13(135) Procedure to accommodate parental objection. These rules shall not apply if the parent objects to the hearing screening, diagnostic audiologic assessment, or cCMV testing.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

3.13(1) If a parent objects to the screening, the birthing hospital, birth center, physician, or other health care professional shall obtain a written refusal from the parent or guardian on the department newborn hearing screening or diagnostic audiologic assessment refusal form and shall maintain the original copy of the written refusal in the newborn's, infant's or child's medical record.

3.13(2) The birthing hospital, birth center, physician, or other health care professional shall send a copy of the written newborn hearing screening or diagnostic audiologic assessment refusal form to the department within six days of the birth of the newborn.

3.13(3) If a parent objects to a hearing rescreen or diagnostic audiologic assessment orally to a department EHDI staff member during follow-up, the staff member shall document the refusal in the department's designated reporting system and mail to the parent or guardian the department newborn hearing screening or diagnostic audiologic assessment refusal form in an attempt to obtain a written refusal to be maintained in the newborn's, infant's or child's medical record.

3.13(4) If a parent objects to cCMV testing, the birthing hospital, birth center, physician, or other health care professional required to ensure cCMV testing shall obtain, on the department cCMV testing refusal form, a written refusal from the parent or guardian, shall maintain the original copy of the written refusal in the child's medical record, and shall send a copy of the written refusal to the department within 21 days of the child's birth.

ARC 3518C

SECRETARY OF STATE[721]

Notice of Intended Action

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

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

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

This proposed amendment is necessary because the General Assembly has enacted 2017 Iowa Acts, Senate File 516. The Secretary of State has determined that as a result of this newly enacted law, the following amendment is necessary to fund the Technology Modernization Fund within the Secretary of State's office. Previously, **ARC 3467C** (IAB 11/22/17) made updates to various chapters under the Secretary of State's administrative rules, including rule 721—2.3(631) and Chapters 30 and 40. This amendment will harmonize the language found in subrule 2.3(5) for fee increases with the sunset and limiting provisions adopted in **ARC 3467C**.

Any interested person may make written suggestions or comments on the proposed amendment on or before January 9, 2018. Written suggestions or comments should be directed to Eric R. Gookin, Legal Counsel, Office of the Secretary of State, First Floor, Lucas State Office Building, Des Moines, Iowa 50319; or by email to eric.gookin@sos.iowa.gov.

Persons who want to convey their views orally or who want to request the opportunity to make a public presentation in regard to this amendment should contact the Secretary of State's office by telephone at (515)281-0145 or in person at the Secretary of State's office on the first floor of the Lucas State Office Building.

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

This amendment is intended to implement 2017 Iowa Acts, Senate File 516, section 23.

The following amendment is proposed.

SECRETARY OF STATE[721](cont'd)

Amend rule 721—2.3(631) as follows:

721—2.3(9,631) Payment for services. The secretary of state may approve accounts to be used for the payment of services provided by the secretary of state. A user of a service provided by the secretary of state may make payment for the service by authorizing a charge to be made upon an account held by the user.

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

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

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

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

2.3(5) An annual fee of \$100 shall be paid by an account holder for the privilege of maintaining an account. The annual fee shall cover a 12-month period measured from the first day of the month in which the account is approved by the secretary of state. An account that is not delinquent one month prior to the expiration of the annual period shall be renewed upon the payment of the annual fee. The secretary of state shall charge the annual fee to the account on the statement of the account for the monthly period prior to the expiration date. The annual fee shall be used for the purpose of offsetting the expenses incurred by the secretary of state in maintaining the account. Upon the expiration of the technology modernization fund in Iowa Code section 9.4A, as created by 2017 Iowa Acts, Senate File 516, section 23, the fee will revert to the amount authorized prior to July 1, 2017. Funds generated by the increase of this fee shall be exclusively used for improving business services technology.

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

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

ARC 3513C

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 322.13, the Iowa Department of Transportation (Department) hereby gives Notice of Intended Action to amend Chapter 425, “Motor Vehicle and Travel Trailer Dealers, Manufacturers, Distributors and Wholesalers,” Iowa Administrative Code.

The Department is proposing amendments to Chapter 425 to align the chapter with the following Iowa Code changes:

- 2014 Iowa Acts, chapter 1123, sections 27 and 28, amended Iowa Code sections 321.57 and 321.60, which allow a motor vehicle dealer to operate or move upon the highways a vehicle owned by

TRANSPORTATION DEPARTMENT[761](cont'd)

the dealer for either private or business purposes without registering the vehicle if the vehicle is in the dealer's inventory and is continuously offered for sale at retail, provided the vehicle is equipped with a special dealer plate issued by the Department. These changes allow the dealer to use an unregistered vehicle in the dealer's inventory to carry a load or tow a trailer, provided the dealer obtains a special dealer plate specifically issued for hauling a load or towing a trailer. Iowa Code section 321.60 sets the fee for a special haul or tow dealer plate at \$750, valid for a two-year period.

- 2015 Iowa Acts, chapter 123, section 38, amended Iowa Code section 322.5(2), which specifies additional places at which a motor vehicle dealer may display, offer for sale, or negotiate sales for new motor vehicles. Before this amendment, Iowa Code section 322.5(2) provided that, in addition to selling motor vehicles at the dealer's principal place of business and permanent car lots, the dealer could, under a temporary permit from the Department, display only (but not offer to sell or negotiate the sale of) motor vehicles at fairs, vehicle shows and vehicle exhibitions anywhere in the state (even if not in the dealer's community), and could display, offer for sale, and negotiate the sale of motor vehicles at fair events, vehicle shows, and vehicle exhibitions that were held within the dealer's community. ("Community" is defined in Iowa Code section 322A.1 and means the dealer's area of responsibility as defined in its franchise agreement with the manufacturer.) "Fair events" only included county and district fairs provided for in Iowa Code chapter 174 and did not include the state fair, which is separately identified in Iowa Code chapter 173. The amendment to Iowa Code section 322.5(2) expanded sales opportunities to also allow motor vehicle dealers to display, offer for sale, and negotiate the sale of new motor vehicles at the state fair under a temporary permit issued by the Department, again provided the fair is within the motor vehicle dealer's community.

- 2016 Iowa Acts, chapter 1083, section 3, amended Iowa Code section 322.2, which defined "engaged in the business" of selling motor vehicles as "doing any of the following acts for the purpose of the sale of motor vehicles at retail: acquiring, selling, exchanging, holding, offering, displaying, brokering, accepting on consignment, conducting a retail auction, or acting as an agent for the purpose of doing any of those acts." This change expanded the definition to also include "advertising as being engaged in any of those acts." The definition of being engaged in the business of selling motor vehicles is significant because only persons who are engaged in the business of selling motor vehicles are required to obtain and maintain a motor vehicle dealer's license to do so.

- 2016 Iowa Acts, chapter 1083, section 7, amended Iowa Code section 322.4. This change increased the minimum bond amount which must be carried by a motor vehicle dealer from \$50,000 to \$75,000.

The following further explains the amendments proposed in this rule making:

Item 1 updates the responsible office name from the office of vehicle services to the office of vehicle and motor carrier services to reflect the consolidation of these two offices into one office. This change is also reflected in Items 4, 5, 6, 7, 10 and 12. This item also updates the Department's website address.

Item 2 updates the definition of "Engage in this state in the business" to match the definition set forth in Iowa Code section 322.2 described above.

Item 3 changes the word "forms" to "form" to clarify that a single application form is needed to apply for a license as a motor vehicle dealer or travel trailer dealer.

Item 4 increases the minimum bond amount a motor vehicle dealer must carry from \$50,000 to \$75,000 to match the amount required in amended Iowa Code section 322.4, as described above. This item also makes a minor clarification in the notifications the Department must give the bond company, by changing the requirement from notifying the bond company of any conviction of the dealer for a violation of dealer laws to notifying the bond company of any conviction of the dealer related to the operations of the dealership. This change reflects that convictions that affect a dealer's license and bond may be under laws that are outside Iowa Code chapter 322.

Items 8 and 11 make changes to the rules concerning permits for motor vehicle dealers to display, offer to sell, and negotiate the sale of new motor vehicles at fairs, vehicle shows and vehicle exhibitions by adding a permit option for the state fair. These changes comply with Iowa Code section 322.5(2) as described above. Other amendments include the addition of the definition of "community" to mean as defined under Iowa Code section 322A.1; addition of the definition of "state fair" to mean the state

TRANSPORTATION DEPARTMENT[761](cont'd)

fair as discussed in Iowa Code chapter 173; and insertion of the term “state fair” in conjunction with fairs, vehicle shows, and vehicle exhibitions wherever applicable. The terms “show” and “exhibition” are also changed to “vehicle show” and “vehicle exhibition” consistently throughout to improve clarity and consistency within the rule and with Iowa Code section 322.5.

Item 9 adds the word “vehicle” before “exhibition” for the same reasons as described in the paragraph above.

Items 13 and 14 make changes to comply with Iowa Code sections 321.57 and 321.60, which provide for issuance of a dealer license plate to be displayed on inventory vehicles used to haul a load and tow a trailer as described above. Item 14 also clarifies that a dealer who obtains a “HAUL & TOW” plate and uses it to demonstrate the load capabilities of motor trucks and truck tractors to prospective purchasers does not also need to obtain a demonstration permit from the Department to do so.

The proposed amendments made throughout this chapter are intended to align the rules with the Iowa Code and conform the rules to Departmental practices.

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, Strategic Communications and Policy, 800 Lincoln Way, Ames, Iowa 50010; email: tracy.george@iowadot.us.
5. Be received by the Department’s rules administrator no later than January 9, 2018.

A meeting to hear requested oral presentations is scheduled for Thursday, January 11, 2018, at 10 a.m. at the Iowa Department of Transportation’s Motor Vehicle Division offices located at 6310 SE Convenience Boulevard, Ankeny, 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 321.57, 321.60, 322.2, 322.4 and 322.5.

The following amendments are proposed.

ITEM 1. Amend subrule 425.1(2) as follows:

425.1(2) The office of vehicle and motor carrier services administers this chapter. The mailing address is: Office of Vehicle and Motor Carrier Services, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278.

a. Applications required by the chapter shall be submitted to the office of vehicle and motor carrier services.

b. Information about dealer plates and the licensing of motor vehicles and travel trailer dealers, manufacturers, distributors and wholesalers is available from the office of vehicle and motor carrier services or on the department’s ~~Web site~~ website at <http://www.iowadot.gov/mvd> www.iowadot.gov.

ITEM 2. Amend rule **761—425.3(322)**, definition of “Engage in this state in the business,” as follows:

“*Engage in this state in the business*” or similar wording means doing any of the following acts for the purpose of selling motor vehicles or travel trailers at retail: to acquire, sell, exchange, hold, offer, display, broker, accept on consignment or conduct a retail auction, advertise as being engaged in any of those acts, or to act as an agent for the purpose of doing any of ~~these~~ those acts. A person selling at retail more than six motor vehicles or six travel trailers during a 12-month period may be presumed to

TRANSPORTATION DEPARTMENT[761](cont'd)

be engaged in the business. See rule 761—425.20(322) for provisions regarding fleet sales and retail auction sales.

ITEM 3. Amend subrule 425.10(1) as follows:

425.10(1) *Application ~~forms~~ form.* To apply for a license as a motor vehicle or travel trailer dealer, the applicant shall complete an application on ~~forms~~ a form prescribed by the department.

ITEM 4. Amend subrule 425.10(2) as follows:

425.10(2) *Surety bond.*

a. The applicant shall obtain a surety bond in the following amounts and file the original with the office of vehicle and motor carrier services:

- (1) For a motor vehicle dealer's license, ~~\$50,000~~ \$75,000.
- (2) No change.

b. The surety bond shall provide for notice to the office of vehicle and motor carrier services at least 30 days before cancellation.

c. The office of vehicle and motor carrier services shall notify the bonding company of any conviction of the dealer for a violation of ~~dealer~~ laws related to the operations of the dealership.

d. If the bond is canceled, the office of vehicle and motor carrier services shall notify the dealer by first-class mail that the dealer's license shall be revoked on the same date that the bond is canceled unless the bond is reinstated or a new bond is filed.

e. If an applicant whose dealer's license was revoked pursuant to paragraph "d" establishes that the applicant obtained a reinstated or new bond meeting the requirements of subrule 425.10(2) that was effective on or before the date of cancellation, but due to mistake or inadvertence failed to file the original bond with the office of vehicle and motor carrier services, the applicant may file the original of the reinstated or new bond. Upon filing, the department will rescind the revocation of the dealer's license.

ITEM 5. Amend paragraph **425.10(3)"a"** as follows:

a. An applicant who intends to sell new motor vehicles or travel trailers shall submit to the office of vehicle and motor carrier services a copy of a signed franchise agreement with the manufacturer or distributor of ~~each~~ make the applicant intends to sell.

ITEM 6. Amend subrule 425.10(6) as follows:

425.10(6) *Zoning.* The applicant shall provide to the office of vehicle and motor carrier services written evidence, issued by the office responsible for the enforcement of zoning ordinances in the city or county where the applicant's business is located, which states that the applicant's principal place of business and any extensions comply with all applicable zoning provisions or are a legal nonconforming use.

ITEM 7. Amend rule 761—425.18(322) as follows:

761—425.18(322) Supplemental statement of changes. A motor vehicle dealer shall file a written statement with the office of vehicle and motor carrier services at least ten days before any change of name, location, hours, or method or plan of doing business. A license is not valid until the changes listed in the statement have been approved by the office of vehicle and motor carrier services.

This rule is intended to implement Iowa Code sections 322.1 to 322.15.

ITEM 8. Amend rule 761—425.26(322) as follows:

761—425.26(322) Fairs State fair, fairs, shows and exhibitions.

425.26(1) *Definitions.* As used in this rule:

"Community" means an area of responsibility as defined in Iowa Code section 322A.1.

"Display" means having new motor vehicles or new travel trailers available for public viewing at fairs, vehicle shows or vehicle exhibitions. The dealer may also post, display or provide product information through literature or other descriptive media. However, the product information shall not include prices, except for the manufacturer's sticker price. "Display" does not mean offering new vehicles for sale or negotiating sales of new vehicles.

TRANSPORTATION DEPARTMENT[761](cont'd)

“Fair” means a county fair or a scheduled gathering for a predetermined period of time at a specific location for the exhibition, display or sale of various wares, products, equipment, produce or livestock, but not solely new vehicles, and sponsored by a person other than a single dealer.

“Offer” new vehicles “for sale,” “negotiate sales” of new vehicles, or similar wording, means doing any of the following at the state fair or a fair, vehicle show or vehicle exhibition: posting prices in addition to the manufacturer’s sticker price, discussing prices or trade-ins, arranging for payments or financing, and initiating contracts.

“State fair” means the fair as discussed in Iowa Code chapter 173.

“Vehicle exhibition” means a scheduled event conducted at a specific location where various types, makes or models of new vehicles are displayed either at the same time or consecutively in time, and sponsored by a person other than a single dealer.

“Vehicle show” means a scheduled event conducted for a predetermined period of time at a specific location for the purpose of displaying at the same time various types, makes or models of new vehicles, which may be in conjunction with other events or displays, and sponsored by a person other than a single dealer.

425.26(2) Permits for ~~motor vehicle~~ dealers of new motor vehicles.

a. A “display only” fair, vehicle show or vehicle exhibition permit allows a motor vehicle dealer to display new motor vehicles at a specified fair, vehicle show or vehicle exhibition in any Iowa county. The permit is valid on Sundays.

b. A “full” fair, state fair, vehicle show or vehicle exhibition permit allows a motor vehicle dealer to display and offer new motor vehicles for sale and negotiate sales of new motor vehicles at the state fair, or a specified fair, vehicle show or vehicle exhibition that is held in the same county as within the motor vehicle dealer’s principal place of business community. EXCEPTION: A motor vehicle dealer who is licensed to sell motor homes may be issued a permit to offer for sale Class “A” and Class “C” motor homes at a specified fair, vehicle show or vehicle exhibition in any Iowa county. A “full” fair, show or exhibition permit is not valid on Sundays.

c. The following restrictions are applicable to both types of permits:

(1) Permits will be issued to motor vehicle dealers only for the state fair, fairs, vehicle shows or vehicle exhibitions where more than one motor vehicle dealer may participate.

(2) No change.

425.26(3) Reserved.

425.26(4) Permits for ~~travel trailer~~ dealers of new travel trailers. A fair, vehicle show or vehicle exhibition permit allows a travel trailer dealer to display and offer new travel trailers for sale and negotiate sales of new travel trailers at a specified fair, vehicle show, or vehicle exhibition in any Iowa county.

a. to c. No change.

425.26(5) Permit application. A motor vehicle or travel trailer dealer shall apply for a ~~fair, show or exhibition~~ permit on an application form prescribed by the department. The application shall include the dealer’s name, address and license number and the following information about the ~~fair, show or exhibition event~~: name, location, sponsor(s) and duration, including the opening and closing dates.

425.26(6) Display of permit. The motor vehicle or travel trailer dealer shall display the permit ~~at the fair, show or exhibition~~ in close proximity to the vehicles being exhibited.

425.26(7) Variance. Rescinded IAB 11/7/07, effective 12/12/07.

425.26(8) Display without permit. Rescinded IAB 7/10/02, effective 8/14/02.

This rule is intended to implement Iowa Code ~~subsections~~ sections 322.5(2) and 322C.3(9).

ITEM 9. Amend rule 761—425.31(322) as follows:

761—425.31(322) Firefighting and rescue show permit.

425.31(1) Application for a firefighting and rescue show permit shall be made on a form prescribed by the department. The application shall include the name, address and license number of the applicant, the type of vehicles being displayed, and the following information about the vehicle show or vehicle exhibition: name, location, sponsor(s), and duration, including the opening and closing dates.

425.31(2) No change.

TRANSPORTATION DEPARTMENT[761](cont'd)

425.31(3) The permit holder shall display the permit in a prominent place at the location of the vehicle show or vehicle exhibition.

This rule is intended to implement Iowa Code ~~subsection~~ section 322.5(5).

ITEM 10. Amend subrule 425.50(2) as follows:

425.50(2) *Licensing requirements.*

~~a. Rescinded IAB 11/3/99, effective 12/8/99.~~

~~b. a.~~ New motor homes delivered to Iowa dealers must contain the systems and meet the standards specified in Iowa Code ~~paragraph~~ section 321.1(36C)“d.”

~~c. b.~~ A licensee shall ensure that any new retail outlet is properly licensed as a dealer before any vehicles are delivered to the outlet.

~~d. c.~~ A licensee shall notify the office of vehicle and motor carrier services in writing at least ten days prior to any:

(1) and (2) No change.

~~(3) Rescinded IAB 11/3/99, effective 12/8/99.~~

~~(4) (3)~~ Change in the trade name of a travel trailer manufactured for delivery in this state.

~~e. d.~~ A licensee shall notify the office of vehicle and motor carrier services in writing at least ten days before any new make of vehicle is offered for sale at retail in this state.

ITEM 11. Amend subrule 425.62(2) as follows:

425.62(2) The department may deny a dealer’s application for the state fair or a fair, vehicle show or vehicle exhibition permit for a period not to exceed six months if the dealer fails to comply with the applicable provisions of rule 761—425.26(322) or Iowa Code ~~subsection~~ section 322.5(2) or 322C.3(9).

ITEM 12. Amend subrule 425.62(4) as follows:

425.62(4) The department shall send notice by certified mail to a person whose certificate, license or permit is to be revoked, suspended, canceled or denied. The notice shall be mailed to the person’s mailing address as shown on departmental records or, if the person is currently licensed, to the principal place of business, and shall become effective 20 days from the date mailed. A person who is aggrieved by a decision of the department and who is entitled to a hearing may contest the decision in accordance with 761—Chapter 13. The request shall be submitted in writing to the director of the office of vehicle and motor carrier services at the address in subrule 425.1(2). The request shall be deemed timely submitted if it is delivered or postmarked on or before the effective date specified in the notice of revocation, suspension, cancellation or denial.

ITEM 13. Amend subrule 425.70(3) as follows:

425.70(3) *Use of dealer plates.*

~~a.~~ No change.

~~b. Motor vehicles used by dealers, manufacturers or distributors to transport other vehicles shall be registered, except when being transported from the place of manufacturing, assembling or distribution to a dealer’s place of business.~~

~~c. b.~~ Saddle-mounted vehicles being transported shall display dealer plates.

~~d. c.~~ Dealer plates may be displayed on a trailer carrying a load, provided the ~~truck or truck tractor~~ motor vehicle towing the trailer is properly registered under Iowa Code section 321.109, 321.120, or 321.122, except as provided or is displaying a dealer plate described in paragraph 425.70(3)“e,” or a demonstration permit has been issued as described in rule 761—425.72(321).

~~e. d.~~ Dealer plates may be used by a dealer licensed as a wholesaler for a new motor vehicle model when operating a new motor vehicle of that model if the motor vehicle is owned by the wholesaler and is operated solely for the purpose of demonstration, show or exhibition.

TRANSPORTATION DEPARTMENT[761](cont'd)

e. A dealer plate issued under Iowa Code section 321.60 for the purpose of hauling a load or towing a trailer shall be marked "HAUL & TOW." Dealer "HAUL & TOW" plates may only be displayed on vehicles in the dealer's inventory that are continuously offered for sale at retail.

ITEM 14. Adopt the following **new** subrule 425.72(6):

425.72(6) A dealer plate issued under Iowa Code section 321.60 for the purpose of hauling a load or towing a trailer may be used in lieu of a demonstration permit.

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

TIME DEPOSITS

7-31 days	Minimum .05%
32-89 days	Minimum .05%
90-179 days	Minimum .05%
180-364 days	Minimum .05%
One year to 397 days	Minimum .25%
More than 397 days	Minimum .55%

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

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

USURY

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

January 1, 2017 — January 31, 2017	4.25%
February 1, 2017 — February 28, 2017	4.50%
March 1, 2017 — March 31, 2017	4.50%
April 1, 2017 — April 30, 2017	4.50%
May 1, 2017 — May 31, 2017	4.50%
June 1, 2017 — June 30, 2017	4.25%
July 1, 2017 — July 31, 2017	4.25%
August 1, 2017 — August 31, 2017	4.25%
September 1, 2017 — September 30, 2017	4.25%
October 1, 2017 — October 31, 2017	4.25%
November 1, 2017—November 30, 2017	4.25%
December 1, 2017—December 31, 2017	4.25%
January 1, 2018 — January 31, 2018	4.25%

ARC 3522C

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 96.11, the Director of Workforce Development Department hereby gives Notice of Intended Action to amend Chapter 23, “Employer’s Contribution and Charges,” Chapter 24, “Claims and Benefits,” and Chapter 25, “Benefit Payment Control,” 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 submit written or oral suggestions or comments on the proposed amendments on or before January 9, 2018, to David J. Steen, Attorney, Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to david.steen@iwd.iowa.gov.

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

Waiver provisions do not apply to this rule making.

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

These amendments are intended to implement Iowa Code chapter 96.

The following amendments are proposed.

ITEM 1. Rescind paragraph **23.6(2)“c”** and adopt the following **new** paragraph in lieu thereof:

c. Only wages reported to the Iowa unemployment insurance program may be used in computing the employee’s reportable taxable wages in Iowa.

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

ITEM 2. Adopt the following **new** subrule 23.60(8):

23.60(8) An employer who fails to submit quarterly wage detail electronically will be assessed a penalty of \$20 per employee, minimum of \$50, in addition to other penalties imposed.

ITEM 3. Adopt the following **new** subrule 23.60(9):

23.60(9) An employer who fails to pay electronically will be assessed a \$100 penalty per payment received.

ITEM 4. Amend rule 871—24.3(96) as follows:

871—24.3(96) Social security number needed for filing.

24.3(1) The correct social security number must be provided by the claimant. The correct social security number is essential in the processing of the claim. ~~Therefore, if the claimant has a social security card, the number must be taken from that card or be provided by the claimant. If the claimant has two or more social security numbers, the claim shall be held until the claimant ascertains which number is correct.~~ A claim cannot be processed without a social security number.

24.3(2) The claim will not become valid until the identity has been verified by the department. If the claimant has not provided the information to verify identity within seven calendar days of filing of a claim, the claim will be voided. The claimant must submit another claim for benefits. The effective date of the claim would be the Sunday of the week the identity was verified.

ITEM 5. Adopt the following **new** rule 871—25.17(96):

871—25.17(96) Federal payment offset. Pursuant to 42 U.S.C. 503 §303(m) and 26 U.S.C. §6402(f), the department shall utilize the treasury offset program in order to collect covered unemployment compensation.

ARC 3521C

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 96.11, the Director of Workforce Development Department hereby gives Notice of Intended Action to amend Chapter 24, “Claims and Benefits,” Iowa Administrative Code.

This proposed amendment updates the reporting requirements for claimants during a continued claim.

Any interested person may submit written or oral suggestions or comments on the proposed amendment on or before January 9, 2018, 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.

This amendment does 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.

This amendment is intended to implement Iowa Code chapter 96.

The following amendment is proposed.

Rescind paragraph **24.2(1)“e”** and adopt the following **new** paragraph in lieu thereof:

e. In order to maintain continuing eligibility for benefits during any continuous period of unemployment, an individual shall report as directed to do so by an authorized representative of the

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

department. If the individual has moved to another locality, the individual may register and report in person at a workforce development center at the time previously specified for the reporting.

- (1) An individual who files a weekly continued claim will have the benefit payment automatically deposited weekly on a debit card specified by the department.
- (2) The department retains the ultimate authority to choose the method of reporting and payment.

ARC 3523C

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code section 10A.801, the Department of Inspections and Appeals hereby adopts a new Chapter 9, “Contested Cases,” and amends Chapter 10, “Contested Case Hearings,” Chapter 30, “Food and Consumer Safety,” Chapter 50, “Health Care Facilities Administration,” Chapter 57, “Residential Care Facilities,” Chapter 58, “Nursing Facilities,” Chapter 62, “Residential Care Facilities for Persons with Mental Illness (RCF/PMI),” Chapter 63, “Residential Care Facilities for the Intellectually Disabled,” Chapter 64, “Intermediate Care Facilities for the Intellectually Disabled,” Chapter 65, “Intermediate Care Facilities for Persons with Mental Illness (ICF/PMC),” Chapter 67, “General Provisions for Elder Group Homes, Assisted Living Programs, and Adult Day Services,” Chapter 90, “Public Assistance Debt Recovery Unit,” Chapter 100, “Administration,” Chapter 105, “Registered Amusement Devices,” and Chapter 106, “Card Game Tournaments by Veterans Organizations,” Iowa Administrative Code.

These amendments make a number of technical corrections to the procedure governing administrative hearings conducted by the Administrative Hearings Division. The amendments update the title of Chapter 10 to better describe the nature of the rules within, and they move the rules pertaining to contested cases of the Department of Inspections and Appeals to their own chapter to provide greater clarity and update cross references accordingly. They update the procedures related to prehearing conferences to simplify the rule and provide greater flexibility to the parties and the administrative law judge to use the conferences in a manner that efficiently advances the administration of justice. The amendments also update the rule related to providing recordings of hearings to account for technological changes and eliminate an obsolete rule implementing a statutory provision that has been repealed. Finally, the amendments update references to statutory provisions and cross references to rules to reflect the accurate citations.

No waiver provision is included in these rules because the statute governs the procedure to be used in contested case proceedings, which includes other safeguards for the administrative law judge to ensure the parties are provided a fair, impartial, and individualized hearing.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 25, 2017, as **ARC 3407C**. No comments were received by the Department during the public comment period. These amendments are identical to those published under Notice of Intended Action.

The Department does not believe that these amendments impose any financial hardship on any regulated entity, body, or individual.

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

These amendments are intended to implement Iowa Code sections 10A.801 and 17A.12.

These amendments shall become effective January 24, 2018.

The following amendments are adopted.

ITEM 1. Adopt the following **new** 481—Chapter 9:

CHAPTER 9
CONTESTED CASES

481—9.1(10A,17A) Applicability. This chapter applies to contested case proceedings conducted under the authority of the department of inspections and appeals in which the director of the department of inspections and appeals is the final decision-making authority.

481—9.2(10A,17A) Initiation of a contested case proceeding. If the department decides to initiate a contested case proceeding upon request or its own initiative, the department shall transmit the proceeding to the administrative hearings division, which shall issue a notice of hearing and assign the proceeding to an administrative law judge to serve as the presiding officer. All contested case proceedings shall be

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

conducted pursuant to 481—Chapter 10 and any other administrative rule applicable to the specific type of proceeding.

481—9.3(10A,17A) Director review.

9.3(1) A request for review of a proposed decision shall be made within 15 days of issuance of the proposed decision, unless otherwise provided by statute. Requests shall be mailed or delivered by either party to the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083. Failure to request review will preclude judicial review unless the department reviews on its own motion as follows. The department may review a proposed decision upon its own motion within 15 days of issuance of the proposed decision.

9.3(2) A review shall be based on the record and limited to issues raised in the hearing. The issues shall be specified in the party's request for review.

9.3(3) Each party shall have opportunity to file exceptions and present briefs. The director or a designee of the director may set a deadline for submission of briefs. When the director or the director's designee consents, oral arguments may be presented. A party wishing to make an oral argument shall specifically request it. All parties shall be notified of the scheduled time and place in advance.

9.3(4) The director or the director's designee shall not take any further evidence with respect to issues of fact heard in the hearing except as set forth below. Application may be filed for leave to present evidence in addition to that found in the record of the case. If it is shown to the satisfaction of the director or the director's designee that the additional evidence is material and that there were good reasons for failure to present it in the hearing, the director or the director's designee may order the additional evidence taken upon conditions determined by the director or the director's designee.

9.3(5) Final decisions shall be issued by the director or the director's designee.

481—9.4(10A,17A) Rehearing. Requests for rehearing shall be made to the director of the department within 20 days of issuance of a final decision. A rehearing may be granted when new legal issues are raised, new evidence is available or an obvious mistake is corrected or when the decision failed to include adequate findings or conclusions on all issues. A request for rehearing is not necessary to exhaust administrative remedies.

481—9.5(10A,17A) Judicial review. Judicial review of department final decisions may be sought in accordance with Iowa Code section 17A.19.

These rules are intended to implement Iowa Code chapters 10A and 17A.

ITEM 2. Amend **481—Chapter 10**, title, as follows:
~~CONTESTED CASE HEARINGS RULES OF PROCEDURE AND PRACTICE BEFORE THE~~
ADMINISTRATIVE HEARINGS DIVISION

ITEM 3. Amend rule **481—10.1(10A)**, definition of "Party," as follows:
 "Party" means a party as defined in Iowa Code subsection ~~17A.2(5)~~ 17A.2(8).

ITEM 4. Amend rule 481—10.2(10A,17A) as follows:

481—10.2(10A,17A) Time requirements. Time shall be computed as provided in Iowa Code subsection ~~4.1(22)~~ 4.1(34). For good cause, the administrative law judge may extend or shorten the time to take any action, except as provided otherwise by rule or law.

This rule is intended to implement Iowa Code sections ~~40A.202(1)~~ 10A.801(7) and 17A.22.

ITEM 5. Amend rule **481—10.3(10A)**, implementation sentence, as follows:
 This rule is intended to implement Iowa Code section ~~40A.202(1)~~ 10A.801(7).

ITEM 6. Amend rule **481—10.4(10A)**, implementation sentence, as follows:
 This rule is intended to implement Iowa Code section ~~40A.202(1)~~ 10A.801(7).

ITEM 7. Amend rule **481—10.6(10A)**, implementation sentence, as follows:
 This rule is intended to implement Iowa Code section ~~40A.202(2)~~ 10A.801(7).

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

ITEM 8. Amend rule **481—10.10(10A,17A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections ~~10A.202(1)~~ 10A.801(7) and 17A.22.

ITEM 9. Amend subrule 10.11(1) as follows:

10.11(1) *Petition.* When an action of the agency is appealed and pleadings are required under ~~subrule 10.10(1)~~ this rule, the aggrieved party shall file the petition.

a. Any required petition shall be filed within 20 days of delivery of the notice of hearing, unless otherwise ordered.

b. The petition shall state in separately numbered paragraphs the following:

- (1) The relief demanded and the facts and law relied upon for relief;
- (2) The particular provisions of the statutes and rules involved;
- (3) On whose behalf the petition is filed; and
- (4) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

ITEM 10. Amend rule **481—10.11(10A,17A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections ~~10A.202(1)~~ 10A.801(7) and 17A.12(6)“*a.*”

ITEM 11. Rescind rule 481—10.16(17A) and adopt the following new rule in lieu thereof:

481—10.16(10A,17A) Prehearing conference.

10.16(1) *Set by division.* The division may commence a contested case proceeding by issuing a notice of hearing that sets a prehearing conference to provide parties an opportunity to be heard on the selection of a date and time for the hearing on the merits and any other matters set forth in the notice or raised by the parties.

10.16(2) *Requested by party.* Any party may request a prehearing conference by filing and serving a written motion at least ten days prior to the date of the hearing. The motion must state any matters that the party seeks to address at the prehearing conference. If the administrative law judge grants the motion, the administrative law judge shall issue an order providing notice of the date and time of the prehearing conference to all parties.

10.16(3) *Ordered by administrative law judge.* The administrative law judge may order a prehearing conference if the administrative law judge determines on the administrative law judge's own motion that a prehearing conference should be held.

10.16(4) *Default.* If a party fails to appear or participate in a prehearing conference after proper service of notice, the administrative law judge may enter a default decision or proceed with the prehearing conference in the absence of the party.

This rule is intended to implement Iowa Code sections 10A.801(7) and 17A.12.

ITEM 12. Amend rule **481—10.17(10A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section ~~10A.202(1)~~ 10A.801(7).

ITEM 13. Amend rule **481—10.18(10A,17A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections ~~10A.202(1)~~ 10A.801(7) and 17A.22.

ITEM 14. Amend rule **481—10.19(10A,17A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections ~~10A.202(1)~~ 10A.801(7) and 17A.22.

ITEM 15. Amend subrule 10.24(2) as follows:

10.24(2) *Review of proposed decisions.* Request for review of a proposed decision shall be made to the agency in which the contested case originated in the manner and within the time specified by that agency's rules. In contested cases in which the director of ~~DIA~~ the department of inspections and appeals has final decision-making authority, request for review shall be made as provided in rule ~~481—10.25(10A,17A)~~ 481—9.3(10A,17A).

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ITEM 16. Rescind and reserve rule **481—10.25(10A,17A)**.

ITEM 17. Rescind and reserve rule **481—10.27(10A)**.

ITEM 18. Amend rule 481—10.28(10A) as follows:

481—10.28(10A) Recording costs. The ~~department~~ division may provide a copy of the ~~tape-recorded audio recording of the hearing~~ or a printed transcript of the hearing when a record of the hearing is requested. The cost of providing the recording or preparing the tape or transcript shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters shall bear the cost, unless otherwise provided by law.

ITEM 19. Amend rule 481—30.11(10A,137C,137D,137F) as follows:

481—30.11(10A,137C,137D,137F) Formal hearing. All decisions of the food and consumer safety bureau may be contested by an adversely affected party. A request for a hearing must be made in writing to the Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319, within 30 days of the mailing or service of a decision. Appeals and hearings are controlled by ~~481—Chapter 10, “Contested Case Hearings.”~~ 481—Chapter 9, “Contested Cases.”

For contractors, license holders shall have the opportunity for a hearing before the local board of health. If the hearing is conducted before the local board of health, the license holder may appeal to the department and shall follow the process for review in rule ~~481—10.25(10A,17A)~~ 481—9.3(10A,17A).

This rule is intended to implement Iowa Code section 10A.104 and Iowa Code chapters 137C, 137D, and 137F.

ITEM 20. Amend rule 481—50.6(10A), introductory paragraph, as follows:

481—50.6(10A) Formal hearing. All decisions of the division may be contested. Appeals and hearings are controlled by ~~481—Chapter 10, “Contested Case Hearings.”~~ 481—Chapter 9, “Contested Cases.”

ITEM 21. Amend paragraph **57.14(6)“d”** as follows:

d. The hearing shall be heard by a department of inspections and appeals administrative law judge pursuant to Iowa Code chapter 17A and ~~481—Chapter 10~~ 481—Chapter 9. The hearing shall be public unless the resident or the resident’s legal representative requests in writing that the hearing be closed. In a determination as to whether a transfer or discharge is authorized, the burden of proof by a preponderance of evidence rests on the party requesting the transfer or discharge.

ITEM 22. Amend paragraph **58.40(7)“d”** as follows:

d. The hearing shall be heard by a department of inspections and appeals administrative law judge pursuant to Iowa Code chapter 17A and ~~481—Chapter 10~~ 481—Chapter 9. The hearing shall be public unless the resident or resident’s legal representative requests in writing that the hearing be closed. In a determination as to whether a transfer or discharge is authorized, the burden of proof by a preponderance of the evidence rests on the party requesting the transfer or discharge.

ITEM 23. Amend paragraph **62.14(6)“d”** as follows:

d. The hearing shall be heard by a department of inspections and appeals administrative law judge pursuant to Iowa Code chapter 17A and ~~481—Chapter 10~~ 481—Chapter 9. The hearing shall be public unless the resident or representative requests in writing that the hearing be closed. In a determination as to whether a transfer or discharge is authorized, the burden of proof by a preponderance of evidence rests on the party requesting the transfer or discharge.

ITEM 24. Amend paragraph **63.34(7)“d”** as follows:

d. The hearing shall be heard by a department of inspections and appeals administrative law judge pursuant to Iowa Code chapter 17A and ~~481—Chapter 10~~ 481—Chapter 9. The hearing shall be public unless the resident or representative requests in writing that the hearing be closed. In a determination as

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to whether a transfer or discharge is authorized, the burden of proof by a preponderance of the evidence rests on the party requesting the transfer or discharge.

ITEM 25. Amend paragraph **64.36(7)“d”** as follows:

d. The hearing shall be heard by a department of inspections and appeals administrative law judge pursuant to Iowa Code chapter 17A and ~~481—Chapter 10 481—Chapter 9~~. The hearing shall be public unless the resident or representative requests in writing that the hearing be closed. In a determination as to whether a transfer or discharge is authorized, the burden of proof by a preponderance of the evidence rests on the party requesting the transfer or discharge.

ITEM 26. Amend paragraph **65.16(6)“d”** as follows:

d. The hearing shall be heard by a department of inspections and appeals administrative law judge pursuant to Iowa Code chapter 17A and ~~481—Chapter 10 481—Chapter 9~~. The hearing shall be public unless the resident or representative requests in writing that the hearing be closed. In a determination as to whether a transfer or discharge is authorized, the burden of proof by a preponderance of evidence rests on the party requesting the transfer or discharge.

ITEM 27. Amend subrule 67.14(5) as follows:

67.14(5) Contested case hearings. Contested case hearings shall be conducted by the department’s administrative hearings division pursuant to Iowa Code chapter 17A and ~~481—Chapter 10 481—Chapter 9~~.

ITEM 28. Amend subrule 67.15(2) as follows:

67.15(2) Hearings. Hearings shall be conducted by the administrative hearings division of the department of inspections and appeals pursuant to Iowa Code chapter 17A and ~~481—Chapter 10 481—Chapter 9~~.

ITEM 29. Amend subrule 67.16(2) as follows:

67.16(2) Appeal of conditional certificate. A written request for hearing must be received by the department within 30 days after the mailing or service of notice. The conditional certificate shall not be suspended pending the hearing. Hearings shall be conducted by the administrative hearings division of the department of inspections and appeals pursuant to Iowa Code chapter 17A and ~~481—Chapter 10 481—Chapter 9~~.

ITEM 30. Amend rule ~~481—67.18(17A,231B,231C,231D)~~ as follows:

~~481—67.18(17A,231B,231C,231D) Judicial review.~~ Judicial review shall be conducted pursuant to Iowa Code chapter 17A and ~~481—Chapter 10 481—Chapter 9~~.

ITEM 31. Amend rule ~~481—90.7(10A)~~ as follows:

~~481—90.7(10A) Appeal rights.~~ If a notice of debt or other notice of adverse action is received by the debtor and the debtor wishes to contest the debt, an appeal is submitted to the recovery unit or to DHS. If an appeal is submitted, the recovery process is suspended until conclusion of the appeal process outlined in ~~481—Chapter 10 481—Chapter 9~~ and ~~441—Chapter 7~~.

ITEM 32. Amend rule ~~481—100.12(10A,17A,99B)~~, introductory paragraph, as follows:

~~481—100.12(10A,17A,99B) Appeal rights.~~ Any decision of the department may be appealed in accordance with procedures set out in ~~Iowa Administrative Code 481—Chapter 10 481—Chapter 9~~. When an appeal is received, the status of the license is governed by the following standards:

ITEM 33. Amend rule ~~481—105.8(10A,99B)~~, introductory paragraph, as follows:

~~481—105.8(10A,99B) Appeal rights.~~ Decisions to refuse to issue a registration or to revoke a registration by the department may be appealed in accordance with the procedures set out in ~~481—Chapter 10 481—Chapter 9~~. The refusal to issue a registration or the notice of revocation shall

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be in writing and state the specific grounds for the action. When an appeal is received, the status of the registration is governed by the following standards:

ITEM 34. Amend subrule 106.13(3) as follows:

106.13(3) If the licensee or applicant requests a hearing, the hearing shall be held in accordance with procedures in ~~481—Chapter 10~~ 481—Chapter 9.

[Filed 11/29/17, effective 1/24/18]

[Published 12/20/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/20/17.

ARC 3524C

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code section 10A.801, the Department of Inspections and Appeals hereby amends Chapter 10, "Contested Case Hearings," and adopts new Chapter 15, "Iowa Code of Administrative Judicial Conduct," Iowa Administrative Code.

Iowa Code section 10A.801(7)(d) requires the Administrative Hearings Division of the Department of Inspections and Appeals to establish a code of administrative judicial conduct that is similar in function and substantially equivalent to the Iowa Code of Judicial Conduct found in Chapter 51 of the Iowa Court Rules, to govern the conduct, in relation to their quasi-judicial functions in contested cases, of all persons who act as presiding officers under the authority of Iowa Code section 17A.11(1). In August 2010, the Iowa Supreme Court substantially amended the Iowa Code of Judicial Conduct. These amendments update the Iowa Code of Administrative Judicial Conduct to be substantially equivalent to the amended Iowa Code of Judicial Conduct. These amendments were drafted in close consultation with a working group representing presiding officers throughout the Executive Branch.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3408C** on October 25, 2017. One comment was received suggesting that subrule 15.3(10) be amended to permit administrative law judges to practice law on a pro bono basis through legal aid organizations and to engage in the private practice of law if employed by the state part-time. While the Department recognizes the importance of pro bono legal assistance, the Iowa Code of Judicial Conduct does not permit such conduct for full-time judges, and the Department concludes that it is not appropriate to deviate from the Iowa Code of Judicial Conduct on this point. And while the Iowa Code of Judicial Conduct does permit part-time magistrates to engage in the private practice of law, the part-time magistrate position is statutorily required and clearly defined. No similar statutory provision exists for administrative law judges. In the absence of a statutory mandate, the Department concludes that the subrule would appropriately apply to a part-time administrative law judge because of the significant ethical concerns that would arise from engaging in private practice at the same time as serving as an administrative law judge. Accordingly, the Department has not made any changes in response to the comment. The Department did make two technical changes to the definitions in subrule 15.5(2) to delete a term not used in the chapter and to correct a typographical error. These amendments are otherwise identical to those published under Notice of Intended Action.

Pursuant to Iowa Code section 10A.801(7)(d), the Administrative Rules Coordinator has approved of the application of this Iowa Code of Administrative Judicial Conduct to agency heads and members of multimember agency heads as set forth in subrule 15.5(3). This approval was memorialized in correspondence from the Administrative Rules Coordinator to the Department dated November 29, 2017, which is on file in the Administrative Hearings Division of the Department.

The Department does not believe that these amendments impose any financial hardship on any regulated entity, body, or individual.

No waiver provision is included in these rules because the statute they implement is mandatory and to the extent the rules could be waived, the Department's general waiver procedure is available.

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After analysis and review of this rule making, no impact on jobs has been found. These amendments are intended to implement Iowa Code section 10A.801. These amendments shall become effective January 24, 2018. The following amendments are adopted.

- ITEM 1. Rescind the definition of “Presiding officer” in rule **481—10.1(10A)**.
- ITEM 2. Rescind and reserve rule **481—10.29(10A)**.
- ITEM 3. Adopt the following new 481—Chapter 15:

CHAPTER 15
IOWA CODE OF ADMINISTRATIVE JUDICIAL CONDUCT

481—15.1(10A) Canon 1. A presiding officer shall uphold and promote the independence, integrity, and impartiality of the administrative judiciary and shall avoid impropriety and the appearance of impropriety.

15.1(1) *Compliance with the law.* A presiding officer shall comply with the law, including the Iowa Code of Administrative Judicial Conduct, hereafter referred to as “this Code.”

15.1(2) *Promoting confidence in the administrative judiciary.* A presiding officer shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the administrative judiciary and shall avoid impropriety and the appearance of impropriety.

15.1(3) *Avoiding abuse of the prestige of an administrative judicial position.* A presiding officer shall not abuse the prestige of the administrative judicial position to advance the personal or economic interests of the presiding officer or others, or allow others to do so.

481—15.2(10A) Canon 2. A presiding officer shall perform administrative judicial duties impartially, competently, and diligently.

15.2(1) *Giving precedence to administrative judicial duties.* The administrative judicial duties, as prescribed by law, shall take precedence over all of a presiding officer’s personal and extrajudicial activities.

15.2(2) *Impartiality and fairness.* A presiding officer shall uphold and apply the law, and shall perform all administrative judicial duties fairly and impartially.

15.2(3) *Bias, prejudice, and harassment.*

a. A presiding officer shall perform all administrative judicial and other duties without bias or prejudice.

b. A presiding officer shall not, in the performance of administrative judicial duties, by words or conduct manifest bias or prejudice or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit others subject to the presiding officer’s direction and control to do so.

c. A presiding officer shall require lawyers and party representatives in proceedings before the presiding officer to refrain from manifesting bias or prejudice or engaging in harassment, based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, party representatives, or others.

d. The restrictions of paragraphs 15.2(3) “*b*” and “*c*” do not preclude presiding officers, lawyers, or party representatives from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

15.2(4) *External influences on administrative judicial conduct.*

a. A presiding officer shall not be swayed by public clamor or fear of criticism.

b. A presiding officer shall not permit family, social, political, financial, or other interests or relationships to influence the presiding officer’s administrative judicial conduct or judgment.

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c. A presiding officer shall not convey or permit others to convey the impression that any person or organization is in a position to influence the presiding officer.

15.2(5) Competence, diligence, and cooperation.

a. A presiding officer shall perform administrative judicial and other duties competently and diligently.

b. A presiding officer shall cooperate with other presiding officers and other executive branch employees in the administration of agency business.

15.2(6) Ensuring the right to be heard.

a. A presiding officer shall accord to every person who has a legal interest in a proceeding, or that person's lawyer or authorized representative, the right to be heard according to law.

b. A presiding officer may encourage parties to a proceeding and their lawyers or authorized representatives to settle matters in dispute but shall not act in a manner that coerces any party into settlement.

15.2(7) Responsibility to decide. A presiding officer shall hear and decide matters assigned to the presiding officer, except when disqualification is required by subrule 15.2(11) or other law.

15.2(8) Decorum and demeanor.

a. A presiding officer shall require order and decorum in proceedings before the presiding officer.

b. A presiding officer shall be patient, dignified, and courteous to parties, board members, witnesses, lawyers, party representatives, agency staff, agency officials, and others with whom the presiding officer deals in an official capacity, and shall require similar conduct of lawyers, party representatives, and others subject to the presiding officer's direction and control.

15.2(9) Ex parte communications.

a. A presiding officer shall not initiate, permit, or consider ex parte communications, or consider other communications made to the presiding officer outside the presence of the parties or their lawyers, concerning a pending matter or impending matter, except as permitted by Iowa Code section 17A.17.

b. A presiding officer shall not investigate facts in a matter independently and shall consider only the evidence presented and any facts that may be officially noticed pursuant to Iowa Code section 17A.14.

15.2(10) Statements on pending and impending cases.

a. A presiding officer shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a pending matter or impending matter before the presiding officer or another presiding officer in the same agency, or make any nonpublic statement that might substantially interfere with a fair hearing.

b. A presiding officer shall not, in connection with cases, controversies, or issues that are likely to come before the presiding officer, make pledges, promises, or commitments that are inconsistent with the impartial performance of the presiding officer's adjudicative duties.

c. A presiding officer shall require others subject to the presiding officer's direction and control to refrain from making statements that the presiding officer would be prohibited from making by paragraphs 15.2(10)"a" and "b."

d. Notwithstanding the restrictions in paragraph 15.2(10)"a," a presiding officer may explain agency procedures and may comment on any proceeding in which the presiding officer is a party in a personal capacity.

e. Subject to the requirements of paragraph 15.2(10)"a," a presiding officer may respond directly or through a third party to allegations in the media or elsewhere concerning the presiding officer's conduct in a matter.

15.2(11) Disqualification.

a. A presiding officer shall disqualify himself or herself in any proceeding in which the presiding officer's impartiality might reasonably be questioned, including but not limited to the following circumstances:

(1) The presiding officer has a personal bias or prejudice concerning a party or a party's lawyer or other representative, or has personal knowledge of facts that are in dispute in the proceeding.

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(2) The presiding officer knows that the presiding officer, the presiding officer's spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is:

1. A party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;
2. Acting as a lawyer or party representative in the proceeding;
3. A person who has more than a de minimis interest that could be substantially affected by the proceeding; or
4. Likely to be a material witness in the proceeding.

(3) The presiding officer knows that he or she, individually or as a fiduciary, or the presiding officer's spouse, domestic partner, parent, or child, or any other member of the presiding officer's family residing in the presiding officer's household, has an economic interest in the subject matter in controversy or in a party to the proceeding.

(4) The presiding officer, while a presiding officer, has made a public statement, other than in an agency proceeding, decision, opinion, or order, that commits or appears to commit the presiding officer to reach a particular result or rule in a particular way in the proceeding or controversy.

(5) The presiding officer:

1. Served as a lawyer in the matter in controversy or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;
2. Served in governmental employment and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy; or
3. Was a material witness concerning the matter.

(6) The presiding officer personally investigated, prosecuted, or advocated in connection with the matter, the specific controversy underlying the matter, or another pending factually related matter, or pending factually related controversy that may culminate in a contested case, involving the same parties, or 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. But the presiding officer is not required to disqualify himself or herself solely because the presiding officer determined there was probable cause to initiate the proceeding.

b. A presiding officer shall keep informed about the presiding officer's personal and fiduciary economic interests and make a reasonable effort to keep informed about the personal economic interests of the presiding officer's spouse or domestic partner and minor children residing in the presiding officer's household.

c. A presiding officer subject to disqualification under this rule, other than for bias or prejudice under subparagraph 15.2(11) "a"(1), may disclose on the record the basis of the presiding officer's disqualification and may ask the parties and their lawyers or representatives to consider, outside the presence of the presiding officer, whether to waive disqualification. If, following the disclosure, the parties and lawyers or party representatives agree, without participation by the presiding officer, that the presiding officer should not be disqualified, the presiding officer may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

15.2(12) Supervisory duties.

a. A presiding officer shall require others subject to the presiding officer's direction and control to act in a manner consistent with the presiding officer's obligations under this Code.

b. A presiding officer with supervisory authority for the performance of other presiding officers shall take reasonable measures to ensure that those presiding officers properly discharge their administrative judicial responsibilities, including the prompt disposition of matters before them.

15.2(13) Reserved.

15.2(14) Disability and impairment. A presiding officer having a reasonable belief that the performance of a lawyer, party representative, or another presiding officer is impaired by drugs or

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alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or employee assistance program.

15.2(15) Responding to administrative judicial and lawyer misconduct.

a. A presiding officer having knowledge that another presiding officer has committed a violation of this Code that raises a substantial question regarding the presiding officer's honesty, trustworthiness, or fitness as a presiding officer in other respects shall inform the appropriate authority.

b. A presiding officer having knowledge that a lawyer has committed a violation of the Iowa Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate authority.

c. A presiding officer who receives information indicating a substantial likelihood that another presiding officer has committed a violation of this Code shall take appropriate action.

d. A presiding officer who receives information indicating a substantial likelihood a lawyer has committed a violation of the Iowa Rules of Professional Conduct shall take appropriate action.

e. This rule does not require disclosure of information gained by a presiding officer while participating in an approved lawyers assistance program.

15.2(16) Cooperation with disciplinary authorities.

a. A presiding officer shall cooperate and be candid and honest with a lawyer disciplinary agency or other appropriate authority investigating a violation of this Code or the Iowa Rules of Professional Conduct.

b. A presiding officer shall not retaliate, directly or indirectly, against a person known or suspected to have assisted or cooperated with an investigation of a presiding officer or a lawyer.

481—15.3(10A) Canon 3. An administrative law judge shall conduct the administrative law judge's personal and extrajudicial activities to minimize the risk of conflict with administrative judicial obligations.

15.3(1) Extrajudicial activities in general. An administrative law judge may engage in extrajudicial activities, except as prohibited by law or this Code. However, when engaging in extrajudicial activities, an administrative law judge shall not:

a. Participate in activities that will interfere with the proper performance of the administrative law judge's administrative judicial duties;

b. Participate in activities that will lead to frequent disqualification of the administrative law judge;

c. Participate in activities that would appear to a reasonable person to undermine the administrative law judge's independence, integrity, or impartiality;

d. Engage in conduct that would appear to a reasonable person to be coercive; or

e. Make use of agency premises, staff, stationery, equipment, or other resources, except for incidental use for activities that concern the law, the legal system, the provision of legal services, or the administration of justice, or unless such additional use is permitted by law.

15.3(2) Reserved.

15.3(3) Testifying as a character witness. An administrative law judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly subpoenaed.

15.3(4) Appointments to governmental positions. An administrative law judge shall not accept appointment to a governmental committee, board, commission, or other governmental position that would appear to a reasonable person to undermine the administrative law judge's independence, integrity, or impartiality or would lead to frequent disqualification of the administrative law judge.

15.3(5) Use of nonpublic information. An administrative law judge shall not intentionally disclose or use nonpublic information acquired in an administrative judicial capacity for any purpose unrelated to the administrative law judge's administrative judicial or other duties.

15.3(6) Affiliation with discriminatory organizations.

a. An administrative law judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual

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orientation. An administrative law judge's membership in a religious organization as a lawful exercise of the freedom of religion is not prohibited.

b. An administrative law judge shall not use the benefits or facilities of an organization if the administrative law judge knows or should know that the organization practices invidious discrimination on one or more of the bases identified in paragraph 15.3(6) "a." An administrative law judge's attendance at an event in a facility of an organization that the administrative law judge is not permitted to join is not a violation of this rule when the administrative law judge's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices.

15.3(7) *Participation in educational, religious, charitable, fraternal, or civic organizations and activities.*

a. Subject to the requirements of subrule 15.3(1), an administrative law judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, the provision of legal services, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities:

(1) Assisting such an organization or entity in planning related to fund-raising, volunteering goods or services at fund-raising events, and participating in the management and investment of the organization's or entity's funds;

(2) Soliciting contributions for such an organization or entity, but only from members of the administrative law judge's family, or from other administrative law judges or coworkers in the administrative law judge's immediate office over whom the administrative law judge does not exercise supervisory authority;

(3) Appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising purpose, the administrative law judge may participate only if the event concerns the law, the legal system, the provision of legal services, or the administration of justice;

(4) Making recommendations to such a public or private fund-granting organization or entity in connection with its programs and activities, but only if the organization or entity is concerned with the law, the legal system, the provision of legal services, or the administration of justice; and

(5) Serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:

1. Will be engaged in proceedings that would ordinarily come before the administrative law judge; or

2. Will frequently be engaged in adversary proceedings before the agency in which the administrative law judge serves.

b. An administrative law judge may encourage lawyers to provide pro bono publico legal services.

c. Subject to the requirements of subrule 15.3(1), an administrative law judge may:

(1) Provide leadership in identifying and addressing issues involving equal access to the justice system; developing public education programs; engaging in activities to promote the fair administration of justice and convening, participating or assisting in advisory committees and community collaborations devoted to the improvement of the law, the legal system, the provision of legal services, or the administration of justice.

(2) Endorse projects and programs directly related to the law, the legal system, the provision of legal services, and the administration of justice to those coming before the courts or the administrative judiciary.

(3) Participate in programs concerning the law or which promote the administration of justice.

15.3(8) *Appointments to fiduciary positions.*

a. An administrative law judge shall not accept appointment to serve in a fiduciary position, such as executor, administrator, trustee, guardian, attorney in fact, or other personal representative, except for the estate, trust, or person of a member of the administrative law judge's family, and then only if such service will not interfere with the proper performance of administrative judicial duties.

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b. An administrative law judge shall not serve in a fiduciary position if the administrative law judge as fiduciary will likely be engaged in proceedings that would ordinarily come before the administrative law judge, or if the estate, trust, or ward becomes involved in adversary proceedings before the agency in which the administrative law judge serves.

c. An administrative law judge acting in a fiduciary capacity shall be subject to the same restrictions on engaging in financial activities that apply to an administrative law judge personally.

d. If a person who is serving in a fiduciary position becomes an administrative law judge, he or she must comply with this subrule as soon as reasonably practicable, but in no event later than six months after becoming an administrative law judge.

15.3(9) *Services as arbitrator or mediator.* An administrative law judge shall not act as an arbitrator or a mediator or perform other judicial functions apart from the administrative law judge's official duties unless expressly authorized by law.

15.3(10) *Practice of law.* An administrative law judge shall not engage in the private practice of law. An administrative law judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the administrative law judge's family, but is prohibited from serving as the family member's lawyer before the agency in which the administrative law judge serves. An administrative law judge serving in the administrative hearings division of the department of inspections and appeals is prohibited from serving as the family member's lawyer in any proceeding in which another administrative law judge serving in the division is the presiding officer, regardless of whether the proceeding is being conducted on behalf of the department of inspections and appeals or another state agency.

15.3(11) *Financial, business, or remunerative activities.*

a. An administrative law judge may hold and manage investments of the administrative law judge and members of the administrative law judge's family.

b. An administrative law judge shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that an administrative law judge may manage or participate in:

(1) A business closely held by the administrative law judge or members of the administrative law judge's family; or

(2) A business entity primarily engaged in investment of the financial resources of the administrative law judge or members of the administrative law judge's family.

c. An administrative law judge shall not engage in financial activities permitted under paragraphs 15.3(11) "a" and "b" if they will:

(1) Interfere with the proper performance of administrative judicial duties;

(2) Lead to frequent disqualification of the administrative law judge;

(3) Involve the administrative law judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the agency in which the administrative law judge serves; or

(4) Result in violation of other provisions of this Code.

15.3(12) *Compensation for extrajudicial activities.* An administrative law judge may accept reasonable compensation for extrajudicial activities permitted by this Code and other law unless such acceptance would appear to a reasonable person to undermine the administrative law judge's independence, integrity, or impartiality.

15.3(13) *Acceptance of gifts, loans, bequests, benefits, or other things of value.* An administrative law judge, an administrative law judge's spouse, and an administrative law judge's dependent child shall not accept or receive any gift, loan, bequest, benefit, or other thing of value, if acceptance or receipt is prohibited by Iowa Code chapter 68B or any other law or if acceptance or receipt would appear to a reasonable person to undermine the administrative law judge's independence, integrity, or impartiality.

15.3(14) *Reimbursement of expenses and waivers of fees or charges.*

a. Unless otherwise prohibited by subrules 15.3(1) and 15.3(13), Iowa Code chapter 68B, or other law, an administrative law judge may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for

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registration, tuition, and similar items, from sources other than the administrative law judge's employing entity, if the expenses or charges are associated with the administrative law judge's participation in extrajudicial activities permitted by this Code.

b. Reimbursement of expenses for necessary travel, food, lodging, or other incidental expenses shall be limited to the actual costs reasonably incurred by the administrative law judge and, when appropriate to the occasion, by the administrative law judge's spouse, domestic partner, or guest.

481—15.4(10A) Canon 4. An administrative law judge shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the administrative judiciary.

15.4(1) Political and campaign activities of administrative law judges.

a. Except as permitted by law, an administrative law judge shall not:

- (1) Act as a leader in, or hold an office in, a political organization;
- (2) Make speeches on behalf of a political organization;
- (3) Publicly endorse or oppose a candidate for any public office;
- (4) Solicit funds for, pay an assessment to, or make a contribution to a political organization, a candidate for judicial retention, or a candidate for public office;
- (5) Attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office; or
- (6) Participate in a precinct caucus, except as provided for in paragraph 15.4(1) "b."

b. Paragraph 15.4(1) "a" does not prohibit an administrative law judge from participating in a precinct caucus merely to vote for, or support in the delegate selection process, a candidate for the office of President of the United States, provided that the administrative law judge does not speak publicly on behalf of or against a candidate, encourage other caucus participants to support or oppose a candidate, or otherwise engage in conduct that is inconsistent with the independence, integrity, or impartiality of the administrative judiciary.

c. An administrative law judge shall take reasonable measures to ensure that other persons do not undertake, on behalf of the administrative law judge, any activities prohibited under paragraph 15.4(1) "a."

15.4(2) to 15.4(4) Reserved.

15.4(5) Activities of administrative law judges who become candidates for nonjudicial office.

a. Upon becoming a candidate for nonjudicial elective office, an administrative law judge shall resign from the administrative law judge position unless permitted by law to continue to hold the administrative law judge position.

b. Upon becoming a candidate for nonjudicial appointive office, an administrative law judge is not required to resign from the administrative law judge position, provided that the administrative law judge complies with the other provisions of this Code.

481—15.5(10A) Scope, definitions, and application.

15.5(1) Scope.

a. The Iowa Code of Administrative Judicial Conduct consists of four canons, each of which is codified as the introductory paragraph of an administrative rule, and numbered rules under each canon, which are codified as subrules. Subrule 15.5(3) establishes when the various rules apply to a presiding officer or an administrative law judge.

b. The canons state overarching principles of judicial ethics that all administrative law judges and presiding officers, as applicable, must observe. Although an administrative law judge or presiding officer may be disciplined only for violating an applicable rule, the canons provide important guidance in interpreting the rules. Where a rule contains a permissive term, such as "may" or "should," the conduct being addressed is committed to the personal and professional discretion of the administrative law judge or presiding officer in question, and no disciplinary action should be taken for action or inaction within the bounds of such discretion.

c. Consistent with the requirement of Iowa Code section 10A.801(7)(d), this Code is similar in function and substantially equivalent to the Iowa Code of Judicial Conduct adopted by the Iowa

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Supreme Court and contained in Chapter 51 of the Iowa Court Rules. The Iowa Code of Judicial Conduct includes accompanying comments to the rules that may provide useful guidance regarding the purpose, meaning, and proper application of the corresponding rule in this Code. The comments contain explanatory material and, in some instances, provide examples of permitted or prohibited conduct. The comments may also identify aspirational goals for administrative law judges and presiding officers. To implement fully the principles of this Code as articulated in the canons, administrative law judges and presiding officers should strive to exceed the standards of conduct established by the rules, holding themselves to the highest ethical standards and seeking to achieve those aspirational goals, thereby enhancing the dignity of the administrative judicial position.

d. The rules of this Code are rules of reason that should be applied consistent with constitutional requirements, statutes, administrative rules, and decisional law, and with due regard for all relevant circumstances. The rules should not be interpreted to impinge upon the essential independence of administrative law judges and presiding officers in making administrative judicial decisions.

e. Although the black letter of the rules is binding and enforceable, it is not contemplated that every transgression will result in the imposition of discipline. Whether discipline should be imposed should be determined by the presiding officer's appointing authority through a reasonable and reasoned application of the rules, and should depend upon factors such as the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, the extent of any pattern of improper activity, whether there have been previous violations, and the effect of the improper activity upon the administrative judicial system or others.

f. This Code is not designed or intended as a basis for civil or criminal liability. Neither is it intended to be the basis for parties to seek collateral remedies against each other or to obtain tactical advantages in proceedings before a presiding officer.

15.5(2) Definitions. For purposes of this chapter, the following definitions apply:

"Administrative law judge" means a person who acts as a presiding officer under the authority of Iowa Code section 17A.11(1) who is not an agency head or a member of a multimembered agency head. This includes, but is not limited to, administrative law judges employed by the administrative hearings division of the department of inspections and appeals, the unemployment insurance appeals bureau of Iowa workforce development, the public employment relations board, and the board of parole, as well as deputy workers' compensation commissioners in the division of workers' compensation of Iowa workforce development.

"Affiliate" and *"affiliated"* mean any person, domestic or foreign, that controls, is controlled by, or is under common control with any other person.

"Appropriate authority" means the authority having responsibility for the initiation of disciplinary process in connection with the violation to be reported.

"Associate" and *"associated"* means any person who employs, is employed by, or is under common employment with another person; any person who acts in cooperation, consultation, or concert with, or at the request of, another person; and any spouse, domestic partner, or person within the third degree of relationship of any of the foregoing.

"Contribution" means both financial and in-kind contributions, such as goods, professional or volunteer services, advertising, and other types of assistance which, if obtained by the recipient otherwise, would require a financial expenditure.

"Control" and *"controlled"* each refers to the power of one person to exercise, directly or indirectly or through one or more persons, a dominating, governing, or controlling influence over another person, whether by contractual relationship (including without limitation a debtor-creditor relationship), by family relationship, by ownership, dominion over, or power to vote any category or voting interest (including without limitation shares of common stock, shares of voting preferred stock, and partnership interests), or by exercising (or wielding the power to exercise) in any manner dominion over a majority of directors, partners, trustees, or other persons performing similar functions. See definition of *"affiliate"* and *"affiliated."*

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“De minimis,” in the context of interests pertaining to disqualification of an administrative law judge, means an insignificant interest that could not raise a reasonable question regarding the administrative law judge’s impartiality.

“Domestic partner” means a person with whom another person maintains a household and an intimate relationship, other than a person to whom he or she is legally married.

“Economic interest” means ownership of more than a de minimis legal or equitable interest. Except for situations in which the presiding officer participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a presiding officer, it does not include:

1. An interest in the individual holdings within a mutual or common investment fund;
2. An interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the presiding officer or the presiding officer’s spouse, domestic partner, parent, or child serves as a director, an officer, an advisor, or other participant;
3. A deposit in a financial institution or deposits or proprietary interests the presiding officer may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or
4. An interest in the issuer of government securities held by the presiding officer.

“Fiduciary” includes relationships such as executor, administrator, trustee, or guardian.

“Impartial,” “impartiality,” and *“impartially”* mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a presiding officer or administrative law judge.

“Impending matter” is a matter that is imminent or expected to occur in the near future.

“Impropriety” includes conduct that violates the law, court rules, or provisions of the Iowa Code of Administrative Judicial Conduct, and conduct that undermines a presiding officer’s or administrative law judge’s independence, integrity, or impartiality.

“Independence” means a presiding officer’s or administrative law judge’s freedom from influence or controls other than those established by law.

“Integrity” means probity, fairness, honesty, uprightness, and soundness of character.

“Knowingly,” “knowledge,” “known,” and *“knows”* mean actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances.

“Law” encompasses administrative rules and regulations, court rules, ordinances, statutes, constitutional provisions, and decisional law.

“Member of the administrative law judge’s family” means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the administrative law judge maintains a close familial relationship.

“Member of the presiding officer’s family” means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the presiding officer maintains a close familial relationship.

“Member of a presiding officer’s family residing in the presiding officer’s household” means any relative of a presiding officer by blood or marriage, or a person treated by a presiding officer as a member of the presiding officer’s family, who resides in the presiding officer’s household.

“Nonpublic information” means information that is not available to the public. “Nonpublic information” may include, but is not limited to, information that is confidential or sealed by statute or court or administrative order or impounded or communicated in camera.

“Pending matter” is a matter that has commenced. A matter continues to be pending through any appellate process, including director review and judicial review, until final disposition.

“Person” means any natural or juridical person, including without limitation any corporation, limited liability company, partnership, trust, union, or other labor organization; any branch, division, department, or local unit of any of the foregoing; any political committee, party, or organization; or any other organization or group of persons.

“Political organization” means a political party or other group sponsored by or affiliated with a political party or candidate, the principal purpose of which is to further the election or appointment of candidates for political office.

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“*Presiding officer*” means a person who acts as a presiding officer of a contested case proceeding under the authority of Iowa Code section 17A.11(1).

“*Third degree of relationship*” includes the following persons: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece.

15.5(3) Application.

a. The provisions of the Iowa Code of Administrative Judicial Conduct apply to all persons who act as presiding officers under the authority of Iowa Code section 17A.11(1), except as specified in paragraph 15.5(3) “b” for agency heads or members of multimembered agency heads. Canons and rules that apply to all presiding officers use the terminology “presiding officer” in their text. This Code only applies to an agency head or a member of a multimembered agency head who actually acts as a presiding officer and does not apply merely because the agency head or member of a multimembered agency head is authorized to serve as the presiding officer when another person serves as the presiding officer.

b. The provisions of rules 481—15.3(10A) and 481—15.4(10A) of this Code do not apply to agency heads or members of multimembered agency heads. These provisions apply only to administrative law judges and thus the terminology “administrative law judge” is used in their text.

c. This Code does not apply to persons who participate only in the making of a final decision in a contested case without serving as a presiding officer pursuant to Iowa Code section 17A.11(1) in that contested case unless a statute or administrative rule requires such a person to abide by this Code or a particular provision of this Code. This Code may nevertheless provide useful ethical guidance for a person participating in the making of a final decision in a contested case.

These rules are intended to implement Iowa Code section 10A.801.

[Filed 11/29/17, effective 1/24/18]

[Published 12/20/17]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 12/20/17.

ARC 3525C

PHARMACY BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby amends Chapter 16, “Nuclear Pharmacy Practice,” Iowa Administrative Code.

Pursuant to Iowa Code section 17A.7(2), the Board has conducted an overall review of this chapter of administrative rules. The Board preemptively sought comments and suggestions from those in the field of nuclear pharmacy in identifying the amendments. These amendments provide alignment with the Iowa Department of Public Health and the Nuclear Regulatory Commission with respect to definitions and training requirements for authorized nuclear pharmacists. The amendments also clarify the type of license issued to nuclear pharmacies and incorporate national minimum standards for sterile compounding consistent with other rule making by the Board.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3228C** on August 2, 2017. The Board received comments and suggestions for revisions from one Iowa pharmacist member of the nuclear pharmacy practice. The suggestions that were accepted and incorporated in this adopted rule making provide further clarification in the practice of nuclear pharmacy without causing substantive changes.

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

The Board of Pharmacy adopted these amendments on November 1, 2017.

As this rule making is updating language to be consistent with national standards that are already in practice in the nuclear pharmacy community, there is no anticipated impact on jobs.

These amendments are intended to implement Iowa Code section 155A.13.

These amendments will become effective January 24, 2018.

PHARMACY BOARD[657](cont'd)

The following amendments are adopted.

ITEM 1. Amend rule 657—16.1(155A) as follows:

657—16.1(155A) Purpose and scope. ~~It is unlawful to receive, possess or transfer radioactive drugs except in accordance with the provisions of Iowa Code chapter 155A. It is also unlawful for any person to provide radiopharmaceutical services unless the person is a pharmacist or a person acting under the direct supervision of a pharmacist acting in accordance with the provisions of Iowa Code chapter 155A, board rules and rules of the environmental protection commission. It is not unlawful for a medical practitioner to receive, possess, or transfer radioactive drugs for administration to patients as provided in Iowa Code chapter 148. No person may receive, acquire, possess, use, transfer, or dispose of any radioactive material except in accordance with the conditions set forth by the environmental protection commission pursuant to the provisions of Iowa Code chapter 455B. The requirements of these nuclear pharmacy rules are in addition to and not in substitution for 657—Chapter 8 and other applicable provisions of rules of the board and the environmental protection commission or the public health department. This chapter establishes the minimum standard for the practice of pharmacy relating to radioactive drugs. These rules apply to individuals authorized to receive, handle, transfer, dispense, or dispose of radioactive drugs pursuant to Iowa Code chapters 136C, 155A, and 455B, and rules of the board, the environmental protection commission, or the public health department. For pharmacies, these rules are in addition to other applicable chapters of rules of the board including, but not limited to, 657—Chapters 8 and 20.~~

ITEM 2. Amend rule **657—16.2(155A)**, definition of “Board,” as follows:

“Board” means the Iowa board of pharmacy examiners.

ITEM 3. Amend rule **657—16.2(155A)**, definition of “Qualified nuclear pharmacist,” as follows:

“Qualified Authorized nuclear pharmacist” means a person currently licensed to practice pharmacy in Iowa who meets the qualifications established by rule 657—16.3(155A).

ITEM 4. Adopt the following **new** definition of “Radioactive drug” in rule **657—16.2(155A)**:

“Radioactive drug” or *“radiopharmaceutical”* means a drug or device that contains a radioactive substance and is used to diagnose or treat disease.

ITEM 5. Amend rule 657—16.3(155A) as follows:

657—16.3(155A) General Training requirements for qualified authorized nuclear pharmacist. ~~A qualified An authorized nuclear pharmacist shall meet all requirements of either alternative one or alternative two established in subrules 16.3(1) and 16.3(2), respectively the United States Nuclear Regulatory Commission pursuant to federal regulations.~~

~~**16.3(1) Alternative one.** A qualified nuclear pharmacist shall:~~

~~a. Meet minimum standards of training for medical uses of radioactive materials; and~~

~~b. Be a currently licensed pharmacist in the state of Iowa; and~~

~~c. Submit an affidavit of experience and training to the board; and~~

~~d. Have completed one of the following nuclear pharmacy training alternatives:~~

~~(1) Received a minimum of 90 contact hours of didactic instruction in nuclear pharmacy from an accredited college of pharmacy. In addition, the pharmacist shall have attained a minimum of 160 hours of clinical nuclear pharmacy training under the supervision of a qualified nuclear pharmacist in a nuclear pharmacy that provides nuclear pharmacy services or in a structured clinical nuclear pharmacy training program of an accredited college of pharmacy.~~

~~(2) Successfully completed a nuclear pharmacy residency accredited by the American Society of Health System Pharmacists (ASHP).~~

~~(3) Successfully completed a certificate program in nuclear pharmacy accredited by the Accreditation Council on Pharmaceutical Education (ACPE).~~

~~**16.3(2) Alternative two.** A qualified nuclear pharmacist shall:~~

~~a. Be a currently licensed pharmacist in the state of Iowa; and~~

PHARMACY BOARD[657](cont'd)

~~b. Be certified by the Board of Pharmaceutical Specialties as a board-certified nuclear pharmacist (BCNP); and~~

~~e. Submit an affidavit of BCNP credentials to the board.~~

ITEM 6. Amend rule 657—16.4(155A) as follows:

657—16.4(155A) General requirements for pharmacies a pharmacy providing radiopharmaceutical services. A pharmacy providing radiopharmaceutical services shall obtain a limited use pharmacy license pursuant to rule 657—8.35(155A) prior to commencing provision of services in this state.

16.4(1) Qualified Authorized nuclear pharmacist. ~~A license to operate a pharmacy providing radiopharmaceutical services shall be issued only to a qualified nuclear pharmacist who shall be the pharmacist in charge of the pharmacy.~~ The pharmacist in charge shall be an authorized nuclear pharmacist and shall be responsible for, at a minimum, the requirements in rule 657—6.2(155A) 657—8.3(155A). All personnel performing tasks in the preparation and distribution of radioactive drugs shall be under the direct personal supervision of ~~a qualified an authorized~~ an authorized nuclear pharmacist. ~~A qualified~~ An authorized nuclear pharmacist is responsible for all operations of the pharmacy and, except in emergency situations, shall be in personal attendance at all times that the pharmacy is open for business.

16.4(2) Space requirements. Nuclear pharmacies shall have adequate space, commensurate with the scope of services required and provided. The nuclear pharmacy area shall be separate from the pharmacy areas for nonradioactive drugs and shall be secured from unauthorized personnel. All pharmacies handling radiopharmaceuticals shall provide a radioactive storage and product decay area, occupying at least 25 square feet of space, separate from and exclusive of the ~~hot laboratory;~~ drug compounding, dispensing, quality assurance, and office areas.

16.4(3) and 16.4(4) No change.

16.4(5) Records required. Nuclear pharmacies shall maintain records of acquisition and disposition of all radioactive drugs in accordance with rules of the board, the public health department, and the environmental protection commission.

16.4(6) to 16.4(9) No change.

16.4(10) Radioactivity. The amount of radioactivity for ~~each individual preparation a radiopharmaceutical prepared by a nuclear pharmacy~~ shall be determined by radiometric methods immediately prior to dispensing.

16.4(11) Redistribution. ~~A~~ When a nuclear pharmacy may redistribute distributes to another nuclear pharmacy or authorized party entity radioactive drugs that are ~~the subject of an approved new drug application if FDA-approved, commercially manufactured drug products,~~ the pharmacy ~~does~~ shall not process the radioactive drugs in any manner or violate the product packaging.

ITEM 7. Amend rule 657—16.6(155A) as follows:

657—16.6(155A) Minimum equipment requirements. Each nuclear pharmacy shall maintain the following equipment for use in the provision of radiopharmaceutical services:

1. ~~Laminar flow hood~~ Appropriate primary engineering control device to comply with rule 657—16.8(155A);

2. Dose calibrator;

3. ~~Refrigerator;~~

4. ~~3.~~ Single-channel scintillation counter;

5. ~~4.~~ Microscope;

6. ~~Autoclave, or access to one;~~

7. ~~5.~~ Incubator, or access to one;

8. ~~6.~~ Radiation survey meter;

9. ~~7.~~ Other equipment necessary for the radiopharmaceutical services provided as required by the board.

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A pharmacy may request waiver or variance from a provision of this rule pursuant to the procedures and requirements of 657—Chapter 34.

ITEM 8. Adopt the following new rule 657—16.8(155A):

657—16.8(155A) Sterile radiopharmaceutical preparations and compounding. Sterile radiopharmaceutical preparations shall comply with federal laws and regulations for radiopharmaceuticals, including enforceable chapters of the United States Pharmacopeia (USP) and final guidance documents regarding sections of the Federal Food, Drug, and Cosmetic Act.

[Filed 11/16/17, effective 1/24/18]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/20/17.

ARC 3526C

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed

Pursuant to the authority of Iowa Code section 100.35, the State Fire Marshal in the Department of Public Safety hereby amends Chapter 205, "Fire Safety Requirements for Hospitals and Health Care Facilities," Iowa Administrative Code.

The State Fire Marshal in the Department of Public Safety is authorized to adopt administrative rules pursuant to Iowa Code section 100.35. These amendments adopt by reference the 2012 edition of NFPA 101: Life Safety Code, referred to as the "2012 Life Safety Code." The 2012 Life Safety Code was adopted by the Centers for Medicare and Medicaid Services and became effective July 5, 2016. The 2012 Life Safety Code reflects current safety standards and requirements for hospitals, nursing facilities, hospices, intermediate care facilities for persons with intellectual disabilities or mental illness, ambulatory care facilities, and religious nonmedical facilities. Adopting the 2012 Life Safety Code will promote safety for vulnerable persons.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3411C** on October 25, 2017. A public hearing was held on November 14, 2017, at 10 a.m. in the First Floor Public Conference Room (Room 125), Oran Pape State Office Building, 215 East 7th Street, Des Moines, Iowa. No persons appeared at the public hearing, and no written comments were received. These amendments are identical to those published under Notice.

The State Fire Marshal adopted these amendments on November 29, 2017.

It is expected that there will be no fiscal impact for the adoption of the 2012 Life Safety Code. The fire inspectors who perform these inspections are trained on the new code, and no additional costs are expected.

Pursuant to the provisions of rule 661—10.222(17A), the State Fire Marshal does not have authority to waive requirements established by statute. Pursuant to the provisions of rules 661—200.2(100) and 661—10.222(17A), the State Fire Marshal has the authority to grant waivers from the rules.

It is expected that there will be no impact on jobs. The adoption of the 2012 Life Safety Code will help to better protect vulnerable populations and persons who work in the facilities listed above.

These amendments are intended to implement Iowa Code section 100.35.

These amendments will become effective January 24, 2018.

The following amendments are adopted.

ITEM 1. Amend rule 661—205.1(100) as follows:

661—205.1(100) Definitions. The following definitions apply to rules 661—205.1(100) through 661—205.25(100).

"*Ambulatory health care facility*" means a facility or portion thereof used to provide services or treatment that provides, on an outpatient basis, treatment for one or more patients that renders the patients

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incapable of taking action for self-preservation under emergency conditions without the assistance of others; or provides, on an outpatient basis, anesthesia that renders the patient incapable of taking action for self-preservation under emergency conditions without the assistance of others.

“Existing” means that a facility (1) has been in continuous operation under its current classification of occupancy since before ~~September 11, 2003~~ July 5, 2016, and has not undergone renovation or remodeling, including an addition, on or after ~~September 11, 2003~~ July 5, 2016, or (2) received plan approval for initial construction or for its most recent renovation or remodeling project, including an addition, if any, from the building code bureau of the fire marshal division prior to ~~March 11, 2003~~ July 5, 2016.

“Hospice” means a facility licensed or seeking licensure pursuant to Iowa Code section 135J.2.

“Hospital” means a facility licensed or seeking licensure pursuant to Iowa Code chapter 135B.

“Intermediate care facility ~~for the mentally retarded~~” means a facility licensed or seeking licensure pursuant to Iowa Code section 135C.2(3) “c.”

“New” means that a facility (1) commenced continuous operation under its current classification of occupancy on or after ~~September 11, 2003~~ July 5, 2016, (2) has undergone renovation or remodeling, including an addition, on or after ~~September 11, 2003~~ July 5, 2016, or (3) received plan approval from the building code bureau of the fire marshal division for the initial construction of the facility or the most recent renovation of or addition to the facility on or after ~~March 11, 2003~~ July 5, 2016.

“NFPA” means the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. References to the form “NFPA xx,” where “xx” is a number, refer to the NFPA standard or pamphlet of the corresponding number.

“Nursing facility” means a facility licensed or seeking licensure pursuant to Iowa Code section 135C.6, including a nursing facility for intermediate care or a nursing facility for skilled care.

ITEM 2. Amend rule 661—205.5(100) as follows:

661—205.5(100) Hospitals.

205.5(1) New hospitals. NFPA 101, Life Safety Code, ~~2000~~ 2012 edition, Chapter 18, is adopted by reference as the fire safety rules for new hospitals.

205.5(2) Existing hospitals. NFPA 101, Life Safety Code, ~~2000~~ 2012 edition, Chapter 19, is adopted by reference as the fire safety rules for existing hospitals, ~~with the following amendments:~~

~~Effective March 13, 2006, Section 19.3.6.3.2, Exception No. 2, is deleted.~~

~~Section 19.2.9 is not effective prior to March 13, 2006.~~

205.5(3) Alcohol-based hand rub dispensers. ~~Notwithstanding any provisions of the 2000 edition of the Life Safety Code to the contrary, a hospital may install alcohol-based hand rub dispensers in its facility if:~~

~~a.—Use of alcohol-based hand rub dispensers does not conflict with a local code that prohibits or otherwise restricts the placement of alcohol-based hand rub dispensers in health care facilities;~~

~~b.—The dispensers are installed in a manner that minimizes leaks and spills that could lead to falls;~~

~~c.—The dispensers are installed in a manner that adequately protects against access by vulnerable populations; and~~

~~d.—The dispensers are installed in accordance with Section 18.3.2.7 or Section 19.3.2.7 of the 2000 edition of the Life Safety Code, as amended by NFPA Temporary Interim Amendment 00-1(101), issued by the Standards Council of the National Fire Protection Association on April 15, 2004.~~

ITEM 3. Amend rule 661—205.10(100) as follows:

661—205.10(100) Nursing facilities and hospices.

205.10(1) New nursing facilities and hospices. NFPA 101, Life Safety Code, ~~2000~~ 2012 edition, Chapter 18, is adopted by reference as the fire safety rules for new nursing facilities and hospices that provide inpatient care directly.

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205.10(2) Existing nursing facilities and hospices. NFPA 101, Life Safety Code, ~~2000~~ 2012 edition, Chapter 19, is adopted by reference as the fire safety rules for existing nursing facilities and hospices that provide inpatient care directly, ~~with the following amendments:~~

Section 19.2.9 is not effective prior to March 13, 2006.

Effective March 13, 2006, Section 19.3.6.3.2, Exception No. 2, is deleted.

205.10(3) Alcohol-based hand rub dispensers. Notwithstanding any provisions of the 2000 edition of the Life Safety Code to the contrary, a hospice or nursing facility may place alcohol-based hand rub dispensers in its facility if:

a.—Use of alcohol-based hand rub dispensers does not conflict with a local code that prohibits or otherwise restricts the placement of alcohol-based hand rub dispensers in health care facilities;

b.—The dispensers are installed in a manner that minimizes leaks and spills that could lead to falls;

c.—The dispensers are installed in a manner that adequately protects against access by vulnerable populations; and

d.—The dispensers are installed in accordance with Section 18.3.2.7 or Section 19.3.2.7 of the 2000 edition of the Life Safety Code, as amended by NFPA Temporary Interim Amendment 00-1(101), issued by the Standards Council of the National Fire Protection Association on April 15, 2004.

205.10(4) Smoke detectors in nursing facilities. A nursing facility shall:

a.—Install battery-operated smoke detectors in resident sleeping rooms and public areas by May 24, 2006.

b.—Have a program for testing, maintenance, and battery replacement to ensure the reliability of the smoke detectors.

EXCEPTION: Battery-operated smoke detectors are not required in each resident sleeping room and public area if either the facility has a hard-wired AC smoke detection system in patient rooms and public areas that is installed, tested, and maintained in accordance with NFPA 72, National Fire Alarm Code, for hard-wired AC systems, or the facility has a sprinkler system throughout that is installed, tested, and maintained in accordance with NFPA 13, Automatic Sprinklers.

ITEM 4. Amend rule 661—205.15(100) as follows:

661—205.15(100) Intermediate care facilities for the mentally retarded persons with intellectual disabilities and intermediate care facilities for persons with mental illness.

205.15(1) New intermediate care facilities. New intermediate care facilities for the ~~mentally retarded persons with intellectual disabilities~~ and new intermediate care facilities for persons with mental illness shall comply with the provisions of one of the following:

a. NFPA 101, Life Safety Code, ~~2000~~ 2012 edition, Chapter 18.

b. NFPA 101, Life Safety Code, ~~2000~~ 2012 edition, Chapter 32, ~~with the following amendments:~~

NOTE: Any requirement contained within Chapter 32 that is based on a rating of evacuation capability shall be based upon an evacuation capability rating of “impractical.” Any provision which is dependent upon an evacuation capability rating other than “impractical” shall be unavailable.

(1) ~~Delete Section 32.2.1.2.1 and insert in lieu thereof the following new section:~~

~~32.2.1.2.1~~

~~Small facilities shall comply with the requirements of Section 32.2 as indicated for an evacuation capability of impractical.~~

~~Exception*: Facilities where the authority having jurisdiction has determined equivalent safety is provided in accordance with Section 1.5.~~

(2) ~~Delete Section 32.2.1.2.2 and insert in lieu thereof the following new section:~~

~~32.2.1.2.2~~

~~The evacuation capability shall be classified as impractical.~~

(3) ~~Delete Exception No. 1 to Section 32.2.2.1.~~

(4) ~~Delete Exceptions No. 2 and No. 3 to Section 32.2.2.4.~~

(5) ~~Delete the Exception to Section 32.2.3.3.2.~~

(6) ~~Delete Exception No. 1 to Section 32.2.3.5.1.~~

(7) ~~Delete Exceptions No. 1, No. 3 and No. 4 to Section 32.2.3.5.2.~~

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~~(8) Delete Exception No. 2 to Section 32.2.3.5.2 and insert in lieu thereof the following new Exception No. 2:~~

~~EXCEPTION NO. 2: An automatic sprinkler system in accordance with NFPA 13D, Standard for the Installation of Sprinkler Systems in One and Two Family Dwellings and Manufactured Homes, with a 30-minute water supply, shall be permitted. All habitable areas and closets shall be sprinklered. Facilities with more than eight residents shall be treated as two-family dwellings with regard to water supply.~~

~~(9) Delete Exception No. 5 to Section 32.2.3.5.2 and insert in lieu thereof the following new Exception No. 5:~~

~~EXCEPTION NO. 5: In facilities up to and including four stories in height, systems in accordance with NFPA 13R, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height, shall be permitted. All habitable areas and closets shall be sprinklered.~~

~~(10) Delete Section 32.2.3.5.3.~~

~~(11) Delete Section 32.2.3.5.4 and insert in lieu thereof the following new section:
32.2.3.5.4~~

~~Automatic sprinkler systems shall be supervised in accordance with Section 9.7.~~

~~(12) Delete Exception No. 1 to Section 32.2.3.6.1.~~

~~(13) Delete Section 32.3.1.2.1.~~

~~(14) Delete Section 32.3.1.2.2 and insert in lieu thereof the following new section:
32.3.1.2.2~~

~~Large facilities shall meet the requirements for limited care facilities in Chapter 18.~~

~~Exception*: Facilities where the authority having jurisdiction has determined equivalent safety is provided in accordance with Section 1.5.~~

~~(15) Delete Section 32.3.1.2.3.~~

~~(16) Delete the Exception to Section 32.3.1.3.3, paragraph (a).~~

~~(17) Delete Section 32.4.1.4 and insert in lieu thereof the following new section:~~

~~32.4.1.4 Minimum Construction Requirements.~~

~~In addition to the requirements of Chapter 30, apartment buildings housing residential board and care facilities shall meet the construction requirements of 18.1.6. In applying the construction requirements, the height shall be determined by the height of the residential board and care facility measured above the primary level of exit discharge.~~

~~EXCEPTION: If the new board and care occupancy is created in an existing apartment building, the construction requirements of 19.1.6 shall apply.~~

~~(18) Delete Exception No. 2 to Section 32.7.3 and insert in lieu thereof the following new Exception No. 2:~~

~~EXCEPTION NO. 2: Those residents who cannot meaningfully assist in their own evacuation or who have special health problems shall not be required to actively participate in the drill. Section 18.7 shall apply in such instances.~~

~~**205.15(2)** Existing intermediate care facilities. Existing intermediate care facilities for the mentally retarded persons with intellectual disabilities and existing intermediate care facilities for persons with mental illness shall comply with the provisions of one of the following:~~

~~a. NFPA 101, Life Safety Code, 2000 2012 edition, Chapter 19.~~

~~b. NFPA 101, Life Safety Code, 2000 2012 edition, Chapter 33, with the following amendments:~~

~~NOTE: Any requirement contained in Chapter 33 that is determined on a rating of evacuation capability shall be based upon an evacuation capability rating of "impractical." Any provision which depends upon an evacuation rating of "prompt" or "slow" shall be unavailable.~~

~~(1) Delete Section 33.1.7.~~

~~(2) Delete Section 33.2.1.2.1 and insert in lieu thereof the following new section:
33.2.1.2.1~~

~~Small facilities shall comply with the requirements of Section 33.2.~~

~~Exception*: Facilities where the authority having jurisdiction has determined equivalent safety is provided in accordance with Section 1.5.~~

~~(3) Delete Section 33.2.1.2.2 and insert in lieu thereof the following new section:~~

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~~33.2.1.2.2~~~~The evacuation capability shall be classified as impractical.~~~~(4) Delete Section 33.2.1.3 and insert in lieu thereof the following new section:~~~~33.2.1.3 Minimum Construction Requirements.~~~~Buildings shall be of any construction type in accordance with 8.2.1 other than Type II(000), Type III(200), or Type V(000) construction.~~~~EXCEPTION: Buildings protected throughout by an approved, supervised automatic sprinkler system in accordance with 33.2.3.5 shall be permitted to be of any type of construction.~~~~(5) Delete Exception No. 1 to Section 33.2.2.1.~~~~(6) Delete Section 33.2.2.2 and insert in lieu thereof the following new section:~~~~33.2.2.2~~~~The primary means of escape for each sleeping room shall not be exposed to living areas and kitchens.~~~~EXCEPTION: Buildings equipped with quick response or residential sprinklers throughout. Standard response sprinklers shall be permitted for use in hazardous areas in accordance with 33.2.3.2.~~~~(7) Delete Exception No. 2, Exception No. 3, and Exception No. 4 to Section 33.2.2.4.~~~~(8) Delete the Exception to Section 33.2.3.3.~~~~(9) Delete Section 33.2.3.5.2 and insert in lieu thereof the following new section:~~~~33.2.3.5.2*~~~~Where an automatic sprinkler system is installed, for either total or partial building coverage, the system shall be in accordance with Section 9.7 and shall activate the fire alarm system in accordance with 33.2.3.4.1. The adequacy of the water supply shall be documented to the authority having jurisdiction.~~~~EXCEPTION NO. 1: An automatic sprinkler system in accordance with NFPA 13D, Standard for the Installation of Sprinkler Systems in One and Two Family Dwellings and Manufactured Homes, with a 30-minute water supply, shall be permitted. All habitable areas and closets shall be sprinklered. Automatic sprinklers shall not be required in bathrooms not exceeding 55 ft² (5.1 m²), provided that such spaces are finished with lath and plaster or materials providing a 15-minute thermal barrier.~~~~EXCEPTION NO. 2: In facilities up to and including four stories in height, systems installed in accordance with NFPA 13R, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height, shall be permitted. All habitable areas and closets shall be sprinklered. Automatic sprinklers shall not be required in bathrooms not exceeding 55 ft² (5.1 m²), provided that such spaces are finished with lath and plaster or materials providing a 15-minute thermal barrier.~~~~EXCEPTION NO. 3: Initiation of the fire alarm system shall not be required for existing installations in accordance with 33.2.3.5.5.~~~~(10) Delete Section 33.2.3.5.3 and insert in lieu thereof the following new section:~~~~33.2.3.5.3~~~~All facilities shall be protected throughout by an approved, supervised automatic sprinkler system in accordance with 33.2.3.5.2.~~~~(11) Delete Exception No. 1 and Exception No. 4 to Section 33.2.3.6.1.~~~~(12) Delete Section 33.3.1.1 and insert in lieu thereof the following new section:~~~~33.3.1.1 Scope.~~~~Section 33.3 applies to residential board and care occupancies providing sleeping accommodations for more than 16 residents. Facilities having sleeping accommodations for not more than 16 residents shall be evaluated in accordance with Section 33.2.~~~~(13) Delete Section 33.3.1.2 and insert in lieu thereof the following new section:~~~~33.3.1.2 Requirements.~~~~Large facilities shall meet the requirements for limited care facilities in Chapter 19.~~~~Exception*: Facilities where the authority having jurisdiction has determined equivalent safety is provided in accordance with Section 1.5.~~~~(14) Delete the Exception to Section 33.3.1.3.3, paragraph (a).~~~~(15) Delete Exception No. 2 to Section 33.3.3.6.1.~~~~(16) Delete Exception No. 2 to Section 33.3.3.6.3.~~

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(17) Delete Section 33.4.1.3 and insert in lieu thereof the following new section:

33.4.1.3 Requirements.

33.4.1.3.1

Apartment buildings housing board and care facilities shall comply with the requirements of Section 33.4.

Exception*: Facilities where the authority having jurisdiction has determined that equivalent safety for housing a residential board and care facility is provided in accordance with Section 1.5.

33.4.1.3.2

All facilities shall meet the requirements of Chapter 31 and the additional requirements of Section 33.4.

(18) Delete Section 33.4.1.4 and insert in lieu thereof the following new section:

33.4.1.4 Minimum Construction Requirements.

In addition to the requirements of Chapter 31, apartment buildings housing residential board and care facilities shall meet the construction requirements of 19.1.6. In applying the construction requirements, the height shall be determined by the height of the residential board and care facility measured above the primary level of exit discharge.

(19) Delete Exception No. 2 to Section 33.7.3 and insert in lieu thereof the following new exception:

EXCEPTION NO. 2: Those residents who cannot meaningfully assist in their own evacuation or who have special health problems shall not be required to actively participate in the drill. Section 19.7 shall apply in such instances.

205.15(3) Alcohol-based hand rub dispensers. Notwithstanding any provisions of the 2000 edition of the Life Safety Code to the contrary, a facility may install alcohol-based hand rub dispensers if:

a.—Use of alcohol-based hand rub dispensers does not conflict with a local code that prohibits or otherwise restricts the placement of alcohol-based hand rub dispensers in health care facilities;

b.—The dispensers are installed in a manner that minimizes leaks and spills that could lead to falls;

c.—The dispensers are installed in a manner that adequately protects against access by vulnerable populations; and

d.—The dispensers are installed in accordance with Section 18.3.2.7 or Section 19.3.2.7 of the 2000 edition of the Life Safety Code, as amended by NFPA Temporary Interim Amendment 00-1(101), issued by the Standards Council of the National Fire Protection Association on April 15, 2004.

ITEM 5. Amend rule 661—205.20(100) as follows:

661—205.20(100) Ambulatory health care facilities.

205.20(1) New ambulatory health care facilities. NFPA 101, Life Safety Code, 2000 2012 edition, Chapter 20, is adopted by reference as the fire safety rules for new ambulatory health care facilities.

205.20(2) Existing ambulatory health care facilities. NFPA 101, Life Safety Code, 2000 2012 edition, Chapter 21, is adopted by reference as the fire safety rules for existing ambulatory health care facilities, with the following amendments:

Section 21.2.9.1 is not effective prior to March 13, 2006.

205.20(3) Alcohol-based hand rub dispensers. Notwithstanding any provisions of the 2000 edition of the Life Safety Code to the contrary, an ambulatory health care facility may place alcohol-based hand rub dispensers in its facility if:

a.—Use of alcohol-based hand rub dispensers does not conflict with a local code that prohibits or otherwise restricts the placement of alcohol-based hand rub dispensers in health care facilities;

b.—The dispensers are installed in a manner that minimizes leaks and spills that could lead to falls;

c.—The dispensers are installed in a manner that adequately protects against access by vulnerable populations; and

d.—The dispensers are installed in accordance with the following provisions:

(1) Where dispensers are installed in a corridor, the corridor shall have a minimum width of 6 ft (1.8 m);

(2) The maximum individual dispenser fluid capacity shall be:

1.—0.3 gallons (1.2 liters) for dispensers in rooms, corridors, and areas open to corridors;

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- ~~2. 0.5 gallons (2.0 liters) for dispensers in suites of rooms;~~
- ~~(3) The dispensers shall have a minimum horizontal spacing of 4 ft (1.2 m) from each other;~~
- ~~(4) Not more than an aggregate 10 gallons (37.8 liters) of alcohol-based hand rub solution shall be in use in a single smoke compartment outside of a storage cabinet;~~
- ~~(5) Storage of quantities greater than 5 gallons (18.9 liters) in a single smoke compartment shall meet the requirements of NFPA 30, Flammable and Combustible Liquids Code;~~
- ~~(6) The dispensers shall not be installed over or directly adjacent to an ignition source; and~~
- ~~(7) In locations with carpeted floor coverings, dispensers installed directly over carpeted surfaces shall be permitted only in sprinklered smoke compartments.~~

ITEM 6. Amend rule 661—205.25(100) as follows:

661—205.25(100) Religious nonmedical health care institutions.

205.25(1) *New religious nonmedical health care institutions.* NFPA 101, Life Safety Code, 2000 2012 edition, Chapter 18, is adopted by reference as the fire safety rules for new religious nonmedical health care institutions.

205.25(2) *Existing religious nonmedical health care institutions.* NFPA 101, Life Safety Code, 2000 2012 edition, Chapter 19, is adopted by reference as the fire safety rules for existing religious nonmedical health care institutions, with the following amendments:

~~Section 19.2.9 is not effective prior to March 13, 2006.~~

~~Effective March 13, 2006, Section 19.3.6.3.2, Exception No. 2, is deleted.~~

205.25(3) *Alcohol-based hand rub dispensers.* Notwithstanding any provisions of the 2000 edition of the Life Safety Code to the contrary, a religious nonmedical health care institution may place alcohol-based hand rub dispensers in its facility if:

- ~~a. Use of alcohol-based hand rub dispensers does not conflict with a local code that prohibits or otherwise restricts the placement of alcohol-based hand rub dispensers in health care facilities;~~
- ~~b. The dispensers are installed in a manner that minimizes leaks and spills that could lead to falls;~~
- ~~c. The dispensers are installed in a manner that adequately protects against access by vulnerable populations; and~~
- ~~d. The dispensers are installed in accordance with Section 18.3.2.7 or Section 19.3.2.7 of the 2000 edition of the Life Safety Code, as amended by NFPA Temporary Interim Amendment 00-1(101), issued by the Standards Council of the National Fire Protection Association on April 15, 2004.~~

[Filed 11/29/17, effective 1/24/18]

[Published 12/20/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/20/17.

ARC 3527C

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Iowa Department of Revenue hereby amends Chapter 43, "Assessments and Refunds," Iowa Administrative Code.

This amendment is necessary to implement changes to the administration of certain income tax checkoffs that are contained in 2016 Iowa Acts, House File 2459, and 2017 Iowa Acts, House File 242. 2016 Iowa Acts, House File 2459, updated the automatic repeal dates for certain checkoffs allowed on the individual income tax return to indicate that the checkoffs which currently appear on the form will not be subject to automatic repeal until 2019. 2017 Iowa Acts, House File 242, changed the tax years in which designations to the Iowa election campaign fund are allowable to reflect the repeal of the election campaign fund. The amendment also rescinds several subrules that implemented checkoffs that are no longer in effect, and the remaining subrules are renumbered to account for this change.

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Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3413C** on October 25, 2017. No public comments were received in relation to this rule making. This amendment is identical to that published under Notice of Intended Action.

Any person who believes that the application of the discretionary provisions of these rules 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).

The Department of Revenue adopted this amendment on November 29, 2017.

After analysis and review of this rule making, the Department finds that this amendment is not likely to have a significant impact on jobs.

This amendment is intended to implement Iowa Code section 422.12E as amended by 2016 Iowa Acts, House File 2459, and Iowa Code sections 68A.601 and 422.12J as amended by 2017 Iowa Acts, House File 242.

This amendment will become effective January 24, 2018.

The following amendment is adopted.

Amend rule 701—43.4(68A,422,456A) as follows:

701—43.4(68A,422,456A) Optional designations of funds by taxpayer.

43.4(1) Iowa fish and game protection fund. The taxpayer may designate an amount to be donated to the Iowa fish and game protection fund. The donation must be \$1 or more, and the designation must be made on the original return for the current year. The donation is allowed only after obligations of the taxpayer to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, and other state agencies, ~~and the Iowa election campaign checkoff~~ have been satisfied. The designation to the fund is irrevocable and cannot be made on an amended return. If the amount of refund claimed on the original return or the payment remitted with the return is adjusted by the department, the amount of the designation to the fund may be adjusted accordingly.

EXAMPLE A: Overpayment as shown on the original return is \$50. \$25 is designated to the fund. Due to an error on the return, only \$20 is an overpayment. The taxpayer would not receive any refund and all \$20 of the overpayment would be credited to the fund.

EXAMPLE B: Overpayment as shown on the original return is \$50. \$25 is designated to the fund. Due to an error on the return, no overpayment occurred, but instead the taxpayer owes \$20. No money would be credited to the fund in this instance.

EXAMPLE C: Amount shown due on return is \$30. \$20 is designated to the fund. A \$50 payment was made with the return. Due to an error on the return, the taxpayer owes \$40. Only \$10 would be credited to the fund in this situation.

43.4(2) Iowa election campaign fund. A For tax years beginning before January 1, 2017, a person with a tax liability of \$1.50 or more on the Iowa individual income tax return may direct or designate that a \$1.50 contribution be made to a specific political party or that the contribution be made to the Iowa election campaign fund to be shared by all political parties as clarified further in this paragraph. In the case of married taxpayers filing a joint Iowa individual return with a tax liability of \$3.00 or more, each spouse may direct or designate that a \$1.50 contribution be made to a specific political party or that a \$1.50 contribution be made to the Iowa election campaign fund as a contribution to be shared by all political parties. The designation or direction of a contribution to a political party or to the election campaign fund is irrevocable and cannot be changed on an amended return. The designation to a political party or the election campaign fund is allowed only after obligations of the taxpayer to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts and other state agencies are satisfied. Note that for purposes of this subrule, “political party” means a party as defined in Iowa Code section 43.2.

In a tax year beginning before January 1, 2017, when there are two political parties for purposes of the Iowa election campaign fund, all undesignated contributions to the fund made on individual income

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tax returns for that tax year are to be divided equally between the two parties. In a tax year beginning before January 1, 2017, where there are more than two political parties for purposes of the Iowa election campaign fund, all undesignated contributions to the fund made on income tax returns for that tax year are to be divided among the political parties on the basis of the number of registered voters for a particular political party on December 31 of that tax year to the total number of registered voters on December 31 of that tax year that have declared an affiliation with any of the recognized political parties.

Thus, if there were 400,000 registered voters for “x” political party, 500,000 registered voters for “y” political party, and 100,000 registered voters for “z” political party on December 31 of a tax year beginning before January 1, 2017, where there were three recognized political parties, 40 percent of the undesignated political contributions on ~~1997~~ that year’s returns would be paid to “x” political party since 40 percent of the registered voters with an affiliation to a political party on December 31 had an affiliation with party “x” on that day.

~~43.4(3) Domestic abuse services checkoff. Rescinded IAB 11/30/11, effective 1/4/12.~~

~~43.4(4)~~ **43.4(3)** *State fair foundation fund checkoff.* For tax years beginning on or after January 1, 1993, a taxpayer filing a state individual income tax return can designate a checkoff of \$1 or more to the foundation fund of the Iowa state fair foundation. If the overpayment on the return or the payment made with the filing of the return is not sufficient to cover the amount designated to the foundation fund checkoff, the amount credited to the foundation fund checkoff will be reduced accordingly. The designation to the foundation fund checkoff is irrevocable.

A designation to the foundation fund checkoff may be allowed only after obligations of the taxpayer to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, ~~the Iowa election campaign checkoff~~, and the Iowa fish and game protection fund checkoff are satisfied.

On or before January 31 of the year following the year in which returns with the foundation fund checkoff are due, the department of revenue shall transfer the total amount designated to the foundation fund.

~~43.4(5)~~ **43.4(4)** *Limitation of checkoffs on the individual income tax return.* For tax years beginning on or after January 1, 1995, but before January 1, 2004, no more than three checkoffs are allowed on the individual income tax return. The election campaign fund checkoff is not considered for purposes of limiting the number of checkoffs on the income tax return. When the same three checkoffs have been provided on the income tax return for three consecutive years, the checkoff for which the least amount has been contributed in the aggregate for the first two years and through March 15 of the third tax year will be repealed.

For example, the 1999 Iowa individual income tax return due in 2000 includes checkoffs A, B and C which also were shown on the Iowa returns for 1997, 1998 and 1999. Through March 15, 2000, \$90,000 was contributed on the 1997, 1998 and 1999 returns for checkoff A, \$60,000 was contributed for checkoff B and \$120,000 for checkoff C. Since the least amount contributed in the aggregate was for checkoff B, that checkoff is repealed and will not appear on the 2000 Iowa income tax return to be filed in 2001.

For tax years beginning on or after January 1, ~~2004~~ 2019, no more than four checkoffs are allowed on the individual income tax return. The election campaign fund checkoff is not considered for purposes of limiting the number of checkoffs on the income tax return.

~~When~~ For tax years beginning on or after January 1, 2017, when the same four checkoffs have been provided on the income tax return for two consecutive years, the two checkoffs for which the least amount has been contributed in the aggregate for the first year and through March 15 of the second tax year will be repealed.

If more checkoffs are enacted in the same session of the general assembly than there is space for inclusion on the individual income tax return form, the earliest enacted checkoffs for which there is space will be included on the income tax return form, and all other checkoffs enacted during that session of the general assembly are repealed. If the same session of the general assembly enacts more checkoffs

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on the same day than there is space for inclusion on the individual income tax form, the director of revenue shall determine which checkoffs shall be included on the individual income tax form.

~~43.4(6) *Keep Iowa beautiful fund checkoff.* For tax years beginning on or after January 1, 2001, but before January 1, 2006, a taxpayer filing an individual income tax return can designate a checkoff of \$1 or more to the keep Iowa beautiful fund. If the refund due on the return or the payment remitted with the return is insufficient to pay the additional amount designated by the taxpayer to the keep Iowa beautiful fund, the amount credited to the keep Iowa beautiful fund will be reduced accordingly. Once the taxpayer has designated a contribution to the keep Iowa beautiful fund on an individual income tax return filed with the department of revenue, the taxpayer cannot amend the designation.~~

~~A designation to the keep Iowa beautiful checkoff may be allowed only after obligations of the taxpayer to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, the Iowa election campaign checkoff, the Iowa fish and game protection fund checkoff and the state fair foundation checkoff are satisfied.~~

~~On or before January 31 of the year following the year in which Iowa income tax returns with contributions to the keep Iowa beautiful fund are due, the department of revenue shall transfer the total amount designated to the keep Iowa beautiful fund.~~

~~43.4(7) *Volunteer fire fighter preparedness fund checkoff.* For tax years beginning on or after January 1, 2004, but before January 1, 2006, a taxpayer filing an individual income tax return can designate a checkoff of \$1 or more to the volunteer fire fighter preparedness fund. If the refund due on the return or the payment remitted with the return is insufficient to pay the additional amount designated by the taxpayer to the volunteer fire fighter preparedness fund, the amount credited to the volunteer fire fighter preparedness fund will be reduced accordingly. Once the taxpayer has designated a contribution to the volunteer fire fighter preparedness fund on an individual income tax return filed with the department of revenue, the taxpayer cannot amend that designation.~~

~~A designation to the volunteer fire fighter preparedness fund checkoff may be allowed only after obligations of the taxpayer to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, the Iowa election campaign checkoff, the Iowa fish and game protection fund checkoff, the state fair foundation checkoff and the keep Iowa beautiful fund checkoff are satisfied.~~

~~On or before January 31 of the year following the year in which Iowa income tax returns with contributions to the volunteer fire fighter preparedness fund are due, the department of revenue is to certify to the state treasurer the amount designated to the volunteer fire fighter preparedness fund on those returns.~~

~~43.4(8) *Veterans trust fund checkoff.* For tax years beginning on or after January 1, 2006, but before January 1, 2008, a taxpayer filing an individual income tax return can designate a checkoff of \$1 or more to the veterans trust fund. If the refund due on the return or the payment remitted with the return is insufficient to pay the additional amount designated by the taxpayer to the veterans trust fund, the amount credited to the veterans trust fund will be reduced accordingly. Once the taxpayer has designated a contribution to the veterans trust fund on an individual income tax return filed with the department of revenue, the taxpayer cannot amend that designation.~~

~~A designation to the veterans trust fund checkoff may be allowed only after obligations of the taxpayer to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, the Iowa election campaign checkoff, the Iowa fish and game protection fund checkoff and the state fair foundation checkoff are satisfied.~~

~~On or before January 31 of the year following the year in which Iowa income tax returns with contributions to the veterans trust fund are due, the department of revenue shall transfer the total amount designated to the veterans trust fund.~~

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~~43.4(9) Joint keep Iowa beautiful fund and volunteer fire fighter preparedness fund checkoff.~~ For tax years beginning on or after January 1, 2006, but before January 1, 2008, a taxpayer filing an individual income tax return can designate a checkoff of \$1 or more to the joint keep Iowa beautiful fund and volunteer fire fighter preparedness fund. If the refund due on the return or the payment remitted with the return is insufficient to pay the additional amount designated by the taxpayer to the joint keep Iowa beautiful fund and volunteer fire fighter preparedness fund, the amount credited to the joint keep Iowa beautiful fund and volunteer fire fighter preparedness fund will be reduced accordingly. Once the taxpayer has designated a contribution to the joint keep Iowa beautiful fund and volunteer fire fighter preparedness fund on an individual income tax return filed with the department of revenue, the taxpayer cannot amend that designation.

~~A designation to the joint keep Iowa beautiful fund and volunteer fire fighter preparedness fund checkoff may be allowed only after obligations of the taxpayer to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, the Iowa election campaign checkoff, the Iowa fish and game protection fund checkoff, the state fair foundation checkoff and the veterans trust fund checkoff are satisfied.~~

~~On or before January 31 of the year following the year in which Iowa income tax returns with contributions to the joint keep Iowa beautiful fund and volunteer fire fighter preparedness fund are due, the department of revenue shall transfer one half of the total amount designated to the keep Iowa beautiful fund, and the remaining one half will be transferred to the volunteer fire fighter preparedness fund.~~

~~43.4(10) 43.4(5) Child abuse prevention program fund checkoff.~~ For tax years beginning on or after January 1, 2008, a A taxpayer filing an individual income tax return can designate a checkoff of \$1 or more to the child abuse prevention program fund. If the refund due on the return or the payment remitted with the return is insufficient to pay the additional amount designated by the taxpayer to the child abuse prevention program fund, the amount credited to the child abuse prevention program fund will be reduced accordingly. Once the taxpayer has designated a contribution to the child abuse prevention program fund on an individual income tax return filed with the department of revenue, the taxpayer cannot amend that designation.

~~A designation to the child abuse prevention program fund checkoff may be allowed only after obligations of the taxpayer to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, the Iowa election campaign checkoff, the Iowa fish and game protection fund checkoff and the state fair foundation fund checkoff are satisfied.~~

~~On or before January 31 of the year following the year in which Iowa income tax returns with contributions to the child abuse prevention program fund are due, the department of revenue shall transfer the total amount designated to the child abuse prevention program fund.~~

~~43.4(11) 43.4(6) Joint veterans trust fund and volunteer fire fighter preparedness fund checkoff.~~ For tax years beginning on or after January 1, 2008, a A taxpayer filing an individual income tax return can designate a checkoff of \$1 or more to the joint veterans trust fund and volunteer fire fighter preparedness fund. If the refund due on the return or the payment remitted with the return is insufficient to pay the additional amount designated by the taxpayer to the joint veterans trust fund and volunteer fire fighter preparedness fund, the amount credited to the joint veterans trust fund and volunteer fire fighter preparedness fund will be reduced accordingly. Once the taxpayer has designated a contribution to the joint veterans trust fund and volunteer fire fighter preparedness fund on an individual income tax return filed with the department of revenue, the taxpayer cannot amend that designation.

~~A designation to the joint veterans trust fund and volunteer fire fighter preparedness fund checkoff may be allowed only after obligations of the taxpayer to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, the Iowa election campaign checkoff, the Iowa~~

REVENUE DEPARTMENT[701](cont'd)

fish and game protection fund checkoff, the state fair foundation fund checkoff and the child abuse prevention program fund checkoff are satisfied.

On or before January 31 of the year following the year in which Iowa income tax returns with contributions to the joint veterans trust fund and volunteer fire fighter preparedness fund are due, the department of revenue shall transfer one-half of the total amount designated to the veterans trust fund, and the remaining one-half will be transferred to the volunteer fire fighter preparedness fund.

This rule is intended to implement Iowa Code sections 422.12D, 422.12E, 422.12H, 422.12J, 422.12K and 422.12L, 2016 Iowa Acts, House File 2459, and 2014 Iowa Acts, House File 2473 2017 Iowa Acts, House File 242.

[Filed 11/29/17, effective 1/24/18]

[Published 12/20/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/20/17.

ARC 3528C

WORKERS' COMPENSATION DIVISION[876]

Adopted and Filed

Pursuant to the authority of Iowa Code section 86.8, the Workers' Compensation Commissioner hereby amends Chapter 1, "Purpose and Function," Chapter 2, "General Provisions," Chapter 3, "Forms," Chapter 4, "Contested Cases," Chapter 5, "Declaratory Orders," Chapter 6, "Settlements and Commutations," Chapter 8, "Substantive and Interpretative Rules," and Chapter 12, "Formal Review and Waiver of Rules," Iowa Administrative Code.

These amendments relate to recent changes enacted in 2017 involving Iowa Code chapter 85, concerning the evaluation of permanent impairments under Iowa Code section 85.34, vocational training and education under Iowa Code section 85.70(2), suitable work under Iowa Code section 85.33, and commutations under Iowa Code section 85.45. These amendments also update agency addresses, agency telephone numbers, and statutory references. Cross references in these rules to provisions of Iowa Code chapter 85 should be understood to include the amendments enacted in 2017 Iowa Acts, House File 518.

Prior to filing the Notice of Intended Action, the Workers' Compensation Commissioner sought input and comments from stakeholders. Comments were received from the Iowa Association of Business and Industry. The comments were considered in drafting the amendments.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 25, 2017, as **ARC 3414C**. Comments were received from the Iowa Association of Business and Industry on November 13, 2017. The rule making was on the agenda for the Administrative Rules Review Committee meeting on November 14, 2017. Comments were also received from the Iowa Association of Business and Industry at that time. The Workers' Compensation Commissioner considered the comments received and determined that no changes would be made from the amendments published under Notice.

After analysis and review, the fiscal impact remains the same as the estimates published in the Final Action Fiscal Note for 2017 Iowa Acts, House File 518. Changes pertaining to how injuries to shoulders and permanent partial disability injuries are addressed will result in an estimated reduction in benefit payments from the state's Workers' Compensation Fund to state workers of \$1.8 million annually beginning with fiscal year 2018. The Workforce Development Department may utilize an additional 2.0 full-time equivalent positions and \$144,000 annually in salary and benefit funding to address all of the changes related to the enactment of House File 518. The estimate includes the cost to administer the shoulder training program, but does not include the actual cost of the training. Little or no impact on the State is anticipated from the changes related to the offer of suitable work.

These amendments will have no impact on small business within the meaning of Iowa Code section 17A.4A.

WORKERS' COMPENSATION DIVISION[876](cont'd)

These amendments do not include a waiver provision because rule 876—12.4(17A) provides the specified situations for waiver of Workers' Compensation Division rules.

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

These amendments are intended to implement Iowa Code chapter 85 as amended by 2017 Iowa Acts, House File 518.

These amendments will become effective January 24, 2018.

The following amendments are adopted.

ITEM 1. Amend rule 876—1.2(86,17A) as follows:

876—1.2(86,17A) Location. Interested persons may contact the Iowa Workers' Compensation Commissioner, 1000 East Grand Avenue (mailing address), 150 Des Moines Street (physical location), Des Moines, Iowa 50319; telephone (~~515~~)281-5387 (515)725-4120 or ~~1-800-Job-Iowa (1-800-562-4692)~~ 1-800-645-4583. The fax number is (515)281-6501. The Web site address is <http://www.iowaworkforce.org/wc>.

ITEM 2. Amend rule 876—2.4(85,86) as follows:

876—2.4(85,86) Guides to evaluation of permanent impairment. The Guides to the Evaluation of Permanent Impairment, Fifth Edition, published by the American Medical Association are adopted as a guide for determining the extent of loss or percentage of impairment for permanent partial disabilities and payment of weekly compensation for permanent partial scheduled injuries under Iowa Code section 85.34(2) "a" to "s." ~~85.34(2) not involving a determination of reduction in an employee's earning capacity. The extent of loss or percentage of permanent impairment may be determined by use of the Fifth Edition of the guides and payment of weekly compensation for permanent partial scheduled injuries made accordingly.~~ Payment so made shall be recognized by the workers' compensation commissioner as a prima facie showing of compliance by the employer or insurance carrier with the foregoing sections of the Iowa workers' compensation Act. Nothing in this rule shall be construed to prevent the presentations of other medical opinions or other material evidence for the purpose of establishing that the degree of permanent disability to which the claimant would be entitled would be more or less than the entitlement indicated in the ~~Fifth Edition of the AMA guides~~ Guides to the Evaluation of Permanent Impairment, Fifth Edition, when the reduction in earning capacity for all other permanent partial and permanent total disabilities is determined.

This rule is intended to implement Iowa Code sections 85.34(2) and 86.8.

ITEM 3. Amend subrule 3.1(7) as follows:

3.1(7) Form—original notice and petition. The following forms are types of original notice and petition: original notice and petition—Form 100 (Form No. 14-0005); original notice, petition, answer and order concerning independent medical examination—Form 100A (Form No. 14-0007); original notice, petition, answer and order concerning vocational rehabilitation program benefit—Form 100B (Form No. 14-0009); original notice, petition, and answer concerning application for alternate medical care—Form 100C (Form No. 14-0011); original notice, petition, and answer concerning application for vocational training and education—Form 100D (Form No. 14-0012); original notice and petition for full commutation of all remaining benefits of ten weeks or more 876 IAC 6.2(6)—Form 9 (Form No. 14-0013); checklist for full commutation (Form No. 14-0015); original notice and petition and order for partial commutation—Form 9A (Form No. 14-0017); and checklist for partial commutation (Form No. 14-0019). See rule 876—4.6(85,86,17A) for further descriptions.

ITEM 4. Amend subrule 3.1(21) as follows:

3.1(21) Form—agreement for settlement. (*Form No. 14-0021*) This form is used to file an agreement for settlement pursuant to Iowa Code ~~Supplement~~ section 85.35(2).

ITEM 5. Amend subrule 3.1(22) as follows:

3.1(22) Form—compromise settlement. (*Form No. 14-0025*) This form is used to file a compromise settlement pursuant to Iowa Code ~~Supplement~~ section 85.35(3).

WORKERS' COMPENSATION DIVISION[876](cont'd)

ITEM 6. Amend subrule 3.1(23) as follows:

3.1(23) Form—combination settlement. (*Form No. 14-0159*) This form is used to file a combination settlement pursuant to Iowa Code Supplement section 85.35(4).

ITEM 7. Amend subrule 3.1(24) as follows:

3.1(24) Form—contingent settlement. (*Form No. 14-0161*) This form is used to file a contingent settlement pursuant to Iowa Code Supplement section 85.35(5).

ITEM 8. Amend rule 876—4.1(85,85A,85B,86,87,17A) as follows:

876—4.1(85,85A,85B,86,87,17A) Contested cases. Contested case proceedings before the workers' compensation commissioner are:

- 4.1(1)** Arbitration (Iowa Code section 86.14).
- 4.1(2)** Review of award or settlement (review-reopening, Iowa Code section 86.14).
- 4.1(3)** Benefits under Iowa Code section 85.27.
- 4.1(4)** Death and burial benefits (Iowa Code sections 85.28, 85.29, 85.31).
- 4.1(5)** Determination of dependency (Iowa Code sections 85.42, 85.43, 85.44).
- 4.1(6)** Equitable apportionment (Iowa Code section 85.43).
- 4.1(7)** Second injury fund (Iowa Code section 85.63 et seq.).
- 4.1(8)** Vocational rehabilitation benefits (Iowa Code section ~~85.70~~ 85.70(1)).
- 4.1(9)** Vocational training and education (Iowa Code section 85.70(2)).
- ~~4.1(9)~~ **4.1(10)** Approval of fees under Iowa Code section 86.39.
- ~~4.1(10)~~ **4.1(11)** Commutation (Iowa Code section 85.45 et seq.).
- ~~4.1(11)~~ **4.1(12)** Employee's examination (Iowa Code section 85.39).
- ~~4.1(12)~~ **4.1(13)** Employer's examination or sanctions (Iowa Code section 85.39).
- ~~4.1(13)~~ **4.1(14)** Determination of compliance with Iowa Code chapters 85, 85A, 85B, 86, and 87.
- ~~4.1(14)~~ **4.1(15)** Applications for alternate medical care (Iowa Code section 85.27).
- ~~4.1(15)~~ **4.1(16)** Determination of liability, reimbursement for benefits paid and recovery of interest (Iowa Code section 85.21).
- ~~4.1(16)~~ **4.1(17)** Interest (Iowa Code section 85.30).
- ~~4.1(17)~~ **4.1(18)** Penalty (Iowa Code section 86.13).
- ~~4.1(18)~~ **4.1(19)** Application for approval of third-party settlement (Iowa Code section 85.22).
- ~~4.1(19)~~ **4.1(20)** Matters that would be a contested case if there were a dispute over the existence of material facts.
- ~~4.1(20)~~ **4.1(21)** Any other issue determinable upon evidential hearing which is under the jurisdiction of the workers' compensation commissioner.

This rule is intended to implement ~~the provisions of~~ Iowa Code sections 17A.2(2) and 86.8 and the statutory sections noted in each category of the rule.

ITEM 9. Amend rule 876—4.4(86) as follows:

876—4.4(86) Request for hearing. Unless otherwise ordered, a hearing shall not be held in proceedings under 4.1(8) to ~~4.1(12)~~ 4.1(13), unless requested in writing by the petitioner in the original notice or petition or by the respondent within ten days following the time allowed by these rules for appearance.

ITEM 10. Amend rule 876—4.5(86) as follows:

876—4.5(86) Commencement by commissioner. In addition to an aggrieved party, the commissioner may initiate proceedings under ~~4.1(9)~~ 4.1(10). The proceeding may be held before a deputy commissioner or the commissioner. The workers' compensation commissioner shall be the only person to commence a proceeding under ~~4.1(13)~~ 4.1(14), unless such authority is specifically delegated by the workers' compensation commissioner to a deputy commissioner concerning a specific matter.

WORKERS' COMPENSATION DIVISION[876](cont'd)

ITEM 11. Amend rule 876—4.6(85,86,17A) as follows:

876—4.6(85,86,17A) Original notice and petition. A petition or application must be delivered or filed with the original notice unless original notice Form 100, Form 100A₂, ~~or~~ Form 100B, or Form 100D of the division of workers' compensation is used.

The original notice Form 100, Form 100A, Form 100B, Form 100C, Form 100D, or a determination of liability reimbursement for benefits paid and recovery of interest form shall provide for the data required in Iowa Code section 17A.12(2) and shall contain factors relevant to the contested case proceedings listed in 876—4.1(85,85A,85B,86,87,17A). Form 100 is to be used for all contested case proceedings except as indicated in this rule. Form 100A is to be used for the contested case proceedings provided for in subrules ~~4.1(11) and 4.1(12) and 4.1(13)~~. Form 100B is to be used for the contested case proceeding provided for in subrule 4.1(8). Form 100C is to be used for the contested case proceeding provided for in subrule ~~4.1(14)~~ 4.1(15) and rule 876—4.48(17A,85,86). Form 100D is to be used for the contested case proceeding provided for in rule 876—4.50(85). The application and consent order for payment of benefits under Iowa Code section 85.21 is to be used for contested case proceedings brought under Iowa Code section 85.21. When a commutation is sought, Form No. 9 or Form No. 9A must be filed in addition to any other document. The petition for declaratory order, approval of attorney fees, determination of compliance and other proceedings not covered in the original notice forms must accompany the original notice.

At the same time and in the same manner as service of the original notice and petition, the claimant shall serve a patient's waiver using Form 14-0043 (authorization for release of information regarding claimants seeking workers' compensation benefits), or a substantially equivalent form, which shall not be revoked until conclusion of the contested case. The claimant shall provide the patient's waivers in other forms and update the patient's waivers as necessary to permit full disclosure of discoverable information whenever requested by a medical practitioner or institution.

~~For all original notices and petitions filed on or after January 1, 2003, a~~ A separate original notice and petition shall be filed for each claim that seeks benefits due to the occurrence of an injury, occupational disease or occupational hearing loss. The original notice and petition shall allege a specific date of occurrence consisting of a day, month and year. Alternate or multiple dates of occurrence may be alleged in the same original notice and petition if the claim or claims arose from the same occurrence or series of occurrences and uncertainty exists concerning the correct date of occurrence or the number of occurrences. An employee may join any number of employers or insurance carriers in the same original notice and petition if the claim is made against them jointly, severally or in the alternative. The remedy for misjoinder must be requested by motion within a reasonable time after the grounds become known, but in no event later than the claimant's case preparation completion date. All remedies will be applied without prejudice to any claim or defense. In addition to the remedies contained in Iowa Rule of Civil Procedure 1.236, the workers' compensation commissioner may order that parts of a claim be severed and proceeded with separately or that separate related claims be joined or consolidated for administrative convenience or for any good cause. If a correction is ordered but not made by a date specified in the order, the original notice and petition may be dismissed without further notice. If the correction is made within the specified time, the correction relates back to the date of the initial filing for purposes of the statute of limitations.

This rule is intended to implement ~~the provisions of~~ Iowa Code sections 85.27, 85.45, 85.48, and 17A.12.

ITEM 12. Amend paragraph **4.8(2)“a”** as follows:

a. For all original notices and petitions for arbitration or review-reopening relating to weekly benefits filed on account of each injury, gradual or cumulative injury, occupational disease or occupational hearing loss alleged, a filing fee shall be paid at the time of filing. ~~The filing fee for original notices and petitions filed on or after July 1, 1988, but before July 1, 2009, is \$65. The filing fee for petitions filed on or after July 1, 2009, is \$100.~~ No filing fee is due for the filing of other actions where the sole relief sought is one of the following or a combination of any of them: medical and other benefits under Iowa Code section 85.27; burial benefits, Iowa Code section 85.28; determination of

WORKERS' COMPENSATION DIVISION[876](cont'd)

dependency, Iowa Code sections 85.42, 85.43, and 85.44; equitable apportionment, Iowa Code section 85.43; second injury fund, Iowa Code sections 85.63 to 85.69; vocational rehabilitation benefits, Iowa Code section ~~85.70~~ 85.70(1); vocational training and education benefits, Iowa Code section 85.70(2); approval of legal, medical and other fees under Iowa Code section 86.39; commutation, Iowa Code sections 85.45 to 85.48; employee's examination, Iowa Code section 85.39; employee's examination or sanctions, Iowa Code section 85.39; application for alternate care, Iowa Code section 85.27; determination of liability, reimbursement for benefits paid and recovery of interest, Iowa Code section 85.21; interest, Iowa Code section 85.30; penalty, Iowa Code section 86.13; application for approval of third-party settlement, Iowa Code section 85.22; and petitions for declaratory orders or petitions for interventions filed pursuant to 876—Chapter 5. An amendment to a petition that was filed on or after July 1, 1988, that alleges an additional or alternate date of occurrence does not require payment of an additional filing fee if a filing fee was paid when the petition was filed.

ITEM 13. Amend subrule 4.9(8) as follows:

4.9(8) *Withdrawal of counsel.* Counsel may withdraw if another counsel has appeared or if the client's written consent accompanies the withdrawal.

Under all other circumstances, counsel may withdraw only upon the order of the workers' compensation commissioner after making written application. Counsel shall give the client written notice that the client has the right to object to the withdrawal by ~~delivering~~ filing written objections and a request for a hearing to the Division of Workers' Compensation, 1000 East Grand Avenue, Des Moines, Iowa 50319, when filing by mail, or 150 Des Moines Street, Des Moines, Iowa 50319, when filing in person, within ten days following the date the notice was mailed or personally delivered to the client. Counsel's application shall be accompanied by proof that a copy of the application and notice was sent by certified mail addressed to the client's last-known address or was delivered to the client personally. If no objections are timely filed, the withdrawal will become effective when approved by the workers' compensation commissioner. If objections are timely filed, a hearing on the application will be held. No withdrawal under this subrule will be effective without the approval of the workers' compensation commissioner. The filing of an application to withdraw stays all pending matters until a ruling is made on the application.

ITEM 14. Adopt the following new rule 876—4.50(85):

876—4.50(85) Vocational training, education, and supplies.

4.50(1) *Purpose.* The purpose of this rule is to establish the procedures for issuing decisions on applications for vocational training, education, and supplies provided for in Iowa Code section 85.70(2).

4.50(2) *Definitions.* The following definitions apply to this rule:

"Application for vocational training and education hearing" or *"application"* means a contested case proceeding filed with the division of workers' compensation contesting the results of an evaluation and determination or contesting or requesting the termination of a vocational training and education program.

"Evaluation and determination" means an assessment conducted by the department of workforce development to determine if the employee would benefit from a vocational training and education program offered through an area community college to allow the employee to return to the workforce.

"Request for vocational training and education" or *"request"* means a written request for an evaluation and determination of whether an employee is entitled to vocational training, education, and supplies.

"Vocational training and education" shall include general educational development programs for employees who have not graduated from high school or obtained a general education diploma, and career and technical education programs that provide instruction in the areas of agriculture, family and consumer sciences, health occupations, business, industrial technology, and marketing, offered through an area community college that will allow the employee to return to the workforce.

4.50(3) *Application for vocational training and education.* An application shall:

a. Only concern the issue of vocational training, education, and supplies;

WORKERS' COMPENSATION DIVISION[876](cont'd)

- b. Be filed on the form provided by the division of workers' compensation;
- c. State the reasons for the application;
- d. Be served on the other party;
- e. Contain a proof of service on the other party; and
- f. Specify whether a telephone or in-person hearing is requested.

4.50(4) Fee. No filing fee is due. See paragraph 4.8(2) "a."

4.50(5) Request for vocational education and training. Prior to filing an application, the employee shall complete a request on a form supplied by the department of workforce development and submit the completed form to the department of workforce development asking for an evaluation and determination. The employee, employer, or insurance carrier may contest the results of the evaluation and determination by filing an application with the division of workers' compensation.

4.50(6) Proper application. An application may not be filed under this rule until:

- a. An evaluation and determination has been made by the department of workforce development; and
- b. There has been a finding by the division of workers' compensation or the employer or the employer's insurance carrier or both and the employee agree that the employee has sustained an injury to the shoulder resulting in a permanent partial disability for which compensation is payable under Iowa Code section 85.34(2) "n," and the employee cannot return to gainful employment because of such disability.

4.50(7) Notice of hearing. The workers' compensation commissioner shall notify the parties by electronic mail, ordinary mail, or facsimile of the time, place, and nature of the hearing. No notice will be made until a proper application is received by the workers' compensation commissioner. The notice shall specify whether the hearing will be held by telephone or in person.

4.50(8) Evidence. Any written evidence to be used by the employer, the employer's insurance carrier, or the employee must be exchanged prior to the hearing. All written evidence must be filed with the agency before the date of hearing. Written evidence shall be limited to 50 pages per party.

4.50(9) Motion to change hearing type. A timely motion to change the type of hearing (telephone or in-person) may be considered prior to the hearing. The workers' compensation commissioner will make no rulings on motions.

4.50(10) Briefs. Hearing briefs, if any, must be filed with the agency before the date of the hearing and shall be limited to five pages.

4.50(11) Hearing. The hearing will be held either by telephone or in person in Des Moines, Iowa. If the party filing the application does not request an in-person hearing in the application, the other parties may request an in-person hearing. The hearing will be recorded electronically. Copies of the recording will be provided to the parties. If there is an appeal of a proposed decision or judicial review of final agency action, the appealing party is responsible for filing a transcript of the hearing. A transcript shall be provided by the appealing party pursuant to Iowa Code section 86.24(4) and a copy of the transcript shall be served on the opposing party at the time the transcript is filed with the workers' compensation commissioner, unless the parties submit an agreed-upon transcript. If a party disputes the accuracy of any transcript prepared by the opposing party, that party shall submit its contentions to the workers' compensation commissioner for resolution. Any transcription charges incurred by the workers' compensation commissioner in resolving the dispute shall be initially paid by the party that disputes the accuracy of the transcript, pursuant to Iowa Code section 86.19(1).

4.50(12) Represented party. A party may be represented as provided in Iowa Code section 631.14. The presiding deputy may permit a party who is a natural person to be assisted during a hearing by any person who does so without cost to that party if the assistance promotes full and fair disclosure of the facts or otherwise enhances the conduct of the hearing. The employer and the employer's insurance carrier shall be treated as one party unless their interests appear to be in conflict, and a representative of either the employer or the employer's insurance carrier shall be deemed to be a representative of both unless notice to the contrary is given.

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4.50(13) Decision. A decision will be issued within 30 working days of receipt of a proper application.

This rule is intended to implement Iowa Code sections 17A.12, 85.70(2), and 86.17.

ITEM 15. Amend subrule 5.6(2) as follows:

5.6(2) Filing. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Workers' Compensation Commissioner, 1000 E. Grand, Des Moines, Iowa 50319-0209, when filed by mail, or 150 Des Moines Street, Des Moines, Iowa 50319, when filed in person.

ITEM 16. Amend rule 876—6.1(85,86) as follows:

876—6.1(85,86) Settlements under Iowa Code Supplement section 85.35. All proposed settlements shall be submitted to the workers' compensation commissioner for approval. An agreement for settlement pursuant to Iowa Code Supplement section 85.35(2) shall be on Form 14-0021. A compromise settlement pursuant to Iowa Code Supplement section 85.35(3) shall be on Form 14-0025. A combination settlement pursuant to Iowa Code Supplement section 85.35(4) shall be on Form 14-0159. A contingent settlement pursuant to Iowa Code Supplement section 85.35(5) shall be on Form 14-0161.

6.1(1) Evidence that a settlement should be approved as required by Iowa Code Supplement section 85.35(7) shall accompany the settlement or be incorporated into the settlement forms. It is presumed that the showing required by Iowa Code Supplement section 85.35(7) has been made if the claimant is represented by an attorney licensed to practice law in this state.

6.1(2) The documents for a compromise settlement shall identify either the specific date or dates of injury or the specific injurious condition or conditions, or both. The documents for a compromise settlement, including any addendum to the documents, shall not contain any language that either expressly states or implies that the proposed compromise settlement is a final settlement of any and all injuries, known or unknown, that an employee may have sustained while employed by the employer. If a compromise settlement is submitted that does not comply with this subrule, the workers' compensation commissioner shall return the proposed compromise settlement to the party ~~who~~ that submitted it.

6.1(3) Approval of a compromise settlement pursuant to Iowa Code Supplement section 85.35(3) is a final bar to rights under the Iowa Workers' Compensation Law, and the approved compromise settlement is not subject to review under Iowa Code section 85.26(2).

6.1(4) Nothing in this rule shall prohibit the approval of settlements in other appropriate cases when allowed by Iowa Code Supplement section 85.35(7).

This rule is intended to implement Iowa Code Supplement section 85.35.

ITEM 17. Amend rule 876—6.2(85,86) as follows:

876—6.2(85,86) Commutation. The following requirements must be met before ~~an uncontested~~ a commutation will be considered or granted:

6.2(1) A first report of injury, an acknowledgment of compensability and an updated supplemental claim activity report must be filed.

6.2(2) The commutation forms provided for in 876—6.4(85,86) must be filed.

6.2(3) All doctors' and practitioners' reports relevant to the disability of the claimant involved in the commutation must be attached to the commutation forms.

6.2(4) Claimant's condition as a result of the injury as shown by the medical reports cannot be one which will be expected to deteriorate. When a partial commutation is sought, this ~~paragraph~~ subrule shall diminish in importance.

6.2(5) Claimant's condition as a result of the injury shown by the doctors' and practitioners' reports cannot be one which will be expected to require future treatment unless the future treatment is adequately provided for. When a partial commutation is sought, this ~~paragraph~~ subrule shall diminish in importance.

6.2(6) A detailed statement of claimant's need or other reason for a lump sum of money must be attached to the application. The analysis shall include disclosure of any attorney fee amount to be paid

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from the full commutation. A commutation of less than ten weeks' benefits is presumed to be not in the best interest of the claimant.

6.2(7) When multiple dependents are involved, a signed stipulation or order of apportionment identifying the proportion of benefits to be received by each dependent shall be attached to the commutation form.

6.2(8) A signed stipulation as to the degree of permanent disability shall be attached to the commutation form.

~~**6.2(9)** Rescinded IAB 10/25/06, effective 11/29/06.~~

This rule is intended to implement Iowa Code sections 85.45 and 85.47.

ITEM 18. Amend rule 876—6.5(85) as follows:

876—6.5(85) Statement of awareness. When a petition for settlement under Iowa Code ~~Supplement~~ section 85.35(3) or commutation is submitted, it shall contain or be accompanied by a verified statement from the injured employee indicating awareness that, upon approval by the workers' compensation commissioner of the settlement or commutation, a final bar to future claims or benefits under the Iowa Workers' Compensation Law for such injury shall exist except as specifically reserved in any agreement.

This rule is intended to implement Iowa Code ~~Supplement section~~ sections 85.35, ~~and sections~~ 85.45, and 85.47.

ITEM 19. Amend rule 876—6.7(85,86) as follows:

876—6.7(85,86) Claimant statement. When the claimant is not represented by counsel, a claimant's statement on Form 14-0163, which the claimant has personally completed, certified and signed, must be submitted with all settlement and commutation forms and documents.

This rule is intended to implement Iowa Code ~~Supplement section~~ sections 85.35 and ~~section~~ 86.8.

ITEM 20. Amend rule 876—6.8(85,86) as follows:

876—6.8(85,86) Failure to timely file settlement. If a party notifies the workers' compensation commissioner that a matter scheduled for a hearing has been settled and the matter is removed from the hearing schedule, the proposed settlement shall be filed with the workers' compensation commissioner within 60 days of the notification. A party may, within 60 days of the notification, request an extension of time to file the settlement documents. If the settlement documents are not timely filed, the matter will be reassigned for hearing in Des Moines at a date determined by the workers' compensation commissioner and the parties cannot request that the matter be rescheduled. Any matter rescheduled because settlement documents were not timely filed shall not again be removed from the hearing schedule because a party notifies the workers' compensation commissioner of a settlement.

This rule is intended to implement Iowa Code ~~Supplement section~~ sections 85.35, ~~and sections~~ 85.47, 85.48, 86.8, 86.13 and 86.27.

ITEM 21. Adopt the following new rule 876—8.11(85):

876—8.11(85) Offer of suitable work. The employer shall communicate an offer of temporary work to the employee in writing, including the details of lodging, meals, and transportation. With each offer of temporary work, the employer shall notify the employee in writing that:

1. If the employee refuses the offer of temporary work, the employee shall communicate the refusal and the reason for the refusal to the employer in writing;

2. During the period of refusal, the employee will not be compensated with temporary partial, temporary total, or healing period benefits unless the work refused is not suitable; and

3. Failure to communicate the reason for the refusal to the employer in writing precludes the employee from raising suitability of the work as the reason for the refusal until such time as the reason for the refusal is communicated in writing to the employer.

This rule is intended to implement Iowa Code section 85.33.

WORKERS' COMPENSATION DIVISION[876](cont'd)

ITEM 22. Amend rule 876—12.3(17A) as follows:

876—12.3(17A) Form of criticism. The ~~Workers' Compensation Commissioner, 1000 E. Grand, Des Moines, Iowa 50319-0209,~~ division of workers' compensation is designated as the office where interested persons may submit written criticism regarding an administrative rule of the Workers' Compensation Division[876]. Written criticism should be mailed to the Division of Workers' Compensation, 1000 East Grand Avenue, Des Moines, Iowa 50319; or delivered to 150 Des Moines Street, Des Moines, Iowa 50319. A criticism of a specific rule must be more than a mere lack of understanding of a rule or a dislike regarding the rule. To constitute a criticism of a rule, the criticism must be in writing, indicate it is a criticism of a specific rule, be signed by the complainant, not be part of any other filing with the workers' compensation commissioner or department of workforce development, and have a valid legal basis for support. All criticisms received on any rule will be kept in a separate record for a period of five years by the workers' compensation commissioner and be a public record open for public inspection. All criticisms must substantially conform to the following form:

BEFORE THE WORKERS' COMPENSATION COMMISSIONER

CRITICISM BY (NAME OF PERSON SUBMITTING CRITICISM).	}	CRITICISM OF (SPECIFY RULE THAT IS CRITICIZED).
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Reasons for criticism:

Name, address, telephone number and signature of person submitting criticism.

ITEM 23. Amend rule 876—12.4(17A) as follows:

876—12.4(17A) Requests for waiver of rules. Requests for waiver of a rule in the Workers' Compensation Division[876] of the Iowa Administrative Code shall be made to the Workers' Compensation Commissioner, 1000 E. Grand, Des Moines, Iowa 50319-0209, ~~by mail;~~ or 150 Des Moines Street, Des Moines, Iowa 50319, in person. All requests for waiver of a rule must be in writing and are a public record open for inspection. The person requesting the waiver must submit all facts relied upon in requesting the waiver. The person requesting waiver of the rule must provide clear and convincing evidence that compliance with the rule will create an undue hardship on the person requesting the waiver. A concise memorandum brief and argument, if any is filed, shall be attached to the request for waiver at the time the request is filed. The workers' compensation commissioner shall grant or deny the waiver within 60 days of the date the request is filed with the agency. The workers' compensation commissioner shall deny the request if the request is for waiver of a statute. If the request for waiver relates to a time requirement of a rule, the request must be received before the time specified in the rule has expired. The workers' compensation commissioner may deny the request if the request does not comply with the provisions of this rule. All requests for waiver must substantially conform to the following form:

BEFORE THE WORKERS' COMPENSATION COMMISSIONER

(NAME OF PERSON REQUESTING WAIVER).	}	REQUEST FOR WAIVER OF (SPECIFY RULE FOR WHICH WAIVER IS REQUESTED).
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Reasons for requesting waiver:

Name, address, telephone number and signature of person submitting waiver request.

[Filed 11/29/17, effective 1/24/18]

[Published 12/20/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/20/17.

ARC 3529C

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Adopted and Filed

Pursuant to the authority of Iowa Code section 96.11, the Director of the Department of Workforce Development hereby amends Chapter 22, "Employer Records and Reports," and Chapter 23, "Employer's Contribution and Charges," Iowa Administrative Code.

These amendments update, clarify and simplify the procedures by which claimants and employers interact with Iowa Workforce Development.

Notice of Intended Action for these amendments was published in the September 27, 2017, Iowa Administrative Bulletin as **ARC 3325C**. No comments were received. The Notice was on the agenda at the Administrative Rules Review Committee (ARRC) meeting held on October 10, 2017. No questions or comments were received during this public meeting of the ARRC. These amendments are identical to those published under Notice.

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

Waiver provisions do not apply to this rule making.

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

These amendments are intended to implement Iowa Code chapter 96.

These amendments will become effective January 24, 2018.

The following amendments are adopted.

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

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

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

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

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

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

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

[Filed 11/29/17, effective 1/24/18]

[Published 12/20/17]

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ARC 3530C

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Adopted and Filed

Pursuant to the authority of Iowa Code section 96.11, the Director of the Department of Workforce Development hereby amends Chapter 26, "Contested Case Proceedings," Iowa Administrative Code.

This amendment clarifies and simplifies the procedures by which claimants and employers interact with Iowa Workforce Development in the unemployment appeal process. This amendment also clarifies

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

the subpoena processes for witnesses and for documents in contested case proceedings. The agency needs updated administrative rules to clarify these processes.

Notice of Intended Action for this amendment was published in the October 25, 2017, Iowa Administrative Bulletin as **ARC 3421C**. No comments were received. The Notice was on the agenda at the Administrative Rules Review Committee (ARRC) meeting held on November 14, 2017. No questions or comments were received during this public meeting of the ARRC. This amendment is identical to the one published under the Notice.

This amendment does 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.

This amendment is intended to implement Iowa Code chapters 96 and 17A.

This amendment will become effective January 24, 2018.

The following amendment is adopted.

Rescind rule 871—26.13(17A,96) and adopt the following new rule in lieu thereof:

871—26.13(17A,96) Subpoenas for witnesses and documents.

26.13(1) It is the responsibility of the parties to request the attendance of witnesses the parties believe have knowledge of the facts in issue in the contested case.

26.13(2) Upon the written request of a party in interest received at least three days prior to the hearing date, the presiding officer shall issue a subpoena compelling the attendance of a person at the contested case hearing.

26.13(3) The written request shall include:

a. The full name and mailing address or e-mail address of the person to be served; and

b. A statement of the relevance of the witness's testimony and that it will not repeat or duplicate the testimony of other witnesses.

26.13(4) Upon the written request of a party in interest received at least three days prior to the hearing date, the presiding officer shall issue a subpoena duces tecum for documents or other items believed to be relevant to the facts in issue in the contested case. The request must specifically describe the items to be provided pursuant to the subpoena duces tecum.

26.13(5) Documents or other items subpoenaed for hearings shall be mailed, faxed, or emailed to the appeals bureau and to the other parties to the proceeding prior to the hearing date.

26.13(6) If the presiding officer deems it appropriate, the entity or person to whom a subpoena is directed shall be notified and given the opportunity to object to its issuance.

a. If an objection to the issuance of the subpoena is raised, the presiding officer, as a matter of discretion, may hear and rule on the objection prior to commencing the evidentiary hearing or may postpone the evidentiary hearing and schedule a special hearing to receive arguments from all parties concerning the issuance of the subpoena.

b. The presiding officer shall issue the subpoena if it is established to the presiding officer's satisfaction that the testimony or document sought is material and relevant, is not unduly repetitious of other evidence already of record or expected to be submitted by any party, and, in the case of the subpoena duces tecum, the records requested do not disclose business secrets or cause undue burden on the party to whom the subpoena is directed.

26.13(7) If the subpoena is granted over objection, the aggrieved party may, in accordance with Iowa Code section 17A.13(1), petition the district court for review of the action before proceeding further. The aggrieved party must promptly notify the presiding officer that a petition for judicial review of the subpoena order will be filed immediately so the contested case may be postponed until the court has issued its ruling. Nothing herein shall preclude an aggrieved party from including the granting or denial of a subpoena as grounds for appeal of the presiding officer's decision in the contested case to the employment appeal board of the department of inspections and appeals.

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26.13(8) If any entity or person to whom a subpoena is directed refuses to honor the subpoena, the aggrieved party may, in accordance with Iowa Code section 17A.13(1), apply to the appropriate district court for an order to compel the entity or person to obey the subpoena.

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