



# IOWA ADMINISTRATIVE BULLETIN

Published Biweekly

VOLUME XXV  
July 24, 2002

NUMBER 2  
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**PREFACE**

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

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

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

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

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**CITATION of Administrative Rules**

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

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

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## Schedule for Rule Making 2002

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Jan. 4 '02	Jan. 23 '02	Feb. 12 '02	Feb. 27 '02	Mar. 1 '02	Mar. 20 '02	Apr. 24 '02	July 22 '02
Jan. 18	Feb. 6	Feb. 26	Mar. 13	Mar. 15	Apr. 3	May 8	Aug. 5
Feb. 1	Feb. 20	Mar. 12	Mar. 27	Mar. 29	Apr. 17	May 22	Aug. 19
Feb. 15	Mar. 6	Mar. 26	Apr. 10	Apr. 12	May 1	June 5	Sept. 2
Mar. 1	Mar. 20	Apr. 9	Apr. 24	Apr. 26	May 15	June 19	Sept. 16
Mar. 15	Apr. 3	Apr. 23	May 8	May 10	May 29	July 3	Sept. 30
Mar. 29	Apr. 17	May 7	May 22	May 24	June 12	July 17	Oct. 14
Apr. 12	May 1	May 21	June 5	June 7	June 26	July 31	Oct. 28
Apr. 26	May 15	June 4	June 19	June 21	July 10	Aug. 14	Nov. 11
May 10	May 29	June 18	July 3	July 5	July 24	Aug. 28	Nov. 25
May 24	June 12	July 2	July 17	July 19	Aug. 7	Sept. 11	Dec. 9
June 7	June 26	July 16	July 31	Aug. 2	Aug. 21	Sept. 25	Dec. 23
June 21	July 10	July 30	Aug. 14	Aug. 16	Sept. 4	Oct. 9	Jan. 6 '03
July 5	July 24	Aug. 13	Aug. 28	Aug. 30	Sept. 18	Oct. 23	Jan. 20 '03
July 19	Aug. 7	Aug. 27	Sept. 11	Sept. 13	Oct. 2	Nov. 6	Feb. 3 '03
Aug. 2	Aug. 21	Sept. 10	Sept. 25	Sept. 27	Oct. 16	Nov. 20	Feb. 17 '03
Aug. 16	Sept. 4	Sept. 24	Oct. 9	Oct. 11	Oct. 30	Dec. 4	Mar. 3 '03
Aug. 30	Sept. 18	Oct. 8	Oct. 23	Oct. 25	Nov. 13	Dec. 18	Mar. 17 '03
Sept. 13	Oct. 2	Oct. 22	Nov. 6	Nov. 8	Nov. 27	Jan. 1 '03	Mar. 31 '03
Sept. 27	Oct. 16	Nov. 5	Nov. 20	Nov. 22	Dec. 11	Jan. 15 '03	Apr. 14 '03
Oct. 11	Oct. 30	Nov. 19	Dec. 4	Dec. 6	Dec. 25	Jan. 29 '03	Apr. 28 '03
Oct. 25	Nov. 13	Dec. 3	Dec. 18	Dec. 20	Jan. 8 '03	Feb. 12 '03	May 12 '03
Nov. 8	Nov. 27	Dec. 17	Jan. 1 '03	Jan. 3 '03	Jan. 22 '03	Feb. 26 '03	May 26 '03
Nov. 22	Dec. 11	Dec. 31	Jan. 15 '03	Jan. 17 '03	Feb. 5 '03	Mar. 12 '03	June 9 '03
Dec. 6	Dec. 25	Jan. 14 '03	Jan. 29 '03	Jan. 31 '03	Feb. 19 '03	Mar. 26 '03	June 23 '03
Dec. 20	Jan. 8 '03	Jan. 28 '03	Feb. 12 '03	Feb. 14 '03	Mar. 5 '03	Apr. 9 '03	July 7 '03
Jan. 3 '03	Jan. 22 '03	Feb. 11 '03	Feb. 26 '03	Feb. 28 '03	Mar. 19 '03	Apr. 23 '03	July 21 '03

### PRINTING SCHEDULE FOR IAB

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**SUBMISSION DEADLINE**

**ISSUE DATE**

**4**

**Friday, August 2, 2002**

**August 21, 2002**

**5**

**Friday, August 16, 2002**

**September 4, 2002**

**6**

**Friday, August 30, 2002**

**September 18, 2002**

**PLEASE NOTE:**

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

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

## PUBLICATION PROCEDURES

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The Administrative Code Division uses Interleaf 6 to publish the Iowa Administrative Bulletin and can import documents directly from most other word processing systems, including Microsoft Word, Word for Windows (Word 7 or earlier), and WordPerfect.

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The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, August 13, 2002, at 8:30 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

#### **CITY DEVELOPMENT BOARD[263]**

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#### **DENTAL EXAMINERS BOARD[650]**

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NATURAL RESOURCES DEPARTMENT[561]"umbrella"

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PUBLIC HEALTH DEPARTMENT[641]“umbrella”

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**PROFESSIONAL LICENSURE DIVISION[645]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Behavioral science examiners, adopt ch 30, <u>Filed</u> <b>ARC 1781B</b> .....	7/10/02
Behavioral science examiners, 31.7(3), <u>Notice</u> <b>ARC 1828B</b> .....	7/24/02
Chiropractic examiners, chs 40 to 44; 44.2(2) to 44.2(6), 44.6, 44.9, 44.10(4) to 44.10(6); chs 45, 46 <u>Filed</u> <b>ARC 1829B</b> .....	7/24/02
Chiropractic examiners, ch 40, <u>Notice</u> <b>ARC 1827B</b> .....	7/24/02
Mortuary science examiners, adopt ch 99, <u>Notice</u> <b>ARC 1782B</b> .....	7/10/02
Mortuary science examiners, 100.9, 100.10; ch 101; ch 102 title, 102.6, 102.9, 102.10; chs 103, 104, <u>Filed</u> <b>ARC 1784B</b> .....	7/10/02
Respiratory care examiners, ch 260, <u>Notice</u> <b>ARC 1780B</b> .....	7/10/02
Athletic training examiners, ch 350, 351.1, <u>Notice</u> <b>ARC 1783B</b> .....	7/10/02

**REVENUE AND FINANCE DEPARTMENT[701]**

Practice and procedure before the department; vehicle trade-ins;

applicability of inheritance tax rules to estate taxes,

7.42, 7.44(2)"e," 7.56(12), 15.19, 87.6, Filed **ARC 1800B** .....

7/10/02

Computation of federal tax on S corporation income, 50.5, 50.9, 50.10, Notice **ARC 1825B** .....

7/24/02

**TRANSPORTATION DEPARTMENT[761]**Improvements and maintenance on primary road extensions, ch 150, Notice **ARC 1779B** .....

7/10/02

Vehicle registration and certificate of title; special registration plates; drivers' privacy protection;

dealer permits; motor vehicle equipment; rescue vehicles, 400.16(2)"d"(2), 400.16(3)"d"(4),

400.16(6)"a," 400.26, 401.2(1)"b," 401.16(1), 401.21(2), 401.25, 415.2 to 415.4, 424.1(1),

424.1(2), 425.3, 425.10(2)"d," 425.12(3)"b," 425.12(4)"e," 425.17, 425.26(1),

425.26(2), 425.26(4), 425.26(8), 425.70(2)"b," 425.72(2), 431.2(1), 450.1, 450.6,

450.7(2), 450.7(3)"b" and "c," 451.2, Filed **ARC 1787B** .....

7/10/02

Manufactured or mobile home retailers, manufacturers

and distributors, ch 421, Filed **ARC 1786B** .....

7/10/02

Special permits for operation and movement of vehicles and loads

of excess size and weight, 511.7(1)"b," 511.7(2)"e," 511.8, 511.9(1)"b,"

511.9(2)"e," 511.12(2)"a," Notice **ARC 1770B** .....

7/10/02

Licenses; computerized driver license records; drivers' privacy protection; sanctions;

OWI and implied consent; financial liability coverage cards, 600.1, 600.4(9), 601.1(3),

601.5(1), 601.5(2), 602.1(2), 602.2(3), 602.4(2), 602.11(2), 602.13(2), 602.18, 602.19,

602.26(1)"c," 607.3, 607.10, 607.20(2)"c," 607.35, 607.49(1), ch 610 title,

610.1 to 610.4, 611.2 to 611.4, 615.1, 615.19, 615.20, 615.23, 615.24(2)"d," 615.42,

615.42(1), 615.45(1)"n," 620.15, 640.5(2)"b," 641.3(1), 641.3(2), Filed **ARC 1785B** .....

7/10/02

**UTILITIES DIVISION[199]**

COMMERCE DEPARTMENT[181]"umbrella"

Threshold for electric transmission line franchises, 11.1(5), 11.3(2),

11.4, Filed **ARC 1799B** .....

7/10/02

Natural gas and electric master metering, 19.3(1)"b" to "g,"

20.3(1)"b" to "g," Notice **ARC 1836B** .....

7/24/02

Certification of rural and nonrural telecommunication carriers,

22.2(7), Filed **ARC 1835B** .....

7/24/02

**ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS**

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

**EDITOR'S NOTE: Terms ending April 30, 2003.**

Senator Jeff Angelo  
808 West Jefferson  
Creston, Iowa 50801

Senator Patricia M. Harper  
3336 Santa Maria Drive  
Waterloo, Iowa 50702

Senator John P. Kibbie  
P.O. Box 190  
Emmetsburg, Iowa 50536

Senator Paul McKinley  
Route 5, Box 101H  
Chariton, Iowa 50049

Senator Sheldon Rittmer  
3539 230th Street  
DeWitt, Iowa 52742

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Telephone (515)281-3084  
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Representative Clyde Bradley  
315 33rd Avenue North  
Clinton, Iowa 52732

Representative Danny Carroll  
244 400th Avenue  
Grinnell, Iowa 50112

Representative Marcella R. Frevert  
P.O. Box 324  
Emmetsburg, Iowa 50536

Representative Mark Kuhn  
2667 240th Street  
Charles City, Iowa 50616

Representative Janet Metcalf  
12954 Oak Brook Drive  
Urbandale, Iowa 50323

Brian Gentry  
**Administrative Rules Coordinator**  
Governor's Ex Officio Representative  
Capitol, Room 11  
Des Moines, Iowa 50319

## To All Agencies:

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

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
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**CITY DEVELOPMENT BOARD[263]**

General, chs 1 to 11 IAB 7/10/02 <b>ARC 1809B</b>	Main Conference Room, Second Floor 200 E. Grand Ave. Des Moines, Iowa	August 8, 2002 9 a.m.
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**DENTAL EXAMINERS BOARD[650]**

Practice of dentistry, 1.1 IAB 7/10/02 <b>ARC 1808B</b>	Conference Room, Suite D 400 SW Eighth St. Des Moines, Iowa	July 30, 2002 2 to 3 p.m.
Dental licensure by credentials, 11.3(2) IAB 7/10/02 <b>ARC 1806B</b>	Conference Room, Suite D 400 SW Eighth St. Des Moines, Iowa	July 30, 2002 2 to 3 p.m.
Resident license; faculty permit holders; fees, 13.1, 13.2, 15.2 IAB 7/10/02 <b>ARC 1807B</b>	Conference Room, Suite D 400 SW Eighth St. Des Moines, Iowa	July 30, 2002 2 to 3 p.m.

**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]**

Iowa community development block grant program, 23.2, 23.4(5), 23.5(9), 23.6 to 23.10, 23.13, 23.14(1), 23.15(12) IAB 7/10/02 <b>ARC 1812B</b>	First Floor Northwest Conference Rm. 200 E. Grand Ave. Des Moines, Iowa	July 30, 2002 1:30 p.m.
Housing fund, 25.5, 25.7, 25.8(7), 25.9(6) IAB 7/10/02 <b>ARC 1811B</b>	First Floor Northwest Conference Rm. 200 E. Grand Ave. Des Moines, Iowa	July 30, 2002 2:30 p.m.

**EDUCATION DEPARTMENT[281]**

Charter schools, ch 68 IAB 6/26/02 <b>ARC 1746B</b> (ICN Network)	ICN Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	August 20, 2002 3:30 to 5 p.m.
	Southwestern Community College 2300 Fourth St. Red Oak, Iowa	August 20, 2002 3:30 to 5 p.m.
	AEA 7 3712 Cedar Heights Dr. Cedar Falls, Iowa	August 20, 2002 3:30 to 5 p.m.
	Buena Vista College 610 W. Fourth St. Storm Lake, Iowa	August 20, 2002 3:30 to 5 p.m.
	Indian Hills Community College 112 S. Court St. Fairfield, Iowa	August 20, 2002 3:30 to 5 p.m.

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

Storm water regulations, 60.2, 60.3, 64.3(4), 64.13, 64.15(2), 64.16(3) IAB 7/10/02 <b>ARC 1778B</b>	Fifth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	August 16, 2002 9 a.m.
Animal feeding operations— construction permits and fees, 65.9(1), 65.16(6) IAB 7/10/02 <b>ARC 1772B</b> (See also <b>ARC 1795B</b> )	Fifth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	August 6, 2002 1 p.m.

**INSPECTIONS AND APPEALS DEPARTMENT[481]**

Games of skill, chance, bingo and raffles, amendments to chs 100, 102 and 103 IAB 7/24/02 <b>ARC 1834B</b> (See also <b>ARC 1837B</b> herein)	Conference Room 422 Third Floor Lucas State Office Bldg. Des Moines, Iowa	August 15, 2002 9 a.m.
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**INSURANCE DIVISION[191]**

Safeguarding customer information, 90.2, 90.37 to 90.50 IAB 7/24/02 <b>ARC 1824B</b>	330 Maple St. Des Moines, Iowa	August 13, 2002 10 a.m.
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**MEDICAL EXAMINERS BOARD[653]**

Tests for English proficiency, 10.4(3), 17.4(1) IAB 7/10/02 <b>ARC 1798B</b>	Suite C 400 SW Eighth St. Des Moines, Iowa	July 31, 2002 2 p.m.
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**NATURAL RESOURCE COMMISSION[571]**

Wildlife importation, transportation and disease monitoring, ch 104 IAB 7/10/02 <b>ARC 1777B</b>	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	July 30, 2002 1 to 4 p.m.
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**PERSONNEL DEPARTMENT[581]**

IPERS, 21.4 to 21.6, 21.8, 21.19(1), 21.22(1), 21.27 IAB 7/24/02 <b>ARC 1815B</b> (See also <b>ARC 1826B</b> herein)	7401 Register Dr. Des Moines, Iowa	August 13, 2002 9 a.m.
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**PROFESSIONAL LICENSURE DIVISION[645]**

Behavioral science examiners, 31.7(3) IAB 7/24/02 <b>ARC 1828B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	August 13, 2002 9 to 11 a.m.
Chiropractic examiners, ch 40 IAB 7/24/02 <b>ARC 1827B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	August 13, 2002 9 to 11 a.m.

**PROFESSIONAL LICENSURE DIVISION[645] (Cont'd)**

Mortuary science examiners, ch 99 IAB 7/10/02 <b>ARC 1782B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	July 31, 2002 9 to 11 a.m.
Respiratory care examiners, ch 260 IAB 7/10/02 <b>ARC 1780B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	July 30, 2002 9 to 11 a.m.
Athletic training examiners, ch 350, 351.1 IAB 7/10/02 <b>ARC 1783B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	July 31, 2002 9 to 11 a.m.

**PUBLIC SAFETY DEPARTMENT[661]**

Sex offender registry, 8.303(2), 8.304(6) IAB 6/26/02 <b>ARC 1728B</b> (See also <b>ARC 1761B</b> )	Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	July 25, 2002 9:30 a.m.
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**TRANSPORTATION DEPARTMENT[761]**

Improvements and maintenance on primary road extensions, 150.1 to 150.4 IAB 7/10/02 <b>ARC 1779B</b>	Third Floor Conference Room Administration Bldg. 800 Lincoln Way Ames, Iowa	August 1, 2002 10 a.m. (If requested)
Special permits for operation and movement of vehicles and loads of excess size and weight, 511.7 to 511.9, 511.12 IAB 7/10/02 <b>ARC 1770B</b>	DOT Conference Room Park Fair Mall 100 Euclid Ave. Des Moines, Iowa	August 1, 2002 10 a.m. (If requested)

**UTILITIES DIVISION[199]**

Natural gas and electric master metering, 19.3(1), 20.3(1) IAB 7/24/02 <b>ARC 1836B</b>	Hearing Room 350 Maple St. Des Moines, Iowa	August 21, 2002 10 a.m.
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Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

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

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

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

The following list will be updated as changes occur:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Agricultural Development Authority[25]

Soil Conservation Division[27]

ATTORNEY GENERAL[61]

AUDITOR OF STATE[81]

BEEF INDUSTRY COUNCIL, IOWA[101]

BLIND, DEPARTMENT FOR THE[111]

CITIZENS' AIDE[141]

CIVIL RIGHTS COMMISSION[161]

COMMERCE DEPARTMENT[181]

Alcoholic Beverages Division[185]

Banking Division[187]

Credit Union Division[189]

Insurance Division[191]

Professional Licensing and Regulation Division[193]

Accountancy Examining Board[193A]

Architectural Examining Board[193B]

Engineering and Land Surveying Examining Board[193C]

Landscape Architectural Examining Board[193D]

Real Estate Commission[193E]

Real Estate Appraiser Examining Board[193F]

Savings and Loan Division[197]

Utilities Division[199]

CORRECTIONS DEPARTMENT[201]

Parole Board[205]

CULTURAL AFFAIRS DEPARTMENT[221]

Arts Division[222]

Historical Division[223]

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

City Development Board[263]

Iowa Finance Authority[265]

EDUCATION DEPARTMENT[281]

Educational Examiners Board[282]

College Student Aid Commission[283]

Higher Education Loan Authority[284]

Iowa Advance Funding Authority[285]

Libraries and Information Services Division[286]

Public Broadcasting Division[288]

School Budget Review Committee[289]

EGG COUNCIL, IOWA[301]

ELDER AFFAIRS DEPARTMENT[321]

EMPOWERMENT BOARD, IOWA[349]

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

EXECUTIVE COUNCIL[361]

FAIR BOARD[371]

GENERAL SERVICES DEPARTMENT[401]

HUMAN INVESTMENT COUNCIL[417]

HUMAN RIGHTS DEPARTMENT[421]

Community Action Agencies Division[427]

Criminal and Juvenile Justice Planning Division[428]

Deaf Services Division[429]

Persons With Disabilities Division[431]

Latino Affairs Division[433]

Status of African-Americans, Division on the[434]

Status of Women Division[435]

HUMAN SERVICES DEPARTMENT[441]

INFORMATION TECHNOLOGY DEPARTMENT[471]

INSPECTIONS AND APPEALS DEPARTMENT[481]  
    Employment Appeal Board[486]  
    Foster Care Review Board[489]  
    Racing and Gaming Commission[491]  
    State Public Defender[493]  
LAW ENFORCEMENT ACADEMY[501]  
LIVESTOCK HEALTH ADVISORY COUNCIL[521]  
MANAGEMENT DEPARTMENT[541]  
    Appeal Board, State[543]  
    City Finance Committee[545]  
    County Finance Committee[547]  
NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]  
NATIONAL AND COMMUNITY SERVICE, IOWA COMMISSION ON[555]  
NATURAL RESOURCES DEPARTMENT[561]  
    Energy and Geological Resources Division[565]  
    Environmental Protection Commission[567]  
    Natural Resource Commission[571]  
    Preserves, State Advisory Board for[575]  
PERSONNEL DEPARTMENT[581]  
PETROLEUM UNDERGROUND STORAGE TANK FUND  
    BOARD, IOWA COMPREHENSIVE[591]  
PREVENTION OF DISABILITIES POLICY COUNCIL[597]  
PUBLIC DEFENSE DEPARTMENT[601]  
    Emergency Management Division[605]  
    Military Division[611]  
PUBLIC EMPLOYMENT RELATIONS BOARD[621]  
PUBLIC HEALTH DEPARTMENT[641]  
    Substance Abuse Commission[643]  
    Professional Licensure Division[645]  
    Dental Examiners Board[650]  
    Medical Examiners Board[653]  
    Nursing Board[655]  
    Pharmacy Examiners Board[657]  
PUBLIC SAFETY DEPARTMENT[661]  
RECORDS COMMISSION[671]  
REGENTS BOARD[681]  
    Archaeologist[685]  
REVENUE AND FINANCE DEPARTMENT[701]  
    Lottery Division[705]  
SECRETARY OF STATE[721]  
SEED CAPITAL CORPORATION, IOWA[727]  
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]  
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]  
TRANSPORTATION DEPARTMENT[761]  
    Railway Finance Authority[765]  
TREASURER OF STATE[781]  
TURKEY MARKETING COUNCIL, IOWA[787]  
UNIFORM STATE LAWS COMMISSION[791]  
VETERANS AFFAIRS COMMISSION[801]  
VETERINARY MEDICINE BOARD[811]  
VOTER REGISTRATION COMMISSION[821]  
WORKFORCE DEVELOPMENT DEPARTMENT[871]  
    Labor Services Division[875]  
    Workers' Compensation Division[876]  
    Workforce Development Board and  
    Workforce Development Center Administration Division[877]

## ARC 1831B

HUMAN SERVICES  
DEPARTMENT[441]

## Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 234.6, 239B.4, and 249A.4, the Department of Human Services proposes to amend Chapter 40, "Application for Aid," Chapter 65, "Administration," and Chapter 76, "Application and Investigation," Iowa Administrative Code.

These amendments provide that applications for FIP, food stamps, or Medicaid delivered to a Department local office when the office is closed will be considered received on the next Department workday. (Current rules allow applications to be filed in a less-than-full-time office only when an income maintenance worker is on duty to receive the application.)

The amendments also provide that applications for food stamps may be filed in any Department local office. The definition of "administrative area" is rescinded. References to the Department office in the administrative area where the food stamp household resides are replaced with references to the local food stamp office where the food stamp case is assigned. This change will allow food stamp cases to be transferred from one county office to another, instead of canceling the case when a family moves out of the "administrative area" and forcing the family to reapply for food stamp benefits.

These amendments do not provide for waivers in specified situations because federal food stamp regulations do not allow for waivers, and because the changes are a benefit to applicants.

Any interested person may make written comments on the proposed amendments on or before August 14, 2002. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments are intended to implement Iowa Code sections 234.12, 239B.2, and 249A.4.

The following amendments are proposed.

ITEM 1. Amend rule 441—40.23(239B), introductory paragraph, as follows:

**441—40.23(239B) Date of application.** The date of application is the date an identifiable Public Assistance Application, Form 470-0462 or Form 470-0466 (Spanish), is received in any local ~~or area office or by an income maintenance worker in any satellite office or~~. *When an application is delivered to a closed office, it will be considered received on the first day that is not a weekend or state holiday following the day that the office was last open. The date of application is also the date an identifiable application is received by a designated worker who is in any disproportionate share hospital, federally qualified health center or other facility in which outstationing activities are provided. The disproportionate share hospital, federally qualified health center or oth-*

er facility will forward the application to the department office that is responsible for the completion of the eligibility determination. An identifiable application is an application containing a legible name and address that has been signed.

ITEM 2. Amend rule 441—65.1(234) by rescinding the definition of "administrative area."

ITEM 3. Amend rule 441—65.2(234), introductory paragraph, as follows:

**441—65.2(234) Application.** Persons in need of food stamps may file an application at ~~an office in the administrative area in which they reside~~ *any local department office in Iowa*. An application is filed the day ~~an appropriate~~ *a* food stamp office receives an application for food stamps on Form 470-0306 or 470-0307 (Spanish), Application for Food Stamps, or Form 470-0462 or Form 470-0466 (Spanish), Public Assistance Application, containing the applicant's name and address which is signed by either a responsible member of the household or the household's authorized representative. *When an application is delivered to a closed office, it will be considered received on the first day that is not a weekend or state holiday following the day that the office was last open.* A household shall complete a Public Assistance Application when any person in the household is applying for or receiving aid through the family investment program, *family medical assistance program (FMAP)-related medical programs Medicaid*, or the refugee resettlement assistance programs. The application is complete when a completed Form 470-0306, 470-0307, 470-0462, or 470-0466 is submitted. ~~An application form is necessary when it is for a month the household is not certified for food stamps or when the household applies in a new administrative area.~~

ITEM 4. Amend subrule 65.4(2) as follows:

**65.4(2)** When a household reports a shortage in its mail issuance, the household shall present the coupon books received to ~~an the local food stamp office in the administrative area in which the household resides~~ *where the case is assigned* for examination.

ITEM 5. Amend rule 441—65.9(234), introductory paragraph, as follows:

**441—65.9(234) Treatment centers and group living arrangements.** Alcoholic or drug treatment or rehabilitation centers and group living arrangements shall complete Form 470-2724, Monthly Facility Food Stamp Report for Drug or Alcohol Treatment Centers or Group Living Arrangements, on a monthly basis and return the form to ~~an the local food stamp office in the administrative area in which~~ *where the center is located assigned*.

ITEM 6. Amend subrule 65.19(2), paragraph "b," as follows:

b. Households shall return the completed form to ~~an the local food stamp office in the administrative area in which they reside~~ *where the case is assigned* by the fifth calendar day of the month which precedes the issuance month, when the form was issued in the department's regular end-of-month mailing. Households shall return the completed form to ~~an the local food stamp office in the administrative area in which they reside~~ *where the case is assigned* by the seventh day after the date of the issuance of the form when the form was not issued in the department's regular end-of-month mailing.

ITEM 7. Amend rule 441—65.31(234), introductory paragraph, as follows:

## HUMAN SERVICES DEPARTMENT[441](cont'd)

**441—65.31(234) Homeless meal providers.** When ~~an a local~~ office of the department is notified that an establishment or shelter ~~in its administrative area~~ has applied to be able to accept food stamps for homeless persons, staff shall obtain a written statement from the establishment or shelter. The statement must contain information on how often meals are served by the establishment or shelter, the approximate number of meals served per month, and a statement that the establishment or shelter does serve meals to homeless persons. This information must be dated and signed by a person in charge of the administration of the establishment or shelter and give the person's title or function with the establishment.

ITEM 8. Amend subrule **65.36(4)**, paragraph "a," as follows:

a. The request for reversal must be made by the household to ~~an the local office in an administrative area in which the household resides where the case is assigned~~ within ten days of the purchase.

ITEM 9. Amend subrule 76.1(1) as follows:

**76.1(1) Place of filing.** An application ~~shall may be filed in a any local or area office of the department or directly with an income maintenance worker at a satellite office of the department office or in any disproportionate share hospital, federally qualified health center or other facility in which outstationing activities are provided. The hospital, health center, or facility shall forward the application to the department office responsible for completing the eligibility determination.~~

a. The Health Services Application, Form 470-2927 or Form 470-2927(S), may also be filed at the office of a qualified provider of presumptive Medicaid eligibility ~~for pregnant women, at a WIC office, at a maternal health clinic, or at a well child clinic. The disproportionate share hospital, federally qualified health center office or other facility clinic will shall forward the application within two working days to the department office which is responsible for the completion of completing the eligibility determination.~~

b. The Healthy and Well Kids in Iowa (HAWK-I) Application, Form 470-3526, shall be filed with the third-party administrator as provided at 441—subrule 86.3(3). If it appears that the family is Medicaid-eligible, the third-party administrator shall forward the application to the ~~county department office where the family resides responsible for a determination of determining~~ Medicaid eligibility.

c. Those persons eligible for supplemental security income and those who would be eligible if living outside a medical institution may make application at the social security district office.

ITEM 10. Amend subrule 76.1(2) as follows:

**76.1(2) Date and method of filing application.** An application is considered filed on the date an identifiable application, Form 470-0462, 470-0466 (Spanish), ~~or 470-2927, or 470-2927(S)~~, is received and date-stamped: (1) in any local ~~or area~~ office of the department, or (2) ~~by an income maintenance worker in any satellite office of the department, or (3) by a designated worker in a disproportionate share hospital, federally qualified health center, or other facility in which outstationing activities are provided, or (4) (3) by the third-party administrator who has contracted with the department to administer the healthy and well kids in Iowa (HAWK-I) program as provided at 441—Chapter 86.~~

a. *When an application is delivered to a closed office, it will be considered received on the first day that is not a weekend or state holiday following the day that the office was last open.*

b. An identifiable application, Form 470-2927 or 470-2927(S), which is filed to apply for FMAP or FMAP-related Medicaid at a WIC office, well child health clinic, maternal health clinic, or the office of a qualified provider for presumptive eligibility ~~for pregnant women~~, shall be considered filed on the date received and date-stamped in one of these offices. ~~An application so received shall be forwarded within two working days to the department office responsible for completion of the eligibility determination.~~

c. When a Healthy and Well Kids in Iowa (HAWK-I) Application, Form 470-3526, is filed with the third-party administrator and subsequently referred to the department for a Medicaid eligibility determination, the date the application is received and date-stamped by the third-party administrator shall be the filing date.

d. A faxed application is considered filed on the date the faxed application is received in one of the places described above, if the fax is received ~~during normal business hours when the office is open. If the fax is received after normal business hours, such as evenings, weekends, or holidays when the office is closed, the faxed application shall be considered received on the next normal business first day that is not a weekend or state holiday following the day that the office was last open.~~ Before the faxed application can be approved, the original application with the applicant's original signature must be received by the department.

e. An identifiable application is an application containing a legible name, address, and signature.

f. If an authorized representative signed the application on behalf of an applicant, the original signature of the applicant or the responsible person must be on the application before the application can be approved. For FMAP and FMAP-related Medicaid, the original signature of each and every parent or stepparent in the home must be on the application before the application can be approved.

**ARC 1830B**

## HUMAN SERVICES DEPARTMENT[441]

### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter 58, "Emergency Assistance Program," Iowa Administrative Code.

These amendments expand and clarify the policies of the Emergency Assistance Program, as a result of the rules review conducted under Executive Order Number 8. Changes include:

- Clarifying what constitutes a valid application and specifying that a new application is required when the previous application is denied, withdrawn, or more than 30 days old.
- Allowing for the possibility that the Department may designate another agency to determine eligibility for the program.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

- Clarifying verification requirements, including acceptable verifications and limits on reverification.
- Clarifying the period of ineligibility when someone in the household refuses or quits a job, goes on strike, or chooses a FIP limited benefit plan.
  - Adding requirements related to eligibility for utility deposits or reconnection.
  - Clarifying and supplementing language on countable income.
    - Adding requirements for payment when the need is more than the maximum amount available and when the vendor is a state employee.
  - Clarifying requirements for approval of additional payments within the 30-day authorization period.
    - Adding language about refunds, donations, and warrants cashed by the client instead of the provider.
    - Adding language to clarify procedures when program funds are exhausted.
    - Rescinding obsolete requirements and correcting references.

These amendments do not provide for waivers in specified situations because individuals may request a waiver of emergency assistance eligibility policies under the Department's general rule on exceptions at rule 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before August 14, 2002. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments are intended to implement Iowa Code section 234.6.

The following amendments are proposed.

ITEM 1. Amend rule 441—58.23(234) as follows:

Amend subrule 58.23(1) as follows:

**58.23(1)** Date of application. The date of application shall be determined by the date a signed Form 470-2762, Emergency Assistance Application, is received in any local ~~or area office or by an income maintenance worker in any satellite office department-designated site.~~ When an application is delivered to a closed office, it will be considered received on the first day that is not a weekend or state holiday following the day that the office was last open. To be considered valid, the application must contain a legible name and address and must be signed.

a. The emergency assistance case record must contain a completed application for each 30-day eligibility period. Whenever an initial application is denied, withdrawn, or more than 30 days old, the household shall be required to complete a new application form.

b. ~~The county office shall conduct a~~ At least one face-to-face interview shall be conducted ~~prior to~~ before approval of the application. The face-to-face interview may be held in the county office, at a department-designated site, or in the applicant's home.

(1) The applicant may appoint an authorized representative to attend the interview if the applicant is unable to attend. The authorized representative must be a person knowledgeable of the household's circumstances.

(2) If the applicant or authorized representative fails to attend the required interview, the application shall be denied.

(3) When it is impossible to hold a face-to-face interview within the ten-day time frame for processing applications as

described at 58.23(2), the county office or department designee may waive the face-to-face interview ~~may be waived by the county office~~ and hold a telephone conference ~~held~~ instead.

c. The household's declaration shall be accepted except when verification is required by these rules or information appears questionable. The decision with respect to eligibility shall be based largely on information provided by the household.

Adopt the following new subrule:

**58.23(5)** Subsequent requests for assistance. Except for verifying that an emergency exists and applying for benefits from LIHEAP, general relief, or veterans affairs, the household is not required to reverify eligibility factors for approval of additional emergency assistance payment requests made within the 30-day authorization period. The time limits for processing additional requests for assistance remain the same as initial requests.

ITEM 2. Amend subrule 58.24(1) as follows:

**58.24(1)** Existence of an emergency. An emergency shall exist, limited to eviction, foreclosure, utility shutoff, fuel shortage, loss of heating energy supply or equipment, or homelessness. *An emergency does not exist for gas or electricity shutoff when a household is approved for LIHEAP and is protected by the moratorium on disconnection between November 1 and March 31.*

a. An emergency also exists when there is a potential for eviction, foreclosure, utility shutoff, fuel shortage, loss of heating energy supply or equipment, or homelessness. *To qualify for emergency assistance, the potential emergency shall be expected to happen within the month of application or the following month.*

b. The household shall be required to provide proof that an emergency exists. *Acceptable verification includes, but is not limited to:*

- (1) An eviction notice.
- (2) A foreclosure notice.
- (3) A utility shutoff notice.
- (4) A written statement to verify homelessness from the party or shelter where the household is staying.
- (5) Other written documentation, as needed.

c. *If the amount necessary to resolve the emergency exceeds the \$500 maximum payment of the emergency assistance program, the applicant must be able to verify the ability to pay the difference from other resources, or the emergency assistance application shall be denied.*

ITEM 3. Amend subrule 58.24(5) as follows:

**58.24(5)** Child in need. To be considered in need, the child shall be destitute or be without living arrangements unless assistance is provided.

a. The child is not in destitution or need if a member of the household (including the child aged 16 or older, who is not attending elementary, secondary or the equivalent level of vocational or technical school full time) without identified problems with participation of a temporary or incidental nature as described at rule 441—93.133(249C 239B) or barriers to participation as described at rule 441—93.134(249C 239B), in the 30 days ~~prior to approval~~ before application or subsequent request for emergency assistance:

- a. (1) Refused a job offer or training for employment.
- b. (2) Was dismissed from a job due to the member's own actions which meet the definition of "misconduct" in rule 441—93.132(239B).
- c. (3) Quit employment.
- d. (4) Reduced earnings.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

(5) *Began participation in a strike.*

(6) *Chose a limited benefit plan.*

b. *The 30-day period of ineligibility shall begin the day after the household member reduced earnings or was dismissed from a job.*

(1) *When a member quits a job, participates in a strike, or refuses employment, each day the job or offer for employment remains available or the household member participates in a strike is considered a day of job refusal. In these situations, the 30-day period of ineligibility shall begin the day the person returns to the job or accepts the job offer or the day after the job or offer for employment is no longer available.*

(2) *When a person chooses a first limited benefit plan, each day the person fails to reconsider by contacting IM or PROMISE JOBS counts as a day of refusal. The day the person reconsiders begins the 30-day period of ineligibility. When a person chooses a subsequent limited benefit plan, the 30-day ineligibility period shall begin the day after the date on the notice of decision establishing the person's limited benefit plan.*

c. *Whenever the household is determined to have good cause for refusing employment, quitting employment, or reducing earnings for the family investment program, no further determination is required for the emergency assistance program. Verification of the circumstances resulting in refusal, loss, or reduction of employment is not required unless information provided appears questionable.*

ITEM 4. Amend subrule **58.24(6)** by adopting the following **new** paragraphs:

a. *Verification that the household has met the requirements of first seeking assistance from these programs shall be documented on Form 470-2804, Disposition of Application for Other Benefits. A separate form shall be completed for each program to which the applicant is referred.*

b. *Emergency assistance benefits shall not be approved while an application for other benefits is pending.*

c. *If a household is denied general relief within 30 days before emergency assistance application, and the denial was due to failure to work off past general relief assistance, emergency assistance shall also be denied.*

ITEM 5. Amend subrule 58.24(7) as follows:

**58.24(7)** *Citizenship and alienage. The household shall contain at least one child who meets citizenship and alienage requirements as defined at 441—subrule 41.23(4-5). The household shall verify the alien status of at least one child to determine if the household contains an eligible child. There is no need to reverify the alien status unless it is subject to change.*

ITEM 6. Amend rule 441—58.24(234) by adopting the following **new** subrule:

**58.24(8)** *Utility service connection. Applicants shall provide verification from the utility company that all requirements to provide service have been met before payment to the utility company for utility deposits for new or reconnected service will be approved. When a household applies for emergency assistance due to a disconnect notice, the household must provide verification from the utility company that the applicant either has signed a payment plan or is not eligible for a payment plan. Failure to provide this verification shall result in denial of the emergency assistance application.*

ITEM 7. Amend rule 441—58.25(234) as follows:

**441—58.25(234) Determination of need.** *Needs covered are limited to rent payments, house payments (including property taxes and homeowner's insurance if included in the house payment), rent and utility deposits, utilities, and purchase, or repair, or rental of heating equipment. Utilities shall include heat (electric, gas, fuel oil, wood, etc.), lights, water, sewer, and garbage, but shall not include telephone. Heating equipment shall include, but is not limited to, furnace, space heater, kerosene heater, wood stove, etc. Air conditioners shall not be funded.*

ITEM 8. Amend subrule 58.26(1), introductory paragraph, as follows:

**58.26(1)** *Income considered. Income considered shall include, but is not limited to, all gross income received or reasonably anticipated to be received by the household in the month of application, such as the family investment program (FIP) grant, veteran's pension, social security benefits, supplemental security income (SSI), job insurance benefits, child support income, alimony, workers' compensation benefits, cash payments from any of the DHS diversion programs, adoption subsidies, foster care payments, retroactive payments from any source, lump-sum income, earnings from on-the-job training, work-study income, income tax refunds (if received in the month of application), loans and grants available for living expenses (including unprorated gross educational moneys received in the month of application that are not earmarked), interest income (if received in the month of application), maintenance payments, Volunteers in Service to America (VISTA) payments, gifts, refunds from rental and utility deposits, earned income credit, self-employment income (net profit expected to be received in the month of application, not annualized), earnings from employment, and earnings of a child aged 16 and or over, who is not attending elementary, secondary or the equivalent of vocational or technical school full-time. The following deductions shall be allowed from earned income:*

ITEM 9. Amend subrule 58.26(2) as follows:

**58.26(2)** *Exempt income. Exempt income shall include reimbursements; earned as well as unearned income in-kind; vendor payments; earnings of a child under age 16, or age 16 and or older, if the child is attending elementary, secondary or the equivalent level of vocational or technical training school full time; training allowances designated for a specific purpose (such as those issued by the ~~Job Training Partnership Act~~ Workforce Investment Act, PROMISE JOBS, Vocational Rehabilitation Services, Food Stamp Employment and Training program, etc.); that amount of the lump-sum expended for legal, medical or burial expenses; and legally obligated moneys. Legally obligated money means money that is otherwise payable to the household, but which is diverted by the provider of the payment to a third party for a household expense without the household's consent. Examples of legally obligated moneys are the amount withheld from job insurance benefits to recover an overpayment or for child support for a child not living with the household; or the amount of child support withheld from earnings for a child not living with the household.*

ITEM 10. Amend rule 441—58.28(234) as follows:

Amend subrule 58.28(1) as follows:

**58.28(1)** *Maximum payment. The maximum payment shall not exceed \$500 per authorization period. This amount can be applied to a single need or to several needs, not to exceed the maximum amount. Payment shall be issued in the amount of the need, not to exceed \$500. When the emergency need is greater than \$500 (or more than the maximum*

## HUMAN SERVICES DEPARTMENT[441](cont'd)

amount still available to the applicant, if a subsequent request is being made), emergency assistance shall be approved only when the applicant provides verification that either:

- a. The vendor will accept payment of up to \$500 (or the maximum amount available) to resolve the emergency, or
- b. Another source will supply the amount needed over and above the emergency assistance payment amount.

Amend subrule 58.28(2) as follows:

**58.28(2) Vendor payment.** Payment shall be issued directly to the vendor in form of a state warrant *unless the vendor is a state employee.*

a. Vendors shall be required to complete Form 470-2781, Approval for Vendor Payment, before payment shall be issued. *The vendor shall provide a copy of IRS Form W-9, Request for Taxpayer Identification Number and Certification, if necessary, to resolve vendor name or vendor number discrepancies.*

b. Form 470-2781 shall also be used to notify the vendor of the amount approved for payment. *Payment is owed to the vendor in the amount approved on Form 470-2781 even if emergency assistance funds are exhausted or emergency assistance eligibility is found not to exist when system entries are made. If the household provides verification of an emergency item and the cost of the item on another document, there is no need to send Form 470-2781 to the vendor to re-verify the information.*

c. *Payment to state employees shall be made as follows:*

(1) *If the emergency assistance payment is for a service, such as furnace repair, the payment is included in the vendor's regular state paycheck as extra pay.*

(2) *If the emergency assistance payment is for goods, such as rent, rent deposit, or purchase of heating equipment, payment to the vendor is processed in the form of a travel voucher.*

Amend subrule 58.28(3) as follows:

**58.28(3) Authorization period.** The authorization period is limited to a period of 30 consecutive days in a 12-month period, and payment shall be approved *if the request is received* within that period. The 30-day authorization period begins on the date the first emergency assistance payment is approved for an eligible household. The household may be eligible for more than one payment as long as the total amount of all payments does not exceed the maximum amount and all requests for additional payments are ~~approved~~ *received* within the period of 30 consecutive days. *Any portion of the maximum payment amount not used in the 30-day authorization period cannot be carried forward to a future authorization period.*

Adopt the following new subrules:

**58.28(4) Returned warrants and donations to emergency assistance.** Any refunds of emergency assistance money shall be returned to the DHS county office. Returned funds shall be deposited back into the emergency assistance account.

a. When an emergency assistance client or vendor returns the emergency assistance warrant or returns an emergency assistance payment in the form of a money order, personal check, or cash, the county office shall accept the repayment and complete Form 470-0009, Official Receipt.

b. The department may receive refunds of rent deposits on behalf of emergency assistance clients that were paid by a combination of assistance from the emergency assistance program and other persons or organizations.

c. Donations shall be handled in the same manner as refunds and shall be deposited into the emergency assistance account.

**58.28(5) Misdirected warrants.** Replacement of an emergency assistance warrant does not apply when the warrant is inadvertently delivered to the emergency assistance client rather than the vendor, and the client endorses it with the client's own name and cashes it. This is not an overpayment, because the warrant is issued on behalf of the same client who cashed it. It is up to the vendor to pursue the matter with the post office, the place of business that cashed the warrant, or the client and to work out possible repayment arrangements.

ITEM 11. Amend rule 441—58.29(234) as follows:

**441—58.29(234) Notification and appeals.** All emergency assistance households shall be given notice with respect to the decision on their application for assistance in accordance with 441—subrule 7.7(1). Households have the right to appeal the department's decision in accordance with rule 441—7.5(~~217~~ 17A).

ITEM 12. Amend rule 441—58.30(234) as follows:

**441—58.30(234) Discontinuance of the emergency assistance program.** The program shall be discontinued when funds have been exhausted. To ensure equitable treatment, applications for emergency assistance shall be approved on a first-come, first-served basis until all funds have been depleted. *First-come, first-served is determined by the date the application is approved for payment and entered into the emergency assistance computer system.*

**58.30(1) Partial payment.** *Because funds are limited, applications may be approved for less than the amount requested. Payment cannot be approved beyond the amount of funds available.*

**58.30(2) Reserved funds.** *A portion of yearly emergency assistance funds shall be reserved for final appeal decisions reversing the department's denial that are received after funds for the program have run out.*

**58.30(3) Untimely applications.** *Emergency assistance applications received after the program is discontinued for the year and more than five working days before the program begins again the next year shall be denied.*

ITEM 13. Rescind rule 441—58.31(234).

**ARC 1833B**

## 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 237.3, the Department of Human Services proposes to amend Chapter 113, “Licensing and Regulation of Foster Family Homes,” Iowa Administrative Code.

These amendments update the requirements for authorizing a variance to allow a foster family home to care for more children than permitted by its normal licensed capacity. Due to Departmental restructuring, variances are now authorized by the service area manager or designee, instead of the re-

## HUMAN SERVICES DEPARTMENT[441](cont'd)

gional administrator. In addition to the existing variance criteria for sibling groups, large families, and emergency placements, these amendments give the service area manager the authority to authorize a variance to any foster family home to allow the placement of a specific child. Currently, such placements require an exception to policy.

These amendments do not provide for waivers in specified situations because foster families may request a waiver of the limits on the number of children under the Department's general rule on exceptions at rule 441—1.8(217). Allowing the service areas to issue child-specific variances will allow more timely placements and reduce the need for waivers.

ITEM 2. Amend subrule **113.4(1)**, paragraph "c," subparagraph (2), as follows:

(2) ~~When the~~ *The* foster parents have three or more biological and adoptive children and relative placements in the home and ~~the parents~~ have shown the ability to parent a large number of children, ~~a regional~~ A variance may be approved to allow the placement of up to three foster children as set forth in the chart below:

No. of birth/relative/adoptive placements	Maximum License Capacity:	
	Without regional variance	With regional variance
0 children	5	Not applicable
1 child	4	Not applicable
2 children	3	Not applicable
3 children	2	3
4 children	1	3
5 or more children	0	3

ITEM 3. Amend subrule **113.4(1)**, paragraph "c," subparagraph (3), as follows:

(3) An emergency placement must be made in a foster family home that causes the home to exceed its licensed capacity. These emergency placements shall be made according to a preapproved regional service area plan as outlined below and are limited to a maximum of 30 days.

~~Prior to~~ *Before* the start of each fiscal year, each region service area shall submit to the central office for approval a plan for when an emergency occurs which necessitates the placement of a child in a foster family home that would exceed the licensing capacity. The regional plan shall define emergencies and identify a specific pool of preapproved homes which shall provide for placement of up to three additional foster children above the number that is allowed by the variances in the chart in subparagraph (2).

ITEM 4. Amend subrule **113.4(1)**, paragraph "c," by adopting the following new subparagraph (4):

(4) A variance beyond the maximum capacity of the foster home license is needed for the placement of a specific child. A child-specific variance shall end when that child leaves the placement or any other change brings the family into licensed capacity.

Any interested person may make written comments on the proposed amendments on or before August 14, 2002. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments are intended to implement Iowa Code section 237.3.

The following amendments are proposed.

ITEM 1. Amend subrule **113.4(1)**, paragraph "a," as follows:

a. Be approved by the ~~regional administrator~~ service area manager or designee.

**ARC 1832B**

## 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 2001 Iowa Acts, House File 763, section 4, subsection 4, the Department of Human Services proposes to adopt Chapter 164, "Iowa Hospital Trust Fund," Iowa Administrative Code.

These rules implement the Iowa Hospital Trust Fund created in the state treasury under the authority of the Department of Human Services by House File 763, enacted by the Second Extraordinary Session of the 79th General Assembly [Iowa Code Supplement chapter 249I]. The goal of the Iowa Hospital Trust Fund is to provide a continuing source of funding to ensure the state's ability to support the labor force, infrastructure, technology needs, and other elements of the hospital system.

The Iowa Hospital Trust Fund is funded by receipt of federal revenue from public hospitals participating in the Medicaid program. The Department will provide increased reimbursement to the participating public facilities for hospital services provided under the Medicaid program. The facilities agree to retain \$5,000 of the additional reimbursement received as an annual administration fee and refund the re-

## HUMAN SERVICES DEPARTMENT[441](cont'd)

mainder of the additional reimbursement through intergovernmental transfer to the Department. The Department will deposit the federal share of the refund (less the \$5,000 retained by the hospital) in the Iowa Hospital Trust Fund and credit the nonfederal share of the refund to the Department's medical assistance appropriation.

These rules do not provide for waivers in specified situations because the Department believes that the trust fund should be administered in the same manner for all public hospitals. Public hospitals may request a waiver of policies for administering the trust fund under the Department's general rule on exceptions at rule 441—1.8(217).

Any interested person may make written comments on the proposed rules on or before August 14, 2002. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These rules are intended to implement Iowa Code Supplement section 249I.4.

The following rules are proposed.

Adopt the following **new** chapter:

CHAPTER 164  
IOWA HOSPITAL TRUST FUND

PREAMBLE

These rules describe the Iowa hospital trust fund created by the Second Extraordinary Session of the Seventy-ninth General Assembly in 2001 Iowa Acts, House File 763, and explain how public hospitals can participate in a program for funding of the Iowa hospital trust fund.

**441—164.1(249I) Definitions.**

"Department" means the Iowa department of human services.

"Hospital" means hospital as defined in Iowa Code section 135B.1.

"Hospital trust fund" or "trust fund" means the Iowa hospital trust fund created by Iowa Code Supplement section 249I.4 in the state treasury under the authority of the department.

"Public hospital" means a hospital licensed pursuant to Iowa Code chapter 135B and governed pursuant to Iowa Code chapter 145A, 347, 347A, or 392.

**441—164.2(249I) Funding and operation of trust fund.**

Net funds received by the department through intergovernmental agreements for the hospital trust fund and moneys received by the department from other sources for the hospital trust fund, including grants, contributions, and participant payments, shall be deposited in the hospital trust fund. Annual expenses that are incurred to operate the hospital trust fund shall be deducted from funds received as a result of intergovernmental agreements and other sources, before their deposit in the hospital trust fund.

**441—164.3(249I) Allocations from the hospital trust fund.** Moneys deposited in the hospital trust fund shall be used only for the purposes of the hospital trust fund as specified in Iowa Code Supplement section 249I.2 and as provided in appropriations from the trust fund to the department of human services as specified in Iowa Code Supplement section 249I.4.

**441—164.4(249I) Participation by public hospitals.**

**164.4(1) Participation agreement.** Iowa public hospitals that participate in the Iowa Medicaid program and wish to participate in the funding of the hospital trust fund shall contact the Department of Human Services, Office of the Deputy Director for Policy, Hoover State Office Building, Fifth Floor, 1305 E. Walnut Street, Des Moines, Iowa 50319-0114, for information regarding the conditions of participation. Upon acceptance of the conditions of participation, the hospital shall sign Form 470-3932, Participation Agreement for Intergovernmental Transfer.

**164.4(2) Administration fee.** Upon acceptance of the participation agreement, the department shall authorize increased reimbursement to the participating facility for hospital services provided under the Medicaid program. Once every state fiscal year, the hospital shall retain \$5,000 of the additional reimbursement received, as an administration fee. The hospital shall refund the remainder of the additional reimbursement through intergovernmental transfer to the department for deposit of the federal share (less the \$5,000 retained by the hospital) in the Iowa hospital trust fund and the nonfederal share in the medical assistance budget.

**164.4(3) Limit on participation.** The department may limit participation by public hospitals to no more than the number needed to maximize the fund.

These rules are intended to implement Iowa Code Supplement chapter 249I.

**ARC 1834B**

**INSPECTIONS AND APPEALS  
DEPARTMENT[481]**

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 99B.13, the Department of Inspections and Appeals hereby proposes to amend Chapter 100, "Administration," Chapter 102, "Social Gambling," and Chapter 103, "Bingo," Iowa Administrative Code.

The purpose of these amendments is to bring the administrative rules into conformance with 2002 Iowa Acts, House File 2109, by changing the raffle amounts for fairs and small, large and real property raffles; reflecting that raffle tickets cannot be used as door prizes; adding provisions for annual raffle licenses; including rules which state that qualified organizations can hold up to eight annual raffles provided that each raffle is held in a different county; noting that the cost for a raffle ticket is now unlimited; specifying which organizations qualify to conduct gambling occasions; specifying that annual game nights for nonqualified organizations cannot include raffles; reflecting the increase in the amount that participants can wager at an annual game night; and adding pool and darts to legal contests. In addition, changes were made in accordance with the rule reviews required by Executive Order Number 8.

These amendments are in response to 2002 Iowa Acts, House File 2109, which was signed into law by Governor

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

Thomas J. Vilsack on April 4, 2002, and became effective July 1, 2002.

These rules are subject to waiver pursuant to the Department's waiver provisions contained in 481—Chapter 6.

Consideration will be given to all written suggestions or comments on the proposed amendments received on or before August 14, 2002. Such written materials should be sent to the Director's Office, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319, faxed to (515)242-6863 or E-mailed to [jcurtis@dia.state.ia.us](mailto:jcurtis@dia.state.ia.us).

Also, there will be a public hearing on August 15, 2002, at 9 a.m. in Conference Room 422, Department of Inspections and Appeals, Lucas State Office Building, Third Floor, Des Moines, Iowa, at which time persons may present their views.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 1837B**. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code chapter 99B as amended by 2002 Iowa Acts, House File 2109.

**ARC 1824B****INSURANCE DIVISION[191]****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 505.8(6), the Insurance Division gives Notice of Intended Action to amend Chapter 90, "Financial and Health Information Regulation," Iowa Administrative Code.

These amendments propose to adopt the NAIC Standards for Safeguarding Customer Information Model Regulation. These amendments are intended to establish standards for developing and implementing administrative, technical and physical safeguards to protect the security, confidentiality and integrity of customer information pursuant to Sections 501, 505(b) and 507 of the Gramm-Leach-Bliley Act, codified at 15 U.S.C. 6801, 6805(b) and 6807.

Any person may make written comments on the proposed amendments on or before August 13, 2002. These comments should be directed to Rosanne Mead, Assistant Commissioner, Insurance Division, 330 Maple Street, Des Moines, Iowa 50319. Comments may also be transmitted by fax to (515) 281-3059 or by E-mail to [rosanne.mead@iid.state.ia.us](mailto:rosanne.mead@iid.state.ia.us).

A public hearing will be held at 10 a.m. on August 13, 2002, at the offices of the Insurance Division, 330 Maple Street, Des Moines, Iowa 50319. Persons wishing to provide oral comments should contact Rosanne Mead no later than August 12, 2002, to be placed on the agenda.

These amendments are intended to implement Iowa Code chapter 505.

The following amendments are proposed.

ITEM 1. Amend rule **191—90.2(505)** by adopting the following **new** definitions in alphabetical order:

"Customer information" means nonpublic personal information about a customer, whether the information is in paper, electronic or other form, that is maintained by or on behalf of the licensee.

"Customer information systems" means the electronic or physical methods used to access, collect, store, use, transmit, protect or dispose of customer information.

"Service provider" means a person that maintains, processes or otherwise is permitted access to customer information through the person's provision of services directly to the licensee.

ITEM 2. Amend 191—Chapter 90 by adopting the following **new** division:

## DIVISION III

## SAFEGUARDING CUSTOMER INFORMATION

**191—90.37(505) Information security program.**

**90.37(1)** Each licensee shall implement a comprehensive written information security program that includes administrative, technical and physical safeguards for the protection of customer information. The administrative, technical and physical safeguards included in the information security program shall be appropriate to the size and complexity of the licensee and the nature and scope of the licensee's activities.

**90.37(2)** A licensee's information security program shall be designed to:

- a. Ensure the security and confidentiality of customer information;
- b. Protect against any anticipated threats or hazards to the security or integrity of the information; and
- c. Protect against unauthorized access to or use of the information that could result in substantial harm or inconvenience to any customer.

**191—90.38(505) Examples of methods of development and implementation.** The actions and procedures that follow are examples of methods a licensee may use to implement the requirements of rule 191—90.37(505) to assess, manage and control risks of disclosure:

1. Identify reasonably foreseeable internal or external threats that could result in unauthorized disclosure, misuse, alteration or destruction of customer information or customer information systems.
2. Assess the likelihood and potential damage of these threats, taking into consideration the sensitivity of customer information.
3. Assess the sufficiency of policies, procedures, customer information systems and other safeguards in place to control risks.
4. Design an information security program to control the identified risks, commensurate with the sensitivity of the information as well as the complexity and scope of the licensee's activities.
5. Train staff, as appropriate, to implement the licensee's information security program.
6. Regularly test or otherwise regularly monitor the key controls, systems and procedures of the information security program. The frequency and nature of these tests or other monitoring practices are determined by the licensee's risk assessment.
7. Exercise appropriate due diligence in selecting service providers.
8. Require service providers to implement appropriate measures designed to meet the objectives of rule 191—90.37(505) and, when indicated by the licensee's risk assess-

## INSURANCE DIVISION[191](cont'd)

ment, take appropriate steps to confirm that service providers have satisfied these obligations.

9. Monitor, evaluate and adjust, as appropriate, the information security program in light of any relevant changes in technology, the sensitivity of customer information, internal or external threats to information, and the licensee's own changing business arrangements, such as mergers and acquisitions, alliances and joint ventures, outsourcing arrangements and changes to customer information systems.

**191—90.39(505) Penalties.** An insurer, producer or licensee that violates a requirement of these rules shall be found to have committed a violation of Iowa Code section 507B.4 and may be subject to penalty as provided in Iowa Code section 507B.7 in addition to any other penalties provided by the laws of this state.

**191—90.40(505) Effective date.** Each licensee shall establish and implement an information security program, including appropriate policies and systems by June 30, 2003.

**191—90.41 to 90.50** Reserved.

**ARC 1815B****PERSONNEL DEPARTMENT[581]****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 97B.15, the Department of Personnel hereby gives Notice of Intended Action to amend Chapter 21, "Iowa Public Employees' Retirement System," Iowa Administrative Code.

These amendments establish an enforcement date for excluding recruitment bonuses from the definition of covered wages; provide for allocation of restored wages to the quarters in which wages would have been received but for an employer-mandated reduction in hours (EMRH); increase the limit of covered wages to mirror the Internal Revenue Code; provide for treatment of employer contributions to Section 125 plans, (also known as cafeteria plans), as covered wages in certain conditions; include full-time county medical examiners and deputy county medical examiners as covered employees effective January 1, 1995; clarify that employees of the Iowa student loan liquidity corporation are not considered covered employees; make actuarial changes to contribution rates for special service members; add county conservation peace officers as protection occupation class members effective July 1, 2002; allow for restoration of covered wages caused by an employer-mandated reduction in hours; reduce the severance period from 4 months to 30 days after the last IPERS-covered paycheck for refunds; increase the wage-earning disqualifications for retired members; clarify that a member must be disabled at the termination of employment to qualify for a disability retirement allowance and eliminate the minimum rollover requirement.

These amendments were prepared after consultation with the IPERS legal, accounting and benefits units.

New subrule 21.4(4) may be subject to requests for waivers. None of the other amendments will be subject to requests for waivers. The proposed amendments to paragraph

21.4(1)"f," subrule 21.4(2), paragraph 21.4(3)"a," subparagraph 21.5(1)"a"(5), new subparagraph 21.5(1)"a"(51), paragraphs 21.6(9)"b," "c," and "e," subparagraph 21.6(9)"d"(1), new subrule 21.6(12), paragraph 21.8(4)"e," subrules 21.8(9) and 21.19(1), paragraph 21.22(1)"a" and rule 581—21.27(97B) confer benefits, prevent abuse, or are required by statute.

Any person may make written suggestions or comments on the proposed amendments on or before August 13, 2002. Such written suggestions or comments should be directed to the IPERS Administrative Rules Coordinator at IPERS, P.O. Box 9117, Des Moines, Iowa 50306-9117. Persons who wish to present their comments orally may contact the IPERS Administrative Rules Coordinator at (515)281-0089. Comments may also be submitted by fax to (515)281-0045, or by E-mail to [info@ipers.state.ia.us](mailto:info@ipers.state.ia.us).

There will be a public hearing on August 13, 2002, at 9 a.m. at IPERS, 7401 Register Drive, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject matter of the proposed amendments.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 1826B**. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code chapter 97B.

**ARC 1821B****PHARMACY EXAMINERS BOARD[657]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 124.301 and 147.76, the Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 9, "Automated Medication Distribution Systems," Iowa Administrative Code.

The amendment was approved at the June 18, 2002, regular meeting of the Board of Pharmacy Examiners.

The amendment provides that either a pharmacist or a nurse shall verify the accuracy of medication doses stocked in dispensing components of automated medication distribution systems used for other than floor-stock distribution when bar coding or other technology-based verification is not utilized, and requires documentation identifying the individual providing that verification.

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

Any interested person may present written comments, data, views, and arguments on the proposed amendment not later than 4:30 p.m. on September 16, 2002. Such written materials should be sent to Terry Witkowski, Administrative Assistant, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688, or by E-mail to [terry.witkowski@ibpe.state.ia.us](mailto:terry.witkowski@ibpe.state.ia.us).

## PHARMACY EXAMINERS BOARD[657](cont'd)

This amendment is intended to implement 2001 Iowa Acts, chapter 182, section 5(10), paragraph "i."

The following amendment is proposed.

Amend subrule 9.7(2), paragraph "a," as follows:

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

## ARC 1820B

PHARMACY EXAMINERS  
BOARD[657]

## Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 124B.2, the Board of Pharmacy Examiners hereby gives Notice of Intended Action to rescind Chapter 12, "Precursor Substances," Iowa Administrative Code, and adopt a new Chapter 12 with the same title.

Pursuant to Executive Order Number 8, comments, complaints, and recommendations were solicited from members of the Board and staff, from licensees and registrants, and from members of the public. Existing rules and proposed new rules were reviewed based on need, clarity, cost, fairness, intent and statutory authority. The following amendment was approved at the June 18, 2002, regular meeting of the Board of Pharmacy Examiners.

The proposed amendment rescinds current rules and adopts new rules establishing requirements for application for a permit to sell or receive precursor substances in Iowa and requirements for reporting transactions involving precursor substances.

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

Any interested person may present written comments, data, views, and arguments on the proposed amendment not later than 4:30 p.m. on September 16, 2002. Such written materials should be sent to Terry Witkowski, Administrative Assistant, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688, or by E-mail to [terry.witkowski@ibpe.state.ia.us](mailto:terry.witkowski@ibpe.state.ia.us).

This amendment is intended to implement Iowa Code chapter 124B.

The following amendment is proposed.

Rescind 657—Chapter 12 and adopt the following new Chapter 12 in lieu thereof:

CHAPTER 12  
PRECURSOR SUBSTANCES

**657—12.1(124B) Precursor substance identified.** For the purpose of this chapter, precursor substance includes all substances identified in Iowa Code section 124B.2 and any substances listed in this rule.

**657—12.2(124B) Reports required.** Except as provided in rule 12.4(124B) or 12.5(124B), the following reports shall be filed with the board on forms provided or approved by the board. Copies of reports submitted pursuant to this rule shall be maintained for two years following the date of the report.

**12.2(1) Delivery in Iowa.** Any manufacturer, retailer, or other person who sells, transfers, or otherwise furnishes a precursor substance to anyone within this state shall report the transaction to the board no less than 21 days prior to delivery of the substance.

**12.2(2) Receipt from out-of-state source.** Any vendor, recipient, or other person who receives a precursor substance from a source outside the state shall submit to the board a report of the transaction no more than 14 days following receipt of the substance.

**12.2(3) Missing quantity.** Any vendor, recipient, or other person who is authorized to possess precursor substances in this state shall report to the board within seven days of discovering either of the following occurrences:

- a. Loss or theft of a precursor substance.
- b. A difference between the amount of a precursor substance shipped and the amount of a precursor substance received.

**657—12.3(124B) Form of reports.** All reports shall be on forms provided by the board except as provided in rule 12.4(124B). The following minimum information shall be completed for each required report.

**12.3(1) Delivery.** Each form that reports the sale, transfer, or other furnishing of a precursor substance shall contain the following information:

- a. Name of substance;
- b. Quantity of substance;
- c. Date sold, transferred, or furnished;
- d. Name and address of business or person selling, transferring, or furnishing the substance;
- e. The signature of the person or the signature of an officer, authorized agent, or authorized employee of the business selling, transferring, or furnishing the substance;
- f. Name, address, and identification information of the person or business purchasing or receiving the substance.

**12.3(2) Receipt.** Each form that reports the receipt of a precursor substance shall contain the following information:

- a. Name of substance;
- b. Quantity of substance;
- c. Date received;
- d. Name and address of person or business receiving the substance;
- e. The signature of the person or the signature of an officer, authorized agent, or authorized employee of a business receiving the substance;
- f. Name and address of the person or business selling, transferring, or furnishing the substance.

**12.3(3) Theft or loss.** Each form that reports a missing quantity of a precursor substance shall contain the following information:

## PHARMACY EXAMINERS BOARD[657](cont'd)

- a. Name of missing substance;
- b. Quantity of substance missing;
- c. Date on which the substance was discovered to be missing;
- d. Name and address of the person or business reporting the missing quantity;
- e. The permit number of the person or business reporting the missing quantity, if applicable;
- f. The signature of the person or an officer, authorized agent, or authorized employee of the business reporting the missing quantity;
- g. The name and address of the person who transported the precursor substance and the date of shipment, if applicable.

**657—12.4(124B) Monthly reporting option.**

**12.4(1) Regular repeated deliveries.** Vendors who regularly transfer the same precursor substance to the same recipient may apply to the board for authorization to submit the report of those transactions on a monthly basis. Requests for monthly reporting authorization must be received at the board office at least 14 days prior to the board meeting at which the request will be considered. The board will review each request to determine if the requirements of Iowa Code chapter 124B are met and will notify the vendor of its decision and the reporting format that will be authorized.

**12.4(2) Computer-generated reports.** Vendors may also petition the board to accept reports on a computer-generated basis. If approved, reports may be furnished in hard copy or in a board-approved data storage format. The vendor will be responsible for the accuracy of all reports and the prompt correction of any data entry or transmission errors.

**12.4(3) Authorization rescinded at board's discretion.** Authorization to report monthly or to use computer-generated reporting may be rescinded at the board's discretion and with 30 days' advance notice.

**657—12.5(124B) Exemptions.** The following are exempt from the reporting requirements of subrules 12.2(1), 12.2(2), 12.3(1), and 12.3(2) and the identification requirements of rule 12.6(124B):

1. A licensed pharmacist or other person authorized under Iowa Code chapter 155A to sell or furnish a precursor substance upon the prescription of a practitioner.
2. A practitioner who administers or furnishes a precursor substance to a patient.
3. A manufacturer, wholesaler, retailer, or person who holds a permit issued by the board and who sells, transfers, or otherwise furnishes a precursor substance to a practitioner or pharmacy as defined in Iowa Code section 155A.3.
4. Any retailer or person who sells, transfers, furnishes, or receives a drug containing ephedrine, phenylpropanolamine, or pseudoephedrine or of a cosmetic containing a precursor substance if the drug or cosmetic is lawfully sold, transferred, or furnished over the counter without a prescription in accordance with Iowa Code chapter 126.

**657—12.6(124B) Identification of purchaser or other recipient.** Prior to selling, transferring, or otherwise furnishing in this state any precursor substance as defined in 12.1(124B), a vendor shall require appropriate identification of any purchaser or other recipient. Letters and other documentation required by this rule shall be maintained for two years following delivery.

**12.6(1) Face-to-face transactions.** Prior to furnishing any precursor substance in any face-to-face transaction, a vendor shall require and document all of the following:

a. A valid driver's license or other state-issued identification issued to the purchaser's representative. The identification shall contain the photograph and residential or mailing address, other than a post office box number, of the purchaser's representative.

b. The motor vehicle license number of the vehicle owned or operated by the purchaser or the purchaser's representative.

c. A letter of authorization from the purchaser. The letter shall include the purchaser's business license number and business address, a description that identifies how the substance will be used, the name of the purchaser's representative authorized to receive the substance, and the purchaser's signature. The purchaser's representative shall also sign the letter in the presence of the vendor and the vendor shall sign as a witness to the identification and signature of the purchaser's representative.

**12.6(2) Furnishing to a person via transaction not face to face.** Prior to furnishing any precursor substance to a person in a transaction that is not face to face, a vendor shall require a letter of authorization that includes all of the following:

- a. The name of the person to whom the substance is to be delivered;
- b. The person's residential or mailing address, other than a post office box number;
- c. The person's residential telephone number, including area code;
- d. The person's place of employment including employer's address and telephone number;
- e. The person's date of birth;
- f. The person's place of birth;
- g. The person's social security number;
- h. The person's signature;
- i. A description that identifies how the substance will be used.

**12.6(3) Furnishing to a business via transaction not face to face.** Prior to furnishing any precursor substance to a business in a transaction that is not face to face, a vendor shall require a letter of authorization that includes all of the following:

- a. The name of the business;
- b. The business license number;
- c. The business address and telephone number, including area code;
- d. A description that identifies how the substance will be used;
- e. The signature of an officer, authorized agent, or authorized employee of the business;
- f. The typed or printed name and title of the signatory.

**657—12.7(124B) Permits.** Persons or entities in this state that purchase, transfer, or otherwise receive a precursor substance as defined in rule 12.1(124B) from a source outside the state shall obtain a permit from the board. No person or entity required to obtain a permit shall receive a precursor substance from a source outside the state until an application for permit is approved and the board has issued a permit certificate. Permits shall expire on the last day of the calendar year in which the permit is issued.

**12.7(1) Applications.** Application forms may be obtained from and completed applications shall be submitted to the Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688. Permit renewal forms will be mailed to each current permit holder approximately 60 days before the expiration date of the permit. A permit holder who has not received a renewal form 45 days

## PHARMACY EXAMINERS BOARD[657](cont'd)

prior to expiration of a current permit is responsible for contacting the board to request an application for renewal.

a. Application shall be made on forms provided or approved by the board. Each application shall include all requested information, unless the item is not applicable, in which case that fact shall be indicated.

b. Each application, attachment, or other document filed as part of an application shall be signed by the applicant as follows:

(1) If the applicant is an individual, signature shall be by that individual.

(2) If the applicant is a partnership, signature shall be by a partner.

(3) If the applicant is a corporation, corporate division, association, trust, or other entity, signature shall be by the chief executive officer.

**12.7(2) Initial permit, renewal, and fees.** The fee for an initial permit or permit renewal shall be paid at the time that the application for the permit or permit renewal is submitted for filing. Payment shall be made in the form of a personal, business, certified, or cashier's check or money order made payable to the Iowa Board of Pharmacy Examiners. Payments made in the form of foreign currency or third-party endorsed checks will not be accepted.

a. Initial and renewal fees. For each initial permit or timely renewed permit, an applicant shall pay a fee of \$100.

b. Late application. Failure to renew a permit prior to January 1 following the permit's expiration shall require an additional \$50 late payment fee.

c. Delinquent permit. If a permit is not renewed before its expiration date, the permit is delinquent and the permit holder may not receive a precursor substance from a source outside the state until the delinquent permit is renewed. A delinquent-permit holder that continues activities for which a permit is required may be subject to disciplinary sanctions pursuant to 657—subrule 36.1(4).

**12.7(3) Exemption from permit fee.** The requirement for permit fee is waived for federal, state, and local law enforcement agencies and analytical laboratories. Exemption from payment of permit fees as provided in this subrule does not relieve the agency or laboratory of any requirement to obtain a permit nor of any other requirements or duties prescribed by law.

**12.7(4) Termination.** A permit issued to an individual shall terminate upon the death of the individual. A permit issued to an individual or business shall terminate when the individual or business ceases legal existence, discontinues business, or discontinues activities for which the permit was issued.

**657—12.8(124B) Denial, modification, suspension, or revocation of permit.** Pursuant to 657—Chapters 35 and 36, the board may deny, suspend, revoke, or modify any permit for any period of time it determines to be justified upon the facts of the case for any violation of this chapter or Iowa Code chapter 124B.

These rules are intended to implement Iowa Code chapter 124B.

ARC 1819B

## PHARMACY EXAMINERS BOARD[657]

### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 22.11, the Board of Pharmacy Examiners hereby gives Notice of Intended Action to rescind Chapter 14, "Public Information and Inspection of Records," Iowa Administrative Code, and adopt a new Chapter 14 with the same title.

Pursuant to Executive Order Number 8, comments, complaints, and recommendations were solicited from members of the Board and staff, from licensees and registrants, and from members of the public. Existing rules and proposed new rules were reviewed based on need, clarity, cost, fairness, intent and statutory authority. The following amendment was approved at the June 18, 2002, regular meeting of the Board of Pharmacy Examiners.

The proposed amendment rescinds current rules and references to Uniform Rules of Agency Procedure and adopts new rules identifying records maintained by the Board, designating which records or record sets are confidential or contain confidential information, and establishing procedures for accessing Board records. The rules establish processes for requesting access to confidential records, for requesting that a record be treated as confidential, and for release of a confidential record in specified circumstances either with or without the consent of the subject of the confidential record.

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

Any interested person may present written comments, data, views, and arguments on the proposed amendment not later than 4:30 p.m. on September 16, 2002. Such written materials should be sent to Terry Witkowski, Administrative Assistant, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688, or by E-mail to [terry.witkowski@ibpe.state.ia.us](mailto:terry.witkowski@ibpe.state.ia.us).

This amendment is intended to implement Iowa Code section 22.11.

The following amendment is proposed.

Rescind 657—Chapter 14 and adopt the following new Chapter 14 in lieu thereof:

### CHAPTER 14 PUBLIC INFORMATION AND INSPECTION OF RECORDS

**657—14.1(22,124,155A) Definitions.** As used in this chapter:

"Board" means the Iowa board of pharmacy examiners.

"Confidential record" means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the board is prohibited by law from making available for examination by members of the public, and records or information contained in records that are

## PHARMACY EXAMINERS BOARD[657](cont'd)

specified as confidential by Iowa Code section 22.7 or other provision of law, but that may be disclosed upon order of a court, order of the lawful custodian of the record, or order of another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

“Custodian” means the executive secretary/director of the board.

“Open record” means a record other than a confidential record.

“Personally identifiable information” means information about or pertaining to an individual or business entity in a record which identifies the individual or entity and which is contained in a record system.

“Record” means the whole or a part of a “public record,” as defined in Iowa Code section 22.1, that is owned by or in the physical possession of the board.

“Record system” means any group of records under the control of the board from which a record may be retrieved by a personal identifier such as the name of an individual or business entity, number, symbol, or other unique retriever assigned to an individual or business entity.

**657—14.2(22,124,155A) Purpose and scope.** The purpose of this chapter is to facilitate broad public access to open records. It seeks to facilitate rational board determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. Board staff shall cooperate with members of the public in implementing the provisions of this chapter.

This chapter does not:

1. Require the board to index or retrieve records that contain information about individuals by that person's name or other personal identifier.
2. Make available to the general public records that would otherwise not be available under Iowa Code chapter 22.
3. Govern the maintenance or disclosure of, notification of or access to records in the possession of the board that are governed by rules of another board or agency.
4. Apply to grantees, including local governments or subdivisions, administering state-funded programs, unless otherwise provided by law or agreement.
5. Make available records compiled by the board in reasonable anticipation of court litigation or formal administrative proceedings. Applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and rules of the board shall govern the availability of the records to the general public or to any subject individual or party to litigation or proceedings.

**657—14.3(22,124,155A) Requests for access to records.**

**14.3(1) Location of record.** A request for access to a record should be directed to Executive Secretary/Director, Iowa Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688.

**14.3(2) Office hours.** Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays, and official state holidays.

**14.3(3) Request for access.** Requests for access to open records shall be made in writing. Requests shall identify the particular records sought, by name or description, in order to facilitate determining the location of the record. All requests shall include the name, address, and telephone number of the person requesting the information.

**14.3(4) Response to requests.** Access to an open record shall be provided in a timely manner upon request. If the size or nature of the request for access to an open record requires time for processing, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code section 22.8(4) or 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 14.4(22,124,155A) and other applicable provisions of law.

**14.3(5) Security of record.** No unauthorized person may search or remove any record from board files. The custodian or a designee of the custodian shall supervise examination and copying of board records. The integrity of board records shall not be compromised during such examination or handling.

**14.3(6) Copying.** A reasonable number of copies of an open record may be made in the board office.

**14.3(7) Fees.**

a. Copying and postage costs. Price schedules for published materials and for photocopies of records supplied by the board shall be prominently posted in the board office. Copies of records may be made by or for members of the public on board photocopy machines or from electronic storage systems at cost as determined by the custodian and posted in the board office. When the mailing of copies of records is requested, the costs of such mailing may also be charged to the requester.

b. Supervisory and retrieval fees. An hourly fee may be charged for board expenses in supervising the examination of and for the copying of requested records, or for the search and retrieval of such records, when the time required exceeds 15 minutes. The custodian shall prominently post in the board office the hourly fees to be assessed. Hourly fees shall not be in excess of the compensation rate of a board employee who ordinarily would be appropriate and suitable to perform the function.

c. Advance payments. The custodian may require payment of assessed or estimated fees before the custodian processes a request.

**657—14.4(22,124,155A) Access to confidential records.** Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 14.3(22,124,155A).

**14.4(1) Proof of identity.** A person requesting access to a confidential record shall be required to provide proof of identity or authority to secure access to the record.

**14.4(2) Requests.** The custodian shall require that a request to examine and copy a confidential record be in writ-

## PHARMACY EXAMINERS BOARD[657](cont'd)

ing. A person requesting access to such a record shall be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

**14.4(3)** Notice to subject of record and opportunity to obtain injunction. If the custodian receives a request for access to a confidential record, the custodian may make reasonable efforts to notify any person who is the subject of the record, who is identified in the record, or whose address or telephone number is contained in the record about the request. If it is practicable and in the public interest to delay releasing the information, the custodian may, before releasing the record, give the notified persons an opportunity to seek a court order under Iowa Code section 22.8 or other applicable provision of law prohibiting the custodian from releasing the confidential information. If the custodian gives a notified person this opportunity, the custodian shall give the notified person a specific deadline to obtain a court order prohibiting release of the confidential information and shall not release the confidential information during that time. If the deadline passes and the notified person has not obtained a court order prohibiting the custodian from releasing the confidential information, the custodian shall release the information to the requester.

**14.4(4)** Request denied. When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification. Written notification shall be signed by the custodian and shall include:

- a. The name and title of the custodian responsible for the denial;
- b. A citation to the provision of law vesting authority in the custodian to deny disclosure of the record; and
- c. A brief statement of the reasons the requester is being denied access to the record.

**14.4(5)** Request granted. When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

**657—14.5(22,124,155A) Requests for treatment of a record as a confidential record and its withholding from examination.** The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized, by Iowa Code section 22.7, another applicable provision of law, or a court order, to refuse to disclose that record to members of the public.

**14.5(1)** Persons who may request. Any person who would be aggrieved or adversely affected by disclosure of a record, and who identifies a provision of law or court order that authorizes the treatment of the record as a confidential record, may request that the custodian treat the record as such and withhold it from public inspection.

**14.5(2)** Request. A request that a record be treated as a confidential record shall be in writing and shall be filed with the custodian. The request shall set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request. A person requesting treatment of a record as a confidential record shall also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as

a confidential record and to provide any proof necessary to establish relevant facts. Requests for treatment of a record as a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

A person filing a request for treatment of a record or a portion of a record as a confidential record shall, if possible, accompany the request with a copy of that record from which those portions for which confidential record treatment is being requested have been deleted. If the original record is being submitted to the board by the person requesting confidential treatment at the time the request is filed, the person shall conspicuously indicate on the original record that all or portions of the record are confidential.

**14.5(3)** Failure to request. Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who submits business information to the board does not request that it be withheld from public inspection under Iowa Code section 22.7(3) or 22.7(6), the custodian may assume that the person has no objection to disclosure of the record to members of the public.

**14.5(4)** Timing of decision. A decision by the custodian with respect to disclosure of a record to members of the public may be made when a request for its treatment as a confidential record is filed or upon receipt of a request for access to the record by a member of the public.

**14.5(5)** Request granted or deferred. If a request for confidential record treatment is granted or if action on a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant or defer action on the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record of the pendency of that subsequent request.

**14.5(6)** Request denied and opportunity to seek injunction. If the custodian denies a request to treat a record as confidential and to withhold it from public inspection, the custodian shall notify the requester in writing of the denial and the reasons for the denial. If the requester asks, the custodian may delay allowing examination of the record if the delay is reasonable and in good faith, to permit the requester to seek a court order under the provisions of Iowa Code section 22.8 or other applicable provision of law prohibiting public inspection of the record. The custodian shall notify the requester in writing of the deadline for obtaining such a court order. The custodian may continue to delay allowing public inspection only if no request for examination of the record has been received, if the court directs the custodian not to allow public inspection of the record, or to the extent permitted by another applicable provision of law and with the consent of the party requesting access. However, the custodian shall not withhold the record from public inspection for any period of time if the custodian determines the requester has no reasonable grounds to justify treatment of the record as confidential.

**657—14.6(22,124,155A) Procedure by which additions, dissents, or objections may be entered into certain records.** Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that person. This does not authorize a person who is

## PHARMACY EXAMINERS BOARD[657](cont'd)

a subject of such a record to alter the original copy of that record or to expand the official record of any board proceeding. A requester shall send the request to review such a record or the written statement of additions, dissents, or objections to Executive Secretary/Director, Iowa Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688. A request to review such a record or the written statement of additions, dissents, or objections to the record shall be dated and signed by the requester and shall include the current address and telephone number of the requester or the requester's representative.

**657—14.7(22,124,155A) Consent to disclosure by the subject of a confidential record.** To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure shall be in writing and shall identify the particular record or records that may be disclosed, the particular person or class of persons to whom the record may be disclosed, and any applicable time period during which the record may be disclosed. The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed shall be required to provide proof of identity. Appearance of counsel before the board on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the board to disclose records about that person to the person's attorney. This rule does not authorize the subject of a record that is confidential under Iowa Code section 272C.6(4) to consent to the release of the record.

**657—14.8(22,124,155A) Notice to suppliers of information.** When the board requests that a person supply information about that person, the board shall notify the person of the use that will be made of the information, which persons outside the board may routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of failure to provide the requested information. This notice may be given in these rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means.

**657—14.9(22,124,155A) Disclosures without the consent of the subject.**

**14.9(1)** Open records are routinely disclosed without the consent of the subject.

**14.9(2)** To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances when disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 14.10(22,124,155A) or in the notice for a particular record system.

b. To a recipient who has provided the board with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law. An authorized representative of the government agency or instrumentality shall have submitted a written request to the board specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual, provided a notice of the disclosure is transmitted to the last-known address of the subject.

e. To the legislative fiscal bureau as provided in Iowa Code section 2.52.

f. In the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

**657—14.10(22,124,155A) Routine use.** "Routine use" means the disclosure of a record without the consent of the subject or subjects, for a purpose that is compatible with the purpose for which the record was collected, and includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

To the extent allowed by law, the following uses are considered routine uses of all board records:

1. Disclosure to those officers, employees, investigators, members, and agents of the board who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer, employee, investigator, member or agent of the board, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

2. Disclosure of information that indicates an apparent violation of law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

3. Disclosure to the attorney general's office for use in performing its official function.

4. Transfers of information among board staff and members; to other state agencies, boards, and departments; to federal agencies; to agencies in other states; to the National Association of Boards of Pharmacy; or to local units of government as appropriate to carry out the board's statutory authority.

5. Information released to the staff of federal or state entities for audit purposes or for purposes of determining whether the board is lawfully operating a program.

6. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

**657—14.11(22,124,155A) Consensual disclosure of confidential records.**

**14.11(1)** Consent to disclosure by a subject individual. To the extent permitted by law, the subject may consent in writing to board disclosure of confidential records as provided in rule 14.7(22,124,155A).

**14.11(2)** Complaints to public officials. A letter from a subject of a confidential record to a public official that seeks the official's intervention on behalf of the subject in a matter involving the board may, to the extent permitted by law, be treated as an authorization to release to the official sufficient information about the subject to resolve the matter.

**657—14.12(22,124,155A) Release to subject.**

**14.12(1)** The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 14.6(22,124,155A). However, the board need not release the following records to the subject:

a. The identity of a person providing information to the board need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

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c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. See Iowa Code section 22.7(5).

d. All information in licensee complaint and investigation files maintained by the board for the purposes of licensee discipline are required to be withheld from the subject prior to the filing of formal charges and the notice of hearing in a licensee disciplinary action.

e. As otherwise authorized by law.

**14.12(2)** When a record has multiple subjects with interest in the confidentiality of the record, the board may take reasonable steps to protect confidential information relating to another subject.

**657—14.13(22,124,155A) Availability of records.**

**14.13(1)** Open records. Board records are open for public inspection and copying unless otherwise provided by rule or law.

**14.13(2)** Confidential records. The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Tax records made available to the board (Iowa Code sections 422.20 and 422.72);

b. All information in complaint and investigation files maintained by the board for purposes of licensee discipline, except that the information may be released to the licensee once a licensee disciplinary proceeding has been initiated by the filing of formal charges and a notice of hearing (Iowa Code section 272C.6(4));

c. Records of controlled substances disposed of or destroyed (Iowa Code section 124.506);

d. Criminal history or prior misconduct of an applicant for licensure (Iowa Code section 147.21(1));

e. Information relating to the contents of an examination for licensure (Iowa Code section 147.21(2));

f. Information relating to the results of an examination for licensure, other than final score, except that information about the results of an examination may be provided to the person who took the examination (Iowa Code section 147.21(3));

g. Information contained in investigative reports relating to the abuse of controlled substances (Iowa Code section 124.504);

h. Minutes of closed meetings of the board (Iowa Code section 21.5(4));

i. Records of closed-session board disciplinary hearings (Iowa Code sections 272C.6(1) and 21.5(4));

j. Information or records received from a restricted source and any other information or records made confidential by law;

k. Identifying details in final orders, decisions, and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)“d”;

l. Those portions of board staff manuals, instructions, or other statements issued by the board that set forth criteria or guidelines to be used by board staff in conducting audits, making inspections, negotiating settlements, or selecting or handling cases. This includes operational tactics or allowable tolerances or criteria for the defense, prosecution, or settlement of cases, when disclosure of these statements would:

(1) Enable law violators to avoid detection;

(2) Facilitate disregard of requirements imposed by law;

or

(3) Give a clearly improper advantage to persons who are in an adverse position to the board. (Iowa Code sections 17A.2 and 17A.3);

m. Personal information in personnel files including, but not limited to, evaluations, discipline, social security number, home address, gender, birth date, and medical and psychological evaluations;

n. Any other records made confidential by law.

**14.13(3)** Authority to release confidential records. The board may in its discretion disclose some confidential records that the board is authorized to refuse to disclose under Iowa Code section 22.7 or other discretionary provision of law. Any person may request permission to inspect such records. If the board determines that it will release such records, the board may, where appropriate, notify interested parties before releasing the records and withhold the records from inspection as provided in subrule 14.4(3).

**657—14.14(22,124,155A) Personally identifiable information.** This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the board by personal identifier in record systems as defined in rule 14.1(22,124,155A). For each record system, this rule describes the legal authority for the collection of that information and the means of storage of that information. Indication that information in a record system is stored in or on more than one media format should not be interpreted to mean that all information is stored in all such formats. Some information comprising a record may be maintained in or on one type of media while other related information is maintained in or on another. The description also indicates whether the record system contains any confidential information, and includes the legal authority for confidentiality. The record systems maintained by the board are:

**14.14(1)** Records of board disciplinary hearings. These records contain information about licensees, permit holders, and registrants who are the subject of a board disciplinary proceeding or other action. This information is collected by the board pursuant to the authority granted in Iowa Code chapters 17A, 124, 155A, and 272C and is stored electronically, in computer, and on paper. The information contained in “closed session” board hearing records is confidential in whole or in part pursuant to Iowa Code sections 21.5(4) and 272C.6(1).

**14.14(2)** Complaint reports. Complaint and investigative files maintained by the board for purposes of licensee discipline contain information about licensees, permit holders, registrants, and the persons that they serve. This information is collected by the board pursuant to the authority granted in Iowa Code chapters 124 and 155A and is stored electronically, in computer, and on paper. The information contained in these records is confidential in whole or in part pursuant to Iowa Code sections 22.7(18) and 272C.6(4).

**14.14(3)** Continuing pharmaceutical education records. These records contain educational information about pharmacists licensed by the board. This information is collected pursuant to the authority granted in Iowa Code chapter 272C and is stored on paper only.

**14.14(4)** Controlled drug samples records. These records contain information about controlled substance registrants who receive samples of controlled drugs from drug manufacturers. The records include the name, strength, and quantity of controlled drugs received by the registrant, and the identity of the manufacturer or distributor. This information is collected by the board pursuant to the authority granted in Iowa Code chapter 124 and is stored on paper.

## PHARMACY EXAMINERS BOARD[657](cont'd)

**14.14(5)** Controlled substance registration records. These records contain information about pharmacies; individual practitioners including doctors of medicine and surgery, osteopathic medicine and surgery, dentistry, veterinary medicine, podiatry, and optometry; physician assistants; advanced registered nurse practitioners; drug manufacturers, distributors, importers, and exporters; researchers; hospitals and clinics; other health care facilities such as long-term care and nursing care facilities; analytical laboratories; and teaching institutions. This information is collected by the board pursuant to the authority granted in Iowa Code chapter 124 and is stored on paper and in computer.

**14.14(6)** Controlled drug destruction reports. These records contain information about the disposal or destruction of controlled substances in the possession of registrants. The records include the name, strength, quantity, and form of all controlled substances disposed of or destroyed, and the identity of the registrant. This information is collected by the board pursuant to the authority granted in Iowa Code chapter 124 and is stored in computer and on paper. The information contained in these records is confidential pursuant to Iowa Code section 124.506.

**14.14(7)** Examination records. These records contain information about applicants for any of the following examinations: National Association of Boards of Pharmacy Licensure Examination, North American Pharmacist Licensure Examination, Multistate Pharmacy Jurisprudence Examination, Federal Drug Law Examination, and Iowa Drug Law Examination. These records may also contain information about applicants licensed or pursuing licensure by reciprocity, score transfer, or other means. This information is collected by the board pursuant to the authority granted in Iowa Code chapters 147 and 155A and is stored on paper, electronically, and in computer. The information contained in these records is confidential in part pursuant to Iowa Code sections 147.21, 22.7(1), and 22.7(19).

**14.14(8)** Pharmacist-intern records. These records contain information about pharmacist-interns and their preceptors. This information is collected by the board pursuant to the authority granted in Iowa Code section 155A.6 and is stored on paper, electronically, and in computer. The information contained in these records may be confidential in part pursuant to Iowa Code section 22.7(1).

**14.14(9)** Investigative reports. These records contain information about the subjects of board investigations and the activities of board investigators. The records include a variety of attachments such as interviews, drug audits, medical records, pharmacy records, exhibits, police reports, incident reports, and investigators' observations. This information is collected by the board pursuant to the authority granted in Iowa Code chapters 124, 126, 147, and 155A and is stored electronically, in computer, and on paper. The information contained in these records is confidential pursuant to Iowa Code sections 22.7(2), 22.7(5), 22.7(6), 22.7(9), and 22.7(19); 147.21(1); 124.504; and 272C.6(4).

**14.14(10)** Licensure records. These records contain information about pharmacists, pharmacies, and wholesalers that are licensed by the board. This information is collected by the board pursuant to the authority granted in Iowa Code chapters 126, 147, and 155A and is stored electronically, on paper, in computer, and in the state archives.

**14.14(11)** Personnel records. These records contain personal information about board members and staff. This information is stored on paper and microfiche. The personal information contained in these records may be confidential in whole or in part pursuant to Iowa Code section 22.7(11).

**14.14(12)** Nonlicensee investigation files. These records contain information about nonlicensees, nonregistrants, or non-permit holders. This information is a public record except to the extent that certain information may be exempt from disclosure under Iowa Code section 22.7 or other provision of law.

**14.14(13)** Routine inspection reports. These records contain information about pharmacies, controlled substance registrant offices, manufacturers and distributors, and wholesalers that are inspected by agents of the board to determine compliance with state and federal law. This information is collected by the board pursuant to the authority granted in Iowa Code chapters 124 and 155A and is stored on paper, in computer, and electronically.

**14.14(14)** Notifications to the board. These records contain reports of theft or loss of controlled substances; of pharmacy or drug wholesaler openings, closings, and changes of ownership, location, or responsible person; of the sale or transfer of prescription drugs including controlled substances; of disasters, accidents, or emergencies affecting drugs; and of pharmacists', pharmacist-interns', and pharmacy technicians' names, addresses, or employment changes. This information is collected by the board pursuant to the authority granted in Iowa Code sections 155A.6 and 155A.19 and is stored on paper, electronically, and in computer.

**14.14(15)** Precursor substances permit and distribution records. These records contain information about precursor substances handlers, both vendors and recipients, and information about the distribution, disposal, or destruction of precursor substances. This information is collected by the board pursuant to the authority granted in Iowa Code chapter 124B and is stored in computer and on paper.

**14.14(16)** Pharmacy technician records. These records contain information about pharmacy technicians who are registered by the board. This information is collected by the board pursuant to the authority granted in Iowa Code chapter 155A and is stored on paper and in computer.

**657—14.15(22,124,155A) Other groups of records.** This rule describes groups of records maintained by the board other than record systems as defined in rule 14.1(22,124,155A). These records are routinely available to the public and may be accessible via the Internet. The board's files of these records do not contain confidential information except where indicated. These records may contain information about individuals and include:

**14.15(1)** Board calendars, agenda, news releases, statistical reports and compilations, newsletters, publications, correspondence, and other information intended for the public. These records may contain information about individuals, including board members and staff, and are stored on paper, electronically, and in computer.

**14.15(2)** Minutes of open meetings of the board. These records contain information about people who participate in board meetings. This information is collected pursuant to Iowa Code section 21.3 and is stored electronically, in computer, and on paper, and may be accessed via the Internet.

**14.15(3)** Records of board rule-making proceedings. These records may contain information about individuals making written or oral comments on rules proposed by the board. This information is collected pursuant to Iowa Code section 17A.4 and is stored electronically, in computer, and on paper. Information may be accessible via the Internet.

**14.15(4)** Board decisions, findings of fact, final orders, advisory opinions, declaratory orders, and other statements of law or policy issued by the board in the performance of its

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function. These records are open to the public pursuant to Iowa Code section 272C.6(4), except for information that is confidential, and are stored on paper, electronically, and in computer.

**657—14.16(22,124,155A) Computer.** The board uses an in-house network of file and print servers and personal computers. This network system permits the comparison of personally identifiable information in one computerized record system with personally identifiable information in another computerized record system.

These rules are intended to implement Iowa Code section 22.11.

**ARC 1818B****PHARMACY EXAMINERS  
BOARD[657]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 147.76 and 155A.13, the Board of Pharmacy Examiners hereby gives Notice of Intended Action to rescind Chapter 20, "Pharmacy Compounding Practices," Iowa Administrative Code, and adopt a new Chapter 20 with the same title.

Pursuant to Executive Order Number 8, comments, complaints, and recommendations were solicited from members of the Board and staff, from licensees and registrants, and from members of the public. Existing rules and proposed new rules were reviewed based on need, clarity, cost, fairness, intent and statutory authority. The following amendment was approved at the June 18, 2002, regular meeting of the Board of Pharmacy Examiners.

The proposed amendment rescinds current rules and adopts new rules regulating drug compounding in pharmacy practice. The rules define compounding, establish prescription and relationship requirements essential to a pharmacist's authorization to compound drugs for patients, and identify specific circumstances under which drug compounding is prohibited. The rules establish personnel, facility, and equipment requirements and identify specialized procedures, testing, and record-keeping requirements relative to drug compounding. The rules also establish labeling and record-keeping requirements for bulk compounding.

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

Any interested person may present written comments, data, views, and arguments on the proposed amendment not later than 4:30 p.m. on September 16, 2002. Such written materials should be sent to Terry Witkowski, Administrative Assistant, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688, or by E-mail to [terry.witkowski@ibpe.state.ia.us](mailto:terry.witkowski@ibpe.state.ia.us).

This amendment is intended to implement Iowa Code sections 124.302, 124.303, 124.306, 124.308, 124.501, 126.9, 126.10, 126.18, 155A.2, 155A.28, 155A.33, and 155A.35.

The following amendment is proposed.

Rescind 657—Chapter 20 and adopt the following **new** Chapter 20 in lieu thereof:

**CHAPTER 20****PHARMACY COMPOUNDING PRACTICES**

**657—20.1(124,126,155A) Purpose and scope.** The requirements of this chapter apply to the compounding of drugs by Iowa-licensed pharmacists and pharmacies and are minimum good compounding practices for the preparation of drug products for dispensing or administering to humans or animals. Pharmacists and pharmacies engaged in the compounding of drugs shall reference USP General Chapter 1161, Pharmacy Compounding Practices, and shall comply with all applicable provisions of state and federal laws, rules, and regulations.

**657—20.2(124,126,155A) Definitions.** For the purposes of this chapter, the following definitions apply:

"Bulk drug substance" means any substance that is represented for use in a drug and that, when used in the manufacturing, processing, or packaging of a drug, becomes an active ingredient or a finished dosage form of the drug. The term does not include intermediates used in the synthesis of such substances.

"Component" means any ingredient, other than a bulk drug substance, intended for use in the compounding of a drug product, including those ingredients that may not be identifiable in the final product.

"Compounding" means preparing, mixing, assembling, packaging, and labeling a drug or device for an identified individual patient as a result of a practitioner's prescription drug order or initiative based on the prescriber/patient/pharmacist relationship in the course of professional practice or for the purpose of, or incident to, research, teaching, or chemical analysis, and not for sale or dispensing. Compounding also includes the preparation of drugs or devices in which all bulk drug substances and components are nonprescription or in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns pursuant to subrule 20.3(3). Compounding does not include mixing or reconstituting a drug according to the product's labeling or to the manufacturer's directions.

"FDA" means the Food and Drug Administration of the U.S. Department of Health and Human Services.

"Manufacturing" means the production, preparation, propagation, conversion, or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis and includes any packaging or repackaging of the substances or labeling or relabeling of the drug's or device's container. Manufacturing also includes the preparation, promotion, and marketing of commercially available products from bulk compounds for resale by pharmacists, practitioners, or other persons.

**657—20.3(124,126,155A) General requirements.**

**20.3(1) Compounding commercially available product.** Based on the existence of a pharmacist/patient/prescriber relationship and the presentation of a valid prescription, pharmacists may compound, for an individual patient, drug products that are commercially available in the marketplace, if the compounded product is changed to produce for that patient a significant difference, as authorized by the prescriber, between the compounded drug and the comparable commercially available drug product, or if use of the compounded product is in the best interest of the patient. "Significant difference" would include the removal of a dye for a medical

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reason such as an allergic reaction. When a compounded product is to be dispensed in place of a commercially available product, the prescriber and patient shall be informed that the product will be compounded.

**20.3(2) Substances and components.** Pharmacists shall receive, store, and use bulk drug substances manufactured by an establishment that is registered with the FDA under the Federal Food, Drug, and Cosmetic Act and that, if requested, will provide a valid certificate of analysis for each drug product. Certificates of analysis shall be maintained pursuant to rule 20.12(124,126,155A).

Bulk drug substances to be used in compounding drugs:

- a. When a monograph exists, shall comply with the applicable United States Pharmacopeia (USP) or National Formulary (NF) monograph and the USP chapter on pharmacy compounding; or
- b. If not subject to a monograph, shall be ingredients of drugs that the FDA has approved; or
- c. If not subject to a monograph and not ingredients of FDA-approved drugs, shall appear on the FDA list of approved bulk drug substances not subject to a monograph; or
- d. If not subject to a monograph, peer-reviewed medical literature shall support the use and, in the professional judgment of the pharmacist, demonstrate the safety and effectiveness of the substance.

**20.3(3) Prescriber/patient/pharmacist relationship.** A prescription for a compounded drug shall be authorized by the prescriber for a specific patient. Prescriptions for all products compounded at the pharmacy shall be maintained on file at the pharmacy as required by Iowa law. Pharmacists may compound drugs prior to receiving a valid prescription based on a history of receiving valid prescriptions generated solely within an established pharmacist/patient/prescriber relationship. Compounding based on a prescription history is bulk compounding and shall comply with the requirements of rule 20.11(126).

**20.3(4) Advertising and resale of compounded drug products.** The sale of compounded drug products to other pharmacies or to prescribers is considered manufacturing. Pharmacists shall not offer compounded drug products to other licensed persons or commercial entities for subsequent resale except in the course of professional practice for a practitioner to administer to an individual patient. Compounding pharmacies or pharmacists may advertise or otherwise promote the fact that they provide prescription drug compounding services. Compounding pharmacies or pharmacists shall not make a claim, assertion, or inference of professional superiority in the compounding of drug products that cannot be substantiated. All advertisements shall meet the requirements contained in 657—8.12(126,155A).

**20.3(5) Compounding prohibited.** Pharmacists shall not compound:

- a. A drug that has been identified by the FDA as withdrawn or removed from the market because the drug was found to be unsafe or ineffective.
- b. Regularly or in inordinate amounts drugs that are essentially copies of a commercially available drug product except as provided in subrule 20.3(1).
- c. Drugs that have been identified by the FDA or the board as products which may not be compounded.

**657—20.4(126,155A) Organization and personnel.**

**20.4(1) Pharmacist responsible.** As in the dispensing of all prescription drugs, the pharmacist has the responsibility and authority to inspect and approve or reject all components, bulk drug substances, drug product containers, closures, in-process materials, and labeling. The pharmacist is

also responsible for the preparation and review of all records relating to compounding to ensure that no errors have occurred in the compounding process and for the proper maintenance, cleanliness, and use of all equipment used in prescription compounding practice.

**20.4(2) Pharmacist competence.** All pharmacists engaged in compounding shall be proficient commensurate with the level of their compounding activity. Pharmacists shall maintain proficiency through current awareness and documented training. Every pharmacist who engages in drug compounding shall be aware of, familiar with, and comply with good compounding practices and all applicable state and federal laws and regulations.

**20.4(3) Pharmacy technicians.** Pharmacy technicians may assist in the compounding of drug products, but the supervising pharmacist remains responsible for all work performed by the pharmacy technician.

**20.4(4) Protective apparel.** Personnel engaged in the compounding of drug products shall wear protective apparel as necessary to protect the individuals from chemical exposure and to protect drug products from contamination.

**657—20.5(126,155A) Drug compounding facilities.** Pharmacies engaged in compounding shall have a specifically designated and adequate area for the orderly placement of equipment and materials to be used to compound drugs. Sterile and nonsterile products shall not be compounded at the same time within the same area.

**20.5(1) Component and bulk drug substance storage.** Bulk drug substances and other materials used in the compounding of drug products shall be stored in adequately labeled containers in a clean, dry area or, if required, under proper refrigeration.

**20.5(2) Facility requirements.** Adequate lighting and ventilation shall be provided in all drug compounding areas. Adequate washing facilities, easily accessible to compounding areas of the pharmacy, shall be provided. These facilities shall include, but not be limited to, a sink with hot and cold running water, soap or detergent, and air dryers or single-source towels.

**20.5(3) Facility maintenance.** All areas used for the compounding of drug products shall be maintained in a clean and sanitary condition and in a good state of repair and shall be free of infestation by insects, rodents, and other vermin. Sewage, trash, and other refuse in and from the pharmacy and immediate drug compounding areas shall be maintained and disposed of in a timely, safe, and sanitary manner.

**657—20.6(126,155A) Sterile products and radiopharmaceuticals.**

**20.6(1) Sterile products.** If sterile products are being compounded, the requirements of 657—8.30(126,155A), in addition to the requirements of this chapter, shall be met.

**20.6(2) Radiopharmaceuticals.** If radiopharmaceuticals are being compounded, the requirements of 657—Chapter 16 shall be met.

**657—20.7 Reserved.**

**657—20.8(126,155A) Equipment.** Equipment used in the compounding of drug products shall be of appropriate design and adequate size and suitably located to facilitate operations for its intended use and for its cleaning and maintenance. Equipment used in the compounding of drug products shall be of suitable composition so that surfaces that come into contact with components, in-process materials, or drug products shall not be reactive, additive, or absorptive so as to alter

## PHARMACY EXAMINERS BOARD[657](cont'd)

the safety, identity, strength, quality, or purity of the drug product beyond that desired.

**20.8(1) Equipment maintenance.** Equipment and utensils used for compounding shall be cleaned and sanitized prior to use to prevent contamination that would alter the safety, identity, strength, quality, or purity of the drug product beyond that desired. In the case of equipment, utensils, and containers or closures used in the compounding of sterile drug products, cleaning, sterilization, and maintenance procedures as set forth in 657—8.30(126,155A) shall be followed.

**20.8(2) Specialized equipment.** If drug products with special precautions to prevent contamination are involved in a compounding operation, appropriate measures, including either the dedication of equipment for such operations or the meticulous cleaning of contaminated equipment prior to its return to inventory, shall be utilized in order to prevent cross-contamination.

**20.8(3) Use of automated equipment.** Automatic, mechanical, or electronic equipment, or other types of equipment or related systems that will perform a function satisfactorily, may be used in the compounding of drug products. If such equipment is used, it shall be routinely inspected and calibrated if necessary to ensure proper performance.

**20.8(4) Equipment storage.** Equipment and utensils used for compounding drugs shall be stored in a manner to protect them from contamination.

**657—20.9(126,155A) Control of bulk drug substances, components, containers, and closures.** Drug product containers and closures shall not be reactive, additive, or absorptive so as to alter the safety, identity, strength, quality, or purity of the compounded drug beyond the desired result. Container closure systems shall provide adequate protection against foreseeable external factors in storage and use that can cause deterioration or contamination of the compounded drug product. Drug product containers and closures shall be clean and, where indicated by the intended use of the drug, sterilized and processed to remove pyrogenic properties to ensure that the containers and closures are suitable for their intended use.

**20.9(1) Storage.** Components, bulk drug substances, drug product containers, closures, and bagged or boxed parts of drug product containers and closures used in the compounding of drug products shall be handled and stored in a manner to prevent contamination and to permit inspection and unhindered cleaning of the work area, including floors. Components, bulk drug substances, drug product containers, and closures for use in the compounding of drug products shall be rotated so that the oldest stock is used first.

**20.9(2) Sterile product containers and closures.** Drug product containers and closures intended for use in the compounding of sterile products shall be handled, sterilized, and stored in compliance with the requirements of 657—8.30(126,155A). Procedures shall be written, implemented, and followed for cleaning, sterilizing, and processing drug product containers and closures to remove pyrogenic properties.

**657—20.10(124,126,155A) Drug compounding controls.** Accountability for quality control is the responsibility of the compounding pharmacist.

**20.10(1) Procedures required.** Procedures for the compounding of drug products shall be written, implemented, and followed to ensure the safety, identity, strength, quality, and purity of the finished product. Such procedures shall include a listing of the bulk drug substances and components,

their amounts in weight or volume, the order of bulk drug substance and component addition, and a description of the compounding processes. All equipment, utensils, and the container closure system relevant to the sterility and stability of the intended use of the compounded drug product shall be listed as necessary.

**20.10(2) Accuracy.** Components and bulk drug substances used in the compounding of drug products shall be accurately weighed, measured, or subdivided as appropriate. These operations shall be verified at each stage of the process to ensure that each weight or measure is correct as stated in the written compounding procedures. If a component or bulk drug substance is removed from the original container and stored in another container, the new container shall be identified with the name and lot number of the component or bulk drug substance.

**20.10(3) Record.** A production record shall be prepared and kept for each drug product compounded for an individual patient. The record shall include the following information:

- a. Production date;
- b. List of ingredients and quantity of each ingredient used;
- c. Initials of each person involved in each of the compounding steps;
- d. Initials of each pharmacist supervising each of the compounding steps;
- e. Internal control or prescription number.

**20.10(4) Product testing and examination.** To ensure the reasonable uniformity and integrity of compounded drug products, written procedures shall be established, implemented, and followed that describe the tests or examinations to be conducted on the product being compounded to monitor the output and to validate the performance of compounding processes that may be responsible for causing variability in the final drug product. Control procedures shall include, but are not limited to, the following as appropriate:

- a. Capsule weight variation;
- b. Adequacy of mixing to ensure uniformity and homogeneity;
- c. Clarity, completeness, or pH of solutions.

**20.10(5) Sterilization.** Appropriate written procedures designed to prevent microbiological contamination of compounded drug products purported to be sterile, including validation of any sterilization process, shall be established and followed.

**20.10(6) Labeling—expiration date.** When applicable, the compounded product shall be labeled with an expiration date based on published data. When such data is unavailable, expiration dating shall be based on professional judgment or appropriate testing.

**20.10(7) Labeling and control of excess products.** When a quantity of a compounded drug product is prepared in excess of that to be initially dispensed, the excess product shall be labeled, stored, and accounted for pursuant to rule 20.11(126).

**657—20.11(126) Bulk compounding.**

**20.11(1) Master formula record.** Pursuant to the provisions of subrule 20.3(3), pharmacies may compound drugs in bulk quantities for subsequent prescription labeling and dispensing. For each drug product compounded in bulk quantity, a master formula record containing the following information shall be prepared:

- a. Name of the product;
- b. Specimen or copy of label;
- c. List of ingredients and quantities;

PHARMACY EXAMINERS BOARD[657](cont'd)

- d. Description of container used;
- e. Compounding instructions, procedures and specifications.

20.11(2) Production record. For each batch of drug product compounded, a production record containing the following information shall be prepared and maintained:

- a. The information from the master formula record;
- b. Records of each step in the compounding process including:
  - (1) Preparation date;
  - (2) Identification of ingredients (including lot numbers);
  - (3) Quantities of ingredients used;
  - (4) Initials of person completing each step;
  - (5) Initials of pharmacist supervising each step;
- c. Expiration date;
- d. Internal control number;
- e. Total yield.

20.11(3) Label information. For each batch of drug product compounded, labels containing the following information shall be prepared and affixed to each container:

- a. Drug product name or formula;
- b. Dosage form;
- c. Strength;
- d. Quantity per container;
- e. Internal control number;
- f. Expiration date.

657—20.12(124,126,155A) Records. All records required by this chapter shall be retained as the original records and shall be readily available at the pharmacy for inspection and photocopying by agents of the board or other authorized authorities for at least two years following the date of the record.

These rules are intended to implement Iowa Code sections 124.302, 124.303, 124.306, 124.308, 124.501, 126.9, 126.10, 126.18, 155A.2, 155A.28, 155A.33, and 155A.35.

ARC 1817B

PHARMACY EXAMINERS BOARD[657]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 17A.7, the Board of Pharmacy Examiners hereby gives Notice of Intended Action to rescind Chapter 26, "Petitions for Rule Making," Iowa Administrative Code, and adopt a new Chapter 26 with the same title.

Pursuant to Executive Order Number 8, comments, complaints, and recommendations were solicited from members of the Board and staff, from licensees and registrants, and from members of the public. Existing rules and proposed new rules were reviewed based on need, clarity, cost, fairness, intent and statutory authority. The following amendment was approved at the June 18, 2002, regular meeting of the Board of Pharmacy Examiners.

The amendment rescinds current rules and references to Uniform Rules on Agency Procedure and adopts new rules establishing procedures for filing a petition for rule making

with the Board. The rules define the form to be used in filing a petition and establish rights and responsibilities of the petitioner and the Board regarding a petition for rule making.

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

Any interested person may present written comments, data, views, and arguments on the proposed amendment not later than 4:30 p.m. on September 16, 2002. Such written materials should be sent to Terry Witkowski, Administrative Assistant, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688, or by E-mail to [terry.witkowski@ibpe.state.ia.us](mailto:terry.witkowski@ibpe.state.ia.us).

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

The following amendment is proposed.

Rescind 657—Chapter 26 and adopt the following new Chapter 26 in lieu thereof:

CHAPTER 26 PETITIONS FOR RULE MAKING

657—26.1(17A) Petition for rule making. Any person, association, agency, or political subdivision may file a petition for rule making with the board at 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688. A petition is deemed filed when received by that office. The board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be typewritten, machine printed, or legibly handwritten in ink and must substantially conform to the following form:

BOARD OF PHARMACY EXAMINERS

Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject matter).	}	PETITION FOR RULE MAKING
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The petition shall include the following information:

1. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.
2. A citation to any law deemed relevant to the board's authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner's arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by or interested in, the proposed action which is the subject of the petition.
6. Any request by petitioner for a meeting provided for by rule 26.4(17A).
7. Original signature of petitioner and date signed.

657—26.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The

## PHARMACY EXAMINERS BOARD[657](cont'd)

board may request a brief from the petitioner or from any other person concerning the substance of the petition.

**657—26.3(17A) Inquiries.** Inquiries concerning the status of a petition for rule making may be made to Executive Secretary/Director, Iowa Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688, or via electronic mail to [lloyd.jessen@ibpe.state.ia.us](mailto:lloyd.jessen@ibpe.state.ia.us).

**657—26.4(17A) Board consideration.**

**26.4(1) Initial activities.** Within 14 days after the filing of a petition, the board shall submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by petitioner in the petition, the board shall schedule a brief and informal meeting between the petitioner and the board, a member of the board, or a member of the staff of the board to discuss the petition. The board may request that the petitioner submit additional information or argument concerning the petition. The board may also solicit comments from any person on the substance of the petition. Any person may submit to the board comments on the substance of the petition.

**26.4(2) Decision issued.** Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the board shall, in writing, deny the petition, and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the board mails or delivers the required notification to petitioner.

**26.4(3) Denial for nonconformity.** Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the board's rejection of the original petition.

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

**ARC 1816B****PHARMACY EXAMINERS  
BOARD[657]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 30, "Impaired Pharmacy Professional and Technician Recovery Program," Iowa Administrative Code.

Pursuant to Executive Order Number 8, comments, complaints, and recommendations were solicited from members of the Board and staff, from licensees and registrants, and from members of the public. Existing rules and proposed new rules were reviewed based on need, clarity, cost, fairness, intent and statutory authority. The following amendments were approved at the June 18, 2002, regular meeting of the Board of Pharmacy Examiners.

The proposed amendments provide for certain communications to the Board via electronic mail and limit notifications of imminent danger to telephone or in-person communication. Various definitions have been amended to clarify the defined terms. Language in other rules is amended to clarify the intent of the rules. Program committee membership is amended to include a recovery professional, and quarterly reports to the Board are to include the date of last contact and a summary of the last communication with each program participant.

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

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on September 16, 2002. Such written materials should be sent to Terry Witkowski, Administrative Assistant, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688, or by E-mail to [terry.witkowski@ibpe.state.ia.us](mailto:terry.witkowski@ibpe.state.ia.us).

These amendments are intended to implement Iowa Code section 155A.39.

The following amendments are proposed.

ITEM 1. Amend rule **657—30.1(155A)**, definitions of "association," "impairment," and "self-report," as follows:

"Association" means a professional pharmaceutical organization, association, or society whose membership consists of Iowa pharmacy professionals or pharmacy technicians.

"Impairment" means the inability of a *pharmacy professional* to practice pharmacy or of a *pharmacy technician* to perform related technical functions with reasonable safety and skill as a result of alcohol or drug abuse, dependency, or addiction, or any neuropsychological or physical disorder or disability.

"Self-report" means the ~~pharmacy professional's or pharmacy technician's providing~~ written, *electronic*, or oral notification to the board or a program provider *by the professional or technician, prior to the board's receipt of a complaint or report from a second party*, that the professional or technician has been or may be diagnosed as having an impairment ~~prior to the board's receiving a complaint or report alleging the same from a second party. A report may be completely self-motivated or may be the result of an interaction with or intervention by another individual and may include acts of poor judgment that need not indicate an impairment or addiction problem but that create a need for medical review and evaluation by appropriate persons.~~ "Self-report" includes those situations where the professional or technician reports diversion or misappropriation of a prescription drug or device for the individual's personal use without proper medical authorization.

ITEM 2. Amend rule 657—30.2(155A) as follows:

**657—30.2(155A) Purpose, function, and responsibilities.**

The board is entrusted with the responsibility to protect the public health and safety through the effective regulation of professionals and technicians engaged in the practice of pharmacy in Iowa. The impaired pharmacy professional and technician recovery program is established to evaluate, assist, and monitor the recovery or rehabilitation of ~~pharmacy professionals and pharmacy technicians~~ whose alcohol or chemical dependency or mental or physical disability is potentially threatening *to the individual*, to the public safety, ~~and~~ *to the performance of their the individual's duties.*

**30.2(1)** Assistance to ~~pharmacy professionals or pharmacy technicians~~. The program assists impaired professionals

## PHARMACY EXAMINERS BOARD[657](cont'd)

and technicians in obtaining evaluation, treatment, aftercare, and support from the profession needed to maintain personal and professional integrity.

**30.2(2)** Assistance to the board. The program assists the board in monitoring the activities and professional conduct of impaired professionals and technicians to maintain their integrity and professional standing within the profession of pharmacy.

ITEM 3. Amend rule 657—30.3(155A), introductory paragraph and numbered paragraphs “1” to “6,” as follows:

**657—30.3(155A) Program committee and personnel; confidentiality; liability.** Activities of program personnel shall be coordinated through the program committee. The committee shall include, but need not be limited to, the following members:

1. One currently licensed Iowa pharmacist;
2. One representative from Drake University College of Pharmacy and Health Sciences;
3. One representative from the University of Iowa College of Pharmacy;
4. *One recovery professional;*
- 4 5. The executive secretary/director of the board or the director's designee;
- 5 6. One representative from the ~~association~~ *program provider.*

ITEM 4. Amend subrule 30.3(2) as follows:

**30.3(2)** Proceedings and records confidential. Records and proceedings of the committee and program personnel reports shall be privileged and confidential, shall not be considered public or open records, and shall not be subject to a subpoena or to a discovery proceeding. Such records and proceedings shall not be disclosed unless the affected professional or technician so requests or as otherwise provided in rule 657—30.7(155A).

ITEM 5. Amend subrule 30.3(4) as follows:

**30.3(4)** Program security. A program provider shall take appropriate steps and shall implement procedures sufficient to ensure the confidentiality of records in the possession of the provider's personnel and the committee. Such security procedures shall include limiting to essential ~~named~~ *identified* personnel access to confidential program information, data, and personally identifiable records.

ITEM 6. Amend rule 657—30.4(155A) as follows:

**657—30.4(155A) Identification and referral of impaired pharmacy professionals and pharmacy technicians.** A professional or technician may self-report an impairment by contacting the board or a program provider. ~~Alternatively, a~~ A pharmaceutical peer review committee, a committee of an association, a member of the staff of a college of pharmacy, or any other concerned party may contact a program provider or the board if the reporting person or committee has knowledge ~~which that~~, in the opinion of the reporter, might affect the professional's or technician's competency due to impairment, or ~~which that~~ might endanger the public health and safety *or the safety of the subject, or which that* provides grounds for disciplinary action.

**30.4(1)** Board referral of self-reporting professional or technician. The board may refer a self-reporting professional or technician to the committee for evaluation and assistance. ~~If the~~ *The board shall not disclose to the public the identity of a self-reporting professional or technician or any information regarding the individual's impairment if:*

*a. The individual was not involved in the distribution of controlled substances or legend drugs to other individuals, and the self-reporting professional or technician*

*b. The individual agrees to participate in the impairment program, including executing a recovery contract and abiding by the terms of that contract, the board shall not disclose to the public the identity of the self-reporting professional or technician and shall not disclose to the public information regarding the professional's or technician's impairment.*

**30.4(2)** Board referral of other impaired pharmacy professionals or technicians. The board may refer to the committee any professional or technician the board has determined to be in need of assistance or support in recovering from the professional's or technician's addiction or impairment. A referral to the committee may be included in the terms of a board order resulting from a contested case hearing, ~~it may be included~~ in the terms of a settlement agreement between the board and the professional or technician, or it may be a recommendation of the board to the professional or technician.

ITEM 7. Amend subrule 30.5(2) as follows:

**30.5(2)** Noncompliance. The recovery contract shall identify acts and omissions ~~which that~~ shall constitute non-compliance with the terms of the contract and shall include the resultant actions of the committee in the event of such noncompliance.

ITEM 8. Amend subrule 30.5(3) as follows:

**30.5(3)** Practice restrictions. The recovery contract shall identify restrictions, if any, placed on the professional's or technician's activities regarding the practice of pharmacy and the duration of such restrictions. If the professional or technician is prohibited from practicing pharmacy *or assisting in the practice of pharmacy* during any period of the recovery contract and is subsequently deemed to be competent to return to the practice of pharmacy, ~~there shall be prepared and executed a~~ *“back-to-work agreement” shall be prepared and executed, and which* shall become an addendum to the original program recovery contract. Any restrictions placed on the professional's or technician's practice activities shall be communicated by the professional or technician to the professional's or technician's employer who shall acknowledge receipt of and agreement with those restrictions within 15 days of the execution of the recovery contract or the recovery contract addendum.

ITEM 9. Amend rule 657—30.6(155A), introductory paragraph, as follows:

**657—30.6(155A) Program provider contract.** The board may contract with one or more associations to provide a recovery program for impaired pharmacy professionals and technicians. ~~Such programs~~ *Programs* shall include, but not be limited to, education, intervention, and posttreatment monitoring. The contract shall provide for payment by the board to the program for expenses incurred in the management and operation of the program but shall not include payment for costs incurred for a participant's ~~initial~~ *initial* evaluation, referral services, treatment, or rehabilitation ~~subsequent to~~ *intervention*. Detailed claims for program expenses shall be submitted to the executive secretary/director or director's designee not less than annually nor more frequently than monthly. ~~A contract shall be renewable on an annual basis.~~

ITEM 10. Amend subrule 30.6(2) as follows:

**30.6(2)** Quarterly reporting. An association contracting with the board pursuant to this rule shall prepare the following reports on a quarterly basis:

## PHARMACY EXAMINERS BOARD[657](cont'd)

a. A confidential written report to the board regarding each participant's diagnosis, prognosis, and recommendations for continuing care, treatment, and supervision. *The report shall include the date of last contact and a summary of the last communication with each participant. Participants shall be identified by case A case number shall be used to identify each participant,* and the report shall be written so as to maintain the anonymity of the participant.

b. A confidential written report to the executive secretary/director or the director's designee regarding each participant's diagnosis, prognosis, and recommendations for continuing care, treatment, and supervision. Participants shall be identified by name. Board staff access to such confidential information, data, and personally identifiable information shall be limited to essential ~~named~~ identified personnel.

ITEM 11. Amend subrule 30.6(3) as follows:

**30.6(3)** Notification of initial contact. An association contracting with the board pursuant to this rule shall, within 72 hours of receiving information identifying a professional or technician believed to be impaired, notify the executive secretary/director or the director's designee of the program's involvement with the individual. This notification shall identify the individual involved and, if known, the suspected impairment. Notification may be transmitted via telephone, facsimile, *electronic mail*, or in person.

ITEM 12. Amend subrule 30.6(4) as follows:

**30.6(4)** Notification of noncompliance or refusal to participate. An association contracting with the board pursuant to this rule shall report to the board the name of a professional or technician who refuses to cooperate with the program, who refuses to submit to treatment, or whose impairment is not substantially alleviated through intervention and treatment. ~~Such notification~~ Notification shall be in writing, shall identify the individual by name, shall include information regarding the alleged impairment, and shall be submitted to the board within 14 days *of knowledge by program personnel* of the individual's failure or refusal to participate.

ITEM 13. Amend subrule 30.6(5) as follows:

**30.6(5)** Notification of imminent danger. An association contracting with the board pursuant to this rule shall report, within 72 hours, the name of an impaired professional or technician whom the committee or monitor believes to be an imminent danger to either the public or the professional or technician. Notification may be transmitted via telephone, facsimile, or in person.

ITEM 14. Amend subrule 30.6(6) as follows:

**30.6(6)** Notification of illegal drug distribution to others. An association contracting with the board pursuant to this rule shall report, within 72 hours, the name of an impaired professional or technician where information regarding the professional's or technician's activities discloses known illegal distribution of controlled substances or legend drugs to other individuals. Notification may be transmitted via telephone, facsimile, *electronic mail*, or in person. Within 10 days of this notification, all records of the participant in the possession of the program and all information regarding the illegal drug distribution shall be delivered to the executive secretary/director or the director's designee.

ITEM 15. Amend subrule 30.7(4) as follows:

**30.7(4)** Practice limitations. ~~The Nothing herein shall prohibit the board may disclose that the from releasing public information regarding the suspension, revocation, cancellation, restriction, or retirement of the license or registra-~~

~~tion of a participant. is suspended, revoked, canceled, restricted, or retired; or that the participant is in any manner otherwise limited in the Public information may include limitations imposed on the participant's ability to practice of pharmacy; or to assist in the practice of pharmacy and other relevant information pertaining to the participant which that the board deems appropriate and disclosure of which is not otherwise prohibited by law.~~

ITEM 16. Amend rule 657—30.8(155A) as follows:

**657—30.8(155A) Program funds.** The board shall assess a surcharge of 10 percent to a pharmacist license fee, a pharmacist license renewal fee, a pharmacist-intern registration fee, a pharmacy technician registration fee, and a pharmacy technician registration renewal fee to fund programs under this chapter. The board may also accept funds made available by the federal or state government or by another public or private source to be used for such programs. Surcharges and funds collected pursuant to this rule shall be delivered to the state treasurer, shall be deposited in a fund separate from the state general fund, and shall be used exclusively to administer programs under this chapter. Expenses ~~which that~~ may be paid from this fund include costs associated with the provision of education, intervention, posttreatment monitoring for program participants, and administrative costs incurred by the board, but shall not include costs incurred for a participant's ~~initial evaluation, referral services, treatment, or rehabilitation subsequent to intervention.~~

## ARC 1823B

PHARMACY EXAMINERS  
BOARD[657]

## Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 35, "Contested Cases," Iowa Administrative Code.

Pursuant to Executive Order Number 8, comments, complaints, and recommendations were solicited from members of the Board and staff, from licensees and registrants, and from members of the public. Existing rules and proposed new rules were reviewed based on need, clarity, cost, fairness, intent and statutory authority. The following amendments were approved at the June 18, 2002, regular meeting of the Board of Pharmacy Examiners.

The proposed amendments add the definition of "board" and amend the definition of "proposed decision." Other amendments delete duplicative references and requirements, amend language to clarify the intent of the rules, and add catchwords to subrules to facilitate identification of the subject of the subrule. New rule 35.25(17A) defines a final decision of the Board depending upon who acts as presiding officer at a contested case hearing.

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

## PHARMACY EXAMINERS BOARD[657](cont'd)

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on September 16, 2002. Such written materials should be sent to Terry Witkowski, Administrative Assistant, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688, or by E-mail to [terry.witkowski@ibpe.state.ia.us](mailto:terry.witkowski@ibpe.state.ia.us).

These amendments are intended to implement Iowa Code sections 17A.10 to 17A.23, 124.304, 124B.12, 126.17, 147.96, 155A.6, 155A.12, 155A.13A, 155A.15 to 155A.18, 155A.26, 205.11, 272C.3 to 272C.6, 272C.9, and 272C.10.

The following amendments are proposed.

ITEM 1. Amend rule **657—35.2(17A,272C)** by adopting the definition of “board” and amending the definition of “proposed decision” as follows:

“Board” means the Iowa board of pharmacy examiners.

“Proposed decision” means the presiding officer’s recommended findings of fact, conclusions of law, decision, and order in a contested case in which the board of pharmacy examiners did not preside. ~~or, if~~ If the contested case involves licensee or registrant discipline, “proposed decision” means the decision of the panel of the board when the hearing is held before a panel of the board rather than the full board.

ITEM 2. Amend rule 657—35.3(17A) as follows:

**657—35.3(17A) Time requirements.**

**35.3(1) Computation.** Time shall be computed as provided in Iowa Code subsection 4.1(34).

**35.3(2) Changing time to take action.** For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute or by rule. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

ITEM 3. Amend subrule **35.5(2)**, paragraph “i,” as follows:

i. Notification of the time period in which a party may request, pursuant to ~~1998 Iowa Acts, chapter 1202, section 15(4) Iowa Code section 17A.11,~~ and rule 657—35.6(17A, 272C), that the presiding officer be an administrative law judge.

ITEM 4. Amend rule 657—35.6(17A,272C) as follows:

**657—35.6(17A,272C) Presiding officer for nondisciplinary hearings.**

**35.6(1) Request for administrative law judge.** Any party ~~who wishes to may request that the presiding officer an administrative law judge employed by the department of inspections and appeals be assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request in a nondisciplinary hearing. The written request shall be filed with the executive secretary/director within 20 days after service of a notice of hearing which identifies or describes identifying or describing the presiding officer as the members of the board of pharmacy examiners.~~

**35.6(2) Grounds for denial.** The executive secretary/director may deny the request only upon a finding that one or more of the following apply:

a. Neither the board nor any member of the board of ~~pharmacy examiners~~, under whose authority the contested case is to take place, is a named party to the proceeding or a real party in interest to that proceeding.

b. to h. No change.

**35.6(3) Written ruling.** The executive secretary/director shall issue a written ruling specifying the grounds for the decision within 20 days after a request for an administrative law judge is filed.

**35.6(4) Appeals to board.** Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the board. A party shall seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

**35.6(5) Review of proposed decision.** Unless otherwise provided by law, members of the board of ~~pharmacy examiners~~, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

ITEM 5. Amend rule 657—35.8(17A,272C) as follows:

**657—35.8(17A,272C) Telephone or network proceedings.**

The presiding officer may resolve preliminary procedural motions by telephone conference *or by a conference on the Iowa Communications Network (ICN)* in which all parties have an opportunity to participate. Other telephone *or network proceedings, including the hearing for the contested case proceeding*, may be held ~~with the consent of all parties when appropriate under the circumstances~~. The presiding officer will determine the location of the parties and witnesses for telephone *or network* hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

ITEM 6. Amend subrule 35.9(1), introductory paragraph, as follows:

**35.9(1) Reasons for withdrawal from participation.** A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

ITEM 7. Amend subrule 35.9(2) as follows:

**35.9(2) “Personally investigated” defined.** The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other board functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrules 35.9(3) and 35.22(9).

ITEM 8. Amend subrule 35.9(3) as follows:

**35.9(3) Determination that withdrawal is not necessary.** In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit *by affidavit for the record* the relevant information ~~for the record by affidavit~~ and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

ITEM 9. Amend subrule 35.9(4) as follows:

**35.9(4) Motion for disqualification.** If a party asserts disqualification on any appropriate ground, including those

## PHARMACY EXAMINERS BOARD[657](cont'd)

listed in subrule 35.9(1), the party shall file a motion supported by an affidavit pursuant to ~~1998 Iowa Acts, chapter 1202, section 19(7)~~ *Iowa Code section 17A.17*. The motion shall be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 657—35.24(17A) and seek a stay under rule 657—35.28(17A,272C).

ITEM 10. Amend subrule 35.11(1) as follows:

**35.11(1)** ~~When service~~ *Service—when* required. Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the board, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

ITEM 11. Amend subrule 35.11(4) as follows:

**35.11(4)** Filing—when made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board of ~~pharmacy examiners~~, delivered to an established courier service for immediate delivery to ~~that~~ *the board* office, or mailed by first-class mail or state interoffice mail to ~~that the board~~ office, so long as there is proof of mailing.

ITEM 12. Amend rule 657—35.12(17A,272C) as follows:

**657—35.12(17A,272C) Discovery.**

**35.12(1)** *Procedures.* Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

**35.12(2)** *Motions.* Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. ~~Motions~~ *The presiding officer shall rule on motions* in regard to discovery ~~shall be ruled upon by the presiding officer.~~ Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 35.12(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

**35.12(3)** *Admissibility of evidence.* Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

ITEM 13. Amend subrule 35.13(1), paragraph “f,” as follows:

f. A person aggrieved by a ruling of an administrative law judge who desires to challenge the ruling ~~must~~ *shall* appeal the ruling to the board in accordance with the procedure

applicable to intra-agency appeals of proposed decisions set forth in rule 657—35.26(17A,124B,126,147,155A,205,272C), provided that all of the time frames are reduced by one-half.

ITEM 14. Amend subrule 35.13(2), paragraph “a,” as follows:

a. Subpoenas issued in a contested case may compel the attendance of witnesses at depositions or hearing, and may compel the production of books, papers, records, and other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at deposition or hearing, or may be issued separately. ~~Subpoenas shall be issued by~~ *Upon written request*, the executive secretary/director or designee ~~upon written request shall issue subpoenas.~~ A request for a subpoena of patient records must confirm the conditions described in subrule 35.13(1), paragraph “a,” prior to the issuance of the subpoena.

ITEM 15. Amend subrule 35.13(2), paragraph “g,” as follows:

g. A person aggrieved by a ruling of an administrative law judge who desires to challenge the ruling shall appeal the ruling to the board in accordance with the procedure applicable to intra-agency appeals of proposed decisions set forth in rule 657—35.26(17A,124B,126,147,155A,205,272C), provided that all of the time frames are reduced by one-half.

ITEM 16. Amend rule 657—35.14(17A,272C) as follows:

**657—35.14(17A,272C) Motions.**

**35.14(1)** *Form.* No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

**35.14(2)** *Timely response.* Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the board or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

**35.14(3)** *Oral argument.* The presiding officer may schedule oral argument on any motion.

**35.14(4)** *Timely filing.* Motions pertaining to the hearing, except motions for summary judgment, ~~must~~ *shall* be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the board or an order of the presiding officer.

ITEM 17. Amend rule 657—35.15(17A,272C) as follows:

**657—35.15(17A,272C) Prehearing conference.**

**35.15(1)** *Request or order for conference.* Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer’s own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the executive secretary/director to all parties. For good cause the presiding officer may permit variances from this rule.

**35.15(2)** *Witness and exhibit lists.* Each party shall bring to the prehearing conference:

a. No change.

## PHARMACY EXAMINERS BOARD[657](cont'd)

b. A final list of exhibits ~~which~~ *that* the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

c. No change.

**35.15(3) Effect of conference.** In addition to the requirements of subrule 35.15(2), the parties at a prehearing conference may:

- a. Enter into stipulations of law or fact;
- b. Enter into stipulations on the admissibility of exhibits;
- c. Identify matters ~~which~~ *that* the parties intend to request be officially noticed;
- d. Enter into stipulations for waiver of any provision of law; and
- e. Consider any additional matters ~~which~~ *that* will expedite the hearing.

**35.15(4) Conducted by telephone.** Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a ~~telephone~~ prehearing conference.

ITEM 18. Amend subrule 35.16(1), introductory paragraph, as follows:

**35.16(1) Requirements of application.** A written application for a continuance shall:

ITEM 19. Amend subrule 35.16(2), introductory paragraph, as follows:

**35.16(2) Consideration of application.** In determining whether to grant a continuance, the presiding officer, or in a disciplinary hearing the executive secretary/director, may consider:

ITEM 20. Amend rule 657—35.19(17A,124B,126,147,155A,205,272C) as follows:

**657—35.19(17A,124B,126,147,155A,205,272C) Hearing procedures in contested cases.**

**35.19(1) Presiding officer.** The presiding officer presides at the hearing and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

**35.19(2) Objections.** All objections shall be timely made and stated on the record.

**35.19(3) Right of participation or representation.** Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. ~~Any party may be represented by an~~ An attorney or another person authorized by law may represent any party.

**35.19(4) Rights of all parties.** Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

**35.19(5) Disorderly conduct.** The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

**35.19(6) Sequestering witnesses.** Witnesses may be sequestered during the hearing.

**35.19(7) Conduct of hearing.** The presiding officer shall conduct the hearing in the following manner:

- a. to e. No change.

**35.19(8) Administrative law judge.** A license ~~discipline~~ *disciplinary* hearing shall be conducted by a qualified administrative law judge and *either* a quorum of the board or a panel of not less than three pharmacist members *of the board*. The administrative law judge's duties shall include:

a. to h. No change.

**35.19(9) Written decision.** In a license disciplinary hearing, the administrative law judge shall prepare in writing the proposed decision of the panel or the final decision of the board, as applicable. Such decisions shall:

a. to d. No change.

**35.19(10) Hearings open to the public.** License, permit, or registration disciplinary hearings shall be open to the public except as provided in Iowa Code section 272C.6 and Iowa Code chapter 21.

**35.19(11) Decisions available for public inspection.** Copies of all decisions of the ~~pharmacy~~ board shall be kept on file for public inspection at the office of the board ~~as per conditions set out in~~ pursuant to 657—Chapter 14.

**35.19(12) Proceedings recorded.** Oral proceedings in connection with a hearing in a contested case shall be recorded either by mechanized means or by certified shorthand reporters. These records shall be kept in the board office for a period of five years following the date of the hearing.

**35.19(13) Board chairperson.** The chairperson of the board shall have the right to vote in all administrative hearings.

**35.19(14) Final decision.** When a quorum of the board presides over the reception of the evidence at the hearing, its decision is a final decision.

ITEM 21. Amend rule 657—35.20(17A,272C) as follows:

**657—35.20(17A,272C) Evidence.**

**35.20(1) Ruling on admissibility.** The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

**35.20(2) Stipulation.** Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

**35.20(3) Issues limited.** Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

**35.20(4) Admissible evidence.** Irrelevant, immaterial, and unduly repetitious evidence should be excluded. A finding will be based upon the kind of evidence upon which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial.

**35.20(5) Exhibits.** The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

**35.20(6) Objection.** Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. ~~Such an objection shall be accompa-~~

## PHARMACY EXAMINERS BOARD[657](cont'd)

nied by a A brief statement of the grounds upon which it is based shall accompany the objection. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

**35.20(7) Offer of proof.** Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

~~**35.20(8)** Subject to the above requirements, when a hearing will be expedited and the interest of the patients will not be prejudiced substantially, any part of the evidence may be required to be submitted in verified written form.~~

~~**35.20(9)** Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Accurate copies of the document offered at the hearing shall be furnished to those members of the board sitting at the hearing and to opposing parties.~~

ITEM 22. Amend rule 657—35.21(17A,272C) as follows:

**657—35.21(17A,272C) Default.**

**35.21(1) Failure to appear.** If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

**35.21(2) Motion for default.** Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

~~**35.21(3) Motion to vacate.** Default decisions or decisions A default decision or a decision rendered on the merits after a party has failed to appear or participate in a contested case proceeding shall become final board action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or unless an appeal of a decision on the merits is timely initiated within the time provided by rule 657—35.26(17A,124B,126, 147,155A,205,272C). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.~~

**35.21(4) Appeal.** The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

**35.21(5) Proof of good cause.** Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion if a request to do so is included in that party's response.

**35.21(6) "Good cause" defined.** "Good cause," for purposes of this rule, shall have the same meaning as "good

cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 236.

**35.21(7) Appeal of decision on motion to vacate.** A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 657—35.24(17A,272C).

**35.21(8) Notice of hearing.** If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

**35.21(9) Default decision.** A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues but, unless the defaulting party has appeared, it cannot exceed the relief demanded.

**35.21(10) Default decision effective.** A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 657—35.28(17A,272C).

ITEM 23. Amend subrule 35.22(2) as follows:

**35.22(2) Duration of prohibition.** Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

ITEM 24. Amend subrule 35.22(3) as follows:

**35.22(3) "Ex parte" defined.** Written, oral, or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

ITEM 25. Amend subrule 35.22(4) as follows:

**35.22(4) Authorized communications.** To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 657—35.11(17A,272C) and may be supplemented by telephone, facsimile, electronic mail, or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

ITEM 26. Amend subrule 35.22(5) as follows:

**35.22(5) Communications between presiding officers.** Persons who jointly act as presiding officers in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

ITEM 27. Amend subrule 35.22(6) as follows:

**35.22(6) Others authorized to communicate with presiding officer.** The executive secretary/director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 35.22(1).

ITEM 28. Amend subrule 35.22(7) as follows:

**35.22(7) Communications not prohibited.** Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 657—35.16(17A,272C).

## PHARMACY EXAMINERS BOARD[657](cont'd)

ITEM 29. Amend subrule 35.22(8) as follows:

**35.22(8)** Disclosure of prohibited communications *received during pendency of case*. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified.

a. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order.

b. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties.

c. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

ITEM 30. Amend subrule 35.22(9) as follows:

**35.22(9)** *Disclosure of prohibited communications received prior to assignment as presiding officer*. Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

ITEM 31. Amend subrule 35.22(10) as follows:

**35.22(10)** *Sanctions for violation*. The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule, including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the board. Violation of ex parte communication prohibitions by board personnel shall be reported to the executive secretary/director for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

ITEM 32. Amend rule 657—35.23(17A,272C) as follows:

**657—35.23(17A,272C)** *Recording costs*. Upon request, the board of pharmacy examiners shall provide a copy of the whole or any portion of the record at cost. The *requesting party shall pay the cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party*. Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation unless otherwise provided by law.

ITEM 33. Adopt new rule 657—35.25(17A) as follows:

**657—35.25(17A)** *Final decision*.

**35.25(1)** Presiding officer—board. When a quorum of the board presides over the reception of evidence at the hearing, the board's decision is a final decision.

**35.25(2)** Presiding officer—not the board. When the board does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the board without further proceedings unless there is an appeal to, or review on motion of, the board within the time provided in rule 35.26(17A,124B,126,147,155A,205,272C).

ITEM 34. Amend subrule 35.26(3), introductory paragraph, as follows:

**35.26(3)** Notice of appeal. An appeal of a proposed decision is initiated by filing a timely notice of appeal with the board of pharmacy examiners. *The appealing party or a representative of that party shall sign the notice of appeal must be signed by the appealing party or a representative of that party and contain and shall include a certificate of service.* The notice shall specify:

ITEM 35. Amend subrule 35.28(3) as follows:

**35.28(3)** Vacation. ~~A stay may be vacated by the~~ *The* issuing authority *may vacate a stay* upon application of the board or any other party.

ITEM 36. Amend subrule **35.30(1)**, paragraph "b," as follows:

b. Whether the specific circumstances ~~which~~ *that* pose immediate danger to the public health, safety, or welfare have been identified and determined to be continuing;

ITEM 37. Amend subrule **35.30(4)**, first unnumbered paragraph, as follows:

Issuance of a written emergency adjudicative order shall include notification of the date on which board proceedings are scheduled for ~~completion~~ *hearing*. After issuance of an emergency adjudicative order, continuance of further board proceedings to a later date will be granted only in compelling circumstances upon application in writing.

ITEM 38. Amend **657—Chapter 35**, implementation clause, as follows:

These rules are intended to implement Iowa Code sections 17A.10 to 17A.23, as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code sections 124.304, 124B.12, 126.17, 147.96, 155A.6, 155A.12, 155A.13A, 155A.15 to 155A.18, 155A.26, 205.11, 272C.3 to 272C.6, 272C.9, and 272C.10.

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**PHARMACY EXAMINERS  
BOARD[657]**

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 147.76, 272C.5, and 272C.10, the Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 36, "Discipline," Iowa Administrative Code.

Pursuant to Executive Order Number 8, comments, complaints, and recommendations were solicited from members of the Board and staff, from licensees and registrants, and from members of the public. Existing rules and proposed

## PHARMACY EXAMINERS BOARD[657](cont'd)

new rules were reviewed based on need, clarity, cost, fairness, intent and statutory authority. The following amendments were approved at the June 18, 2002, regular meeting of the Board of Pharmacy Examiners.

The proposed amendments delete duplicative or outdated provisions and requirements, add catchphrases to rules and subrules to facilitate identification of the subject, and amend language to clarify the intent of the various rules and to combine like provisions applicable to various types of licenses and registrations. Additional grounds for licensee discipline that are currently listed in the Iowa Code are identified in subrule 36.1(4) to ensure that all possible grounds for licensee or registrant discipline are identified in this subrule. New rule 36.17(155A,272C) establishes the procedures relating to an order of the Board to a licensee or registrant for a mental or physical examination.

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

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on September 16, 2002. Such written materials should be sent to Terry Witkowski, Administrative Assistant, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688, or by E-mail to [terry.witkowski@ibpe.state.ia.us](mailto:terry.witkowski@ibpe.state.ia.us).

These amendments are intended to implement Iowa Code sections 17A.10 to 17A.23, 124.301, 124.304, 124B.12, 126.16 to 126.18, 155A.6, 155A.12, 155A.13, 155A.13A, 155A.15 to 155A.18, 155A.25, 205.11, 272C.3 to 272C.6, 272C.9, and 272C.10.

The following amendments are proposed.

ITEM 1. Amend subrule 36.1(1) as follows:

**36.1(1) Jurisdiction of the board.** The board has the authority to impose discipline for any violations of Iowa Code chapters 124, 124A, 124B, 126, 147, 155A, 205, and 272C or the rules promulgated thereunder.

ITEM 2. Amend subrule 36.1(2) as follows:

**36.1(2) Disciplinary sanctions.** The board has the authority to impose the following disciplinary sanctions:

a. Revocation of a registration, *a permit*, or of a license ~~to operate a pharmacy or to practice pharmacy issued by the board.~~

b. Suspension of a registration, *a permit*, or of a license ~~to operate a pharmacy or to practice pharmacy issued by the board~~ until further order of the board or for a specified period.

c. Nonrenewal of a registration, *a permit*, or of a license ~~to operate a pharmacy or to practice pharmacy issued by the board.~~

d. Prohibit permanently, until further order of the board, or for a specified period, the engaging in specified procedures, methods or acts.

e. Probation.

f. Require *a pharmacist or a pharmacist-intern to complete* additional education or training.

g. Require ~~a reexamination~~ *a pharmacist to successfully complete any reexamination for licensure.*

h. Order *a pharmacist, pharmacist-intern, or pharmacy technician to undergo* a physical or mental examination.

i. Impose civil penalties not to exceed \$25,000.

j. Issue citation and warning.

k. Such other sanctions allowed by law as may be appropriate.

~~l. Suspend for a specified period of time the licensee's privilege to participate in the medical assistance program operated by the state.~~

~~m. Deny, suspend, or revoke a wholesale drug license.~~

~~n. Refuse, suspend, or revoke a precursor substance permit.~~

ITEM 3. Amend subrule 36.1(3) as follows:

**36.1(3) Considerations in determining sanctions.** The board may consider the following factors ~~may be considered by the board~~ in determining the nature and severity of the disciplinary sanction to be imposed:

a. The relative seriousness of the violation as it relates to assuring the citizens of this state a high standard of professional care.

b. The facts of the particular violation.

c. Any extenuating circumstances or other countervailing considerations.

d. Number of prior violations or complaints.

e. Seriousness of prior violations or complaints.

f. Whether remedial action has been taken.

g. ~~Such~~ Any other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee, registrant, or permittee.

ITEM 4. Amend subrule 36.1(4), introductory paragraph, as follows:

**36.1(4) Grounds for discipline.** The board may impose any of the disciplinary sanctions set out in subrule 36.1(2), ~~including civil penalties in an amount not to exceed \$25,000,~~ when the board determines that the licensee, registrant, or permittee is guilty of the following acts or offenses:

ITEM 5. Amend subrule **36.1(4)**, paragraph "a," as follows:

a. Fraud in procuring a license. Fraud in procuring a license includes but is not limited to an intentional perversion of the truth in making application for a license to practice pharmacy, to operate a pharmacy doing business in this state, or to operate as a wholesale drug distributor doing business in this state, or in making an application for a registration to practice as a pharmacist-intern or a pharmacy technician, ~~and~~ *It* includes false representations of a material fact, whether by word or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making ~~such~~ application, or attempting to file or filing with the board any false or forged diploma, certificate, affidavit, identification, or qualification in making ~~such~~ application for a license or registration in this state.

ITEM 6. Amend subrule **36.1(4)**, paragraph "c," as follows:

c. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of pharmacy or engaging in unethical conduct or practice harmful *or detrimental* to the public. Proof of actual injury need not be established.

ITEM 7. Amend subrule **36.1(4)**, paragraph "e," as follows:

e. Conviction of a felony *related to the profession or occupation of the licensee or registrant, or a conviction of a felony that would affect the licensee's or registrant's ability to practice within the licensee's or registrant's profession.* A copy of the record of conviction or a plea of guilty shall be conclusive evidence.

ITEM 8. Amend subrule **36.1(4)**, paragraph "h," as follows:

## PHARMACY EXAMINERS BOARD[657](cont'd)

h. Distribution of ~~intoxicating liquors or~~ drugs for other than lawful purposes. The distribution of drugs for other than lawful purposes includes, but is not limited to, the disposition of drugs in violation of Iowa Code chapters 124, 126, and 155A, ~~124, and 126.~~

ITEM 9. Amend subrule 36.1(4), paragraph "i," as follows:

i. Willful or repeated violations of the provisions of Iowa Code chapter 147 or Iowa Code chapter 272C. Willful or repeated violations of these Acts include, but are not limited to, a pharmacist's, pharmacist-intern's, or pharmacy technician's intentionally or repeatedly violating a lawful rule or regulation promulgated by the board of pharmacy examiners or the state department of public health, ~~or~~ violating a lawful order of the board in a disciplinary hearing, or violating the provisions of Title IV (Public Health) of the Code of Iowa, as amended.

ITEM 10. Amend subrule 36.1(4), paragraph "l," as follows:

l. Knowingly aiding, assisting, procuring, or advising another person to unlawfully practice pharmacy or to unlawfully perform the functions of a pharmacy technician *or a pharmacist-intern.*

ITEM 11. Amend subrule 36.1(4), paragraph "o," as follows:

o. Submission of a false report of continuing education or failure to submit ~~annual~~ *biennial* reports of continuing education.

ITEM 12. Amend subrule 36.1(4), paragraph "u," as follows:

u. Violating any of the grounds for revocation or suspension of a license or registration listed in Iowa Code sections 147.55, 155A.12, and 155A.15 *or any of the rules of the board.*

ITEM 13. Amend subrule 36.1(4), paragraph "v," as follows:

v. Practicing pharmacy without an active and current Iowa pharmacist license, operating a pharmacy without a current pharmacy license, operating a prescription drug wholesale facility without a current wholesale drug license, practicing as a pharmacist-intern without a current pharmacist-intern registration, or assisting a pharmacist with technical functions associated with the practice of pharmacy without a current pharmacy technician registration except as provided in ~~657—subrule 22.4(3)~~ *657—subrule 3.3(1) or rule 657—3.4(155A).*

ITEM 14. Amend subrule 36.1(4), paragraph "x," as follows:

x. Noncompliance with a *child* support order or with a written agreement for payment of *child* support as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 252J.

ITEM 15. Amend subrule 36.1(4), paragraph "aa," as follows:

aa. Employing or continuing to employ as a practicing pharmacist any person whose Iowa pharmacist license is not current and active, or employing or continuing to employ a person to assist a pharmacist with technical functions associated with the practice of pharmacy who is not currently registered as a pharmacy technician except as provided in ~~657—subrule 22.4(3)~~ *657—subrule 3.3(1) or rule 657—3.4(155A).*

ITEM 16. Amend subrule 36.1(4), paragraph "ab," as follows:

ab. Retaliatory action. Retaliating against a pharmacist, pharmacist-intern, or a pharmacy technician for ~~reporting to the board as required by board rules or by federal or state law,~~ making allegations of illegal or unethical activities, making ~~other~~ required reports to the board, or cooperating with a board investigation or survey ~~under this chapter.~~

ITEM 17. Amend subrule 36.1(4) by adopting the following ~~new~~ paragraphs "ac" to "ae":

ac. Failing to create and maintain complete and accurate records as required by state or federal law, regulation, or rule of the board.

ad. Violating the pharmacy or drug laws or rules of another state while under the jurisdiction of that state.

ae. Having a license to practice pharmacy issued by another state canceled, revoked, or suspended for conduct substantially equivalent to any of the grounds for disciplinary action in Iowa. A copy of the record from the state taking the disciplinary action shall be conclusive evidence of the action taken by that state.

ITEM 18. Amend rule 657—36.2(155A,272C) as follows:

#### **657—36.2(155A,272C) Investigations.**

**36.2(1) General.** The board ~~shall~~ *may*, upon receipt of a written or verbal complaint, or ~~may~~ upon its own motion pursuant to other evidence received by the board, review and investigate alleged acts or omissions ~~which~~ *that* the board reasonably believes constitute cause under applicable law or administrative rules for licensee, registrant, or permittee discipline.

**36.2(2) Reporting of judgments or settlements.** Each licensee or registrant shall report to the board every adverse judgment in a malpractice action to which the *pharmacy*, pharmacist, pharmacist-intern, or pharmacy technician is a party, and every settlement of a claim alleging malpractice. The report, ~~together with a copy of the judgment or settlement,~~ must be filed within 30 days from the date of the judgment or settlement.

~~**36.2(3) Investigation of reports of judgments and settlements.** Reports received by the board from the commissioner of insurance, insurance carriers, and licensees or registrants involving adverse judgments in a professional malpractice action, and settlement of claims alleging malpractice, which involve acts or omissions which constitute negligence, careless acts, or omissions in the practice of pharmacy, shall be reviewed and investigated by the board.~~

**36.2(4) 36.2(3) Reporting of acts or omissions.** Each licensee or registrant, having firsthand knowledge of acts or omissions set forth in subrule 36.1(4), shall report to the board *within 30 days of initially acquiring the information* those acts or omissions ~~when~~ committed by another person licensed to practice pharmacy or registered to practice as a pharmacist-intern or as a pharmacy technician. The report shall include the name and ~~address of other available information identifying~~ the licensee or registrant and the date, time, and place of the incident.

~~**36.2(5) Failure to report.** Upon obtaining information that a licensee or registrant failed to file a report as required by subrule 36.2(4) within 30 days from the date the licensee or registrant initially acquired the information, the board may initiate a disciplinary proceeding against the licensee or registrant who failed to make the required report.~~

**36.2(6) 36.2(4) Confidentiality of investigative files.** Complaint files, investigation files, and all other investiga-

## PHARMACY EXAMINERS BOARD[657](cont'd)

tion reports and investigative information in the possession of the board or its employees or agents ~~which that~~ relate to licensee, permittee, or registrant discipline shall be privileged and confidential and shall not be subject to discovery, subpoena, or other means of legal compulsion for their release to any person other than the licensee, permittee, or registrant, and the board, its employees, and agents involved in licensee, permittee, or registrant discipline, nor be admissible evidence in any judicial or administrative proceeding other than the proceeding involving licensee, permittee, or registrant discipline pursuant to Iowa Code section 272C.6(4). The licensee, permittee, or registrant is not entitled to investigative reports and documentary information until a disciplinary proceeding has been commenced. However, a final written decision, finding of fact, and order of the board in a disciplinary proceeding shall be public record.

~~36.2(7)~~ **36.2(5)** Investigation of allegations. In order to determine if probable cause exists for a disciplinary hearing, the board, the executive secretary/director, or someone designated by the executive secretary/director, shall cause an investigation to be made into the allegations of the complaint. ~~In this regard, the person~~ *The licensee, registrant, or permittee* complained of may shall be furnished information concerning the complaint and given the opportunity to informally present to the investigator a position or defense respecting the allegations of the complaint prior to the commencement of a contested case. This position or defense may be submitted in writing but a personal conference with the investigator(s) may be had as a matter of right upon request.

~~36.2(8)~~ **36.2(6)** Investigatory subpoena powers. ~~In connection with the reporting of acts and omissions as required in 36.2(4), the~~ *The* board is authorized by law to subpoena books, papers, records, and any other real evidence, whether or not privileged or confidential under law, to help determine whether a contested case proceeding (hearing) should be commenced.

~~36.2(9)~~ **36.2(7)** Investigative report. Upon completion of the investigation, the investigator(s) shall prepare a report for the board's consideration, ~~which~~. *The* report may contain the position or defense of the respondent, discuss jurisdiction, and set forth any legal arguments and authorities that appear applicable to the case. ~~The report may be concluded with a recommendation as to whether probable cause exists for further proceedings.~~

~~36.2(10)~~ **36.2(8)** Board consideration. The board shall review and rule on all investigative reports investigations. Participation in the review and consideration of the investigative report(s) ~~does~~ shall not bar any board member from participating in any subsequent disciplinary proceeding.

a. *Board action.* After reviewing an investigation, the board may either institute a disciplinary proceeding by filing one or more statements of charges, send a confidential letter of education or administrative warning to the licensee, registrant or permittee, request additional investigation, or close the case without further investigation.

b. *Confidential action.* If the board determines that formal disciplinary action is not warranted, the board may send a confidential letter of education or administrative warning to the licensee, registrant or permittee. The purpose of a confidential letter of education or administrative warning is to alert the licensee, registrant or permittee to possible violations of Iowa law or board rules so that the licensee, registrant or permittee may address the issues. Confidential letters of education and administrative warnings do not constitute formal disciplinary action and are not public records. The board shall maintain a copy of the confidential letter of

education or administrative warning in the confidential investigative file regarding the licensee, registrant or permittee. Confidential letters of education and administrative warnings may be used as evidence against a licensee, registrant or permittee in future administrative hearings.

**36.2(11) Ruling on the initial inquiry.**

a. *Rejection.* If a determination is made by the board to reject the case, the complaint may be returned to the complainant along with a statement specifying the reason for rejection. A letter of explanation concerning the decision of the board may be sent to the subject of the investigation.

b. *Requirement of further inquiry.* If determination is made by the board to order further inquiry, the complaint and recommendations by the investigator(s) shall be returned to the investigator(s) along with a statement specifying the information deemed necessary.

c. *Acceptance of the case.* If determination is made by the board to initiate formal disciplinary action, the board shall direct the executive secretary/director to prepare a statement of charges and notice of hearing.

ITEM 19. Amend rule 657—36.3(147,272C) as follows:

**657—36.3(147,272C) Peer review committees.**

**36.3(1) Establish committee.** The board may establish and register peer review committees in an emergency or under special circumstances.

**36.3(2) Referral to committee.** The board shall determine which complaints or other matters shall be referred to the a peer review committee for investigation, review, and report to the board.

**36.3(3) Services to committee.** The board may provide investigatory and related services to a peer review committee upon request.

**36.3(4) Investigation by committee.** A peer review committee may determine the method to be used in making its investigation, or that it is unable to investigate the report upon a complaint and return the complaint, together with an explanation, to the board.

**36.3(5) Confidentiality.** A peer review committee shall observe the requirements of confidentiality imposed by Iowa Code section 272C.6.

**36.3(6) Immunity from civil liability.** Members of a peer review committee shall not be liable for acts, omissions, or decisions made in connection with service on the a peer review committee. However, such immunity from civil liability shall not apply if such the act is done with malice.

**36.3(7) Committee procedures.** A peer review committee shall submit to the board for approval the procedures to be used for review, investigation, and handling of all complaints.

ITEM 20. Amend rule 657—36.4(17A,124,124B,126, 147,155A,272C) as follows:

**657—36.4(17A,124,124B,126,147,155A,272C) Disciplinary proceedings.** The proceeding for revocation, or suspension, or other disciplinary sanctions against of a pharmacy license, a wholesale drug license, a pharmacy technician registration, a pharmacist-intern registration, or a license to practice pharmacy, or to discipline a person licensed to practice pharmacy, or the denial of or refusal to issue or renew a license, or registration, or permit, or the suspension, denial, or revocation of a permit to handle precursor substances, or the refusal to issue or renew a license, registration, or permit, shall be substantially in accord accordance with the procedures set forth in 657—~~Chapters 35 and 36 of 657—Chapter 35 and~~ these rules,

## PHARMACY EXAMINERS BOARD[657](cont'd)

which are ~~an~~ *in* addition to the procedures stated in Iowa Code sections 147.58 et seq. and 155A.16.

ITEM 21. Amend subrule 36.5(1) as follows:

**36.5(1) Preparation of notice.** The executive secretary/director shall prepare the notice of hearing upon direction to do so by ~~members~~ of the board upon a probable cause determination.

ITEM 22. Amend subrule 36.5(4) as follows:

**36.5(4) Timely service—denial of renewal.** Notice of a hearing involving denial of license, permit, or registration renewal shall be served no later than 30 days before the expiration of the license, permit, or registration.

ITEM 23. Amend subrule 36.5(5) as follows:

**36.5(5) Timely service—revocation or suspension.** Notice of a hearing involving revocation or suspension of a license, permit, or registration shall be served no less than 30 days before the time set for the hearing.

ITEM 24. Amend subrule 36.6(1) as follows:

**36.6(1) Parties Negotiating parties.**

a. A contested case may be resolved by informal settlement. ~~Negotiation of an informal settlement may be initiated by the board or the respondent. The respondent or the board may initiate negotiation of an informal settlement.~~

b. The board chairperson ~~shall~~ *may* designate the executive secretary/director or one or more board members with authority to negotiate on behalf of the board.

ITEM 25. Amend rule 657—36.8(17A,147,155A,124B,272C) as follows:

**657—36.8(17A,124B,147,155A,124B,272C) Order of proceedings.** Before testimony is presented, the record shall show the identity of any board members present, the presiding hearing officer, the primary parties and their representatives, and the fact that all testimony is being recorded.

Hearings before the board generally follow the order established by ~~these rules~~ *this rule*.

1. The presiding officer ~~shall~~ *may* read the specification of charges and the answer thereto, or other responsive pleading, filed by the respondent prior to the hearing.

2. The assistant attorney general representing the public interest before the board may make an opening statement.

3. ~~The~~ *Each* respondent or respondents shall ~~each~~ be offered the opportunity to make an opening statement. A respondent may elect to reserve an opening statement until just prior to the presentation of evidence by the respondent.

4. ~~The presentation of evidence~~ *Evidence is presented* on behalf of the public.

5. ~~The presentation of evidence~~ *Evidence is presented* on behalf of the respondent(s).

6. Rebuttal evidence *is presented* on behalf of the public.

7. Rebuttal evidence *is presented* on behalf of the respondent(s).

8. ~~Closing~~ *The parties are offered the opportunity to make closing arguments*, first on behalf of the public, then on behalf of the respondent, and then on behalf of the public.

ITEM 26. Amend rule 657—36.11(272C) as follows:

**657—36.11(272C) Board decision.** The board's decision and order to discipline a licensee, registrant, or permittee, or to revoke or suspend a license to practice pharmacy, a wholesale drug license, a license to operate a pharmacy, a registration to practice as a pharmacist-intern or as a pharmacy technician, or to ~~suspend or revoke~~ a permit to

handle precursor substances, shall remain in force and effect until the appeal is finally determined and disposed of upon its merit unless the board grants a stay of its decision as provided for in rule 657—35.28(17A).

ITEM 27. Amend rule 657—36.12(17A,272C) as follows:

**657—36.12(17A,272C) Publication of decisions.** Final decisions of the board relating to disciplinary proceedings *are public records subject to Iowa Code chapter 22, examination of public records, and* may be transmitted to the appropriate professional association and a newspaper of general circulation to be selected by the board.

ITEM 28. Amend rule 657—36.13(17A,124B,147,155A,272C) as follows:

**657—36.13(17A,124B,147,155A,272C) Reinstatement.** Any person whose license to practice pharmacy or to operate a pharmacy or whose wholesale drug license or permit to handle precursor substances or whose pharmacy technician registration or pharmacist-intern registration has been revoked or suspended ~~must~~ *shall* meet the following eligibility requirements *for reinstatement*:

1. ~~36.13(1) Prerequisites. Must have satisfied~~ *The individual shall satisfy all the terms of the order of revocation or suspension or court proceedings as they apply to that revocation or suspension. If the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur, or if the license, registration, or permit was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the board's order or the date of voluntary surrender.*

2. ~~36.13(2) Pharmacist license revoked or surrendered—examinations required.~~ A person whose license to practice pharmacy was revoked or voluntarily surrendered must successfully pass the North American Pharmacist Licensure Examination (NAPLEX) or an equivalent examination as determined by NABP and the Multistate Pharmacy Jurisprudence Examination (MPJE), Iowa Edition.

3. ~~36.13(3) Proceedings. All~~ *The respondent shall initiate all proceedings for reinstatement shall be initiated by the respondent who shall file by filing with the board an application for reinstatement of the license, registration, or permit. Such* *The application shall be docketed in the original case in which the license, registration, or permit was revoked, suspended, or relinquished surrendered.* All proceedings upon petition for reinstatement, including all matters preliminary and ancillary thereto, shall be subject to the same rules of procedure as other cases before the board. The board and the respondent may informally settle the issue of reinstatement. The respondent may choose to have an informal reinstatement conference before the board, as provided in rule 657—36.14(17A,124B,147,155A,272C).

4. ~~36.13(4) Burden of proof.~~ An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation or suspension no longer exists and that it will be in the public interest for the license, registration, or permit to be reinstated. The burden of proof to establish such facts shall be on the respondent.

5. ~~36.13(5) Order.~~ An order for reinstatement shall be based upon a decision ~~which~~ *that* incorporates findings of facts and conclusions of law and ~~must~~ *shall* be based upon the affirmative vote of a quorum of the board. This order

## PHARMACY EXAMINERS BOARD[657](cont'd)

shall be available to the public as provided in 657—Chapter 14.

ITEM 29. Amend subrule 36.14(1) as follows:

**36.14(1)** Request. Upon ~~informed and written consent by request of the respondent and approval by the executive secretary/director of the board,~~ an informal reinstatement conference ~~may be held~~.

ITEM 30. Amend subrule 36.14(2) as follows:

**36.14(2)** Confidentiality. The conference shall be open to the public except as provided in Iowa Code chapter 21 and Iowa Code section 272C.6. Material submitted to the board regarding a licensee, registrant, or permittee subject to suspension or revocation *and* received prior to the filing of an application for reinstatement shall be deemed to be investigatory in nature and therefore confidential. ~~After an application for reinstatement is filed by the respondent, no material regarding the respondent shall be presented to board members until either a formal hearing is held or a request for an informal settlement conference is made and approved. After~~ If a request for an informal settlement conference is made and approved, all material submitted by the respondent to the board for its consideration shall be deemed public records and is not confidential ~~unless the respondent requests that the conference be closed.~~ Upon filing a request for an informal reinstatement conference, the respondent consents to the provision of relevant materials to board members prior to the time of the informal reinstatement conference.

ITEM 31. Adopt **new** subrule 36.14(5) as follows:

**36.14(5)** Final order. A proposed order resulting from an informal reinstatement conference becomes the final decision of the board without further proceedings unless there is an appeal to, or review on motion of, the board within the time provided in rule 657—35.26(17A,124B,126,147,155A,205,272C).

ITEM 32. Amend rule 657—36.15(17A,124B,147,155A,272C) as follows:

**657—36.15(17A,124B,147,155A,272C)** Voluntary surrender of a license, permit, or registration. ~~A~~ *The voluntary surrender of a license to practice pharmacy, a license to operate a pharmacy, a wholesale drug license, a permit to handle precursor substances, a pharmacy technician registration, or a pharmacist-intern registration which has been voluntarily surrendered shall be considered a revocation of license, permit, or registration with respect to a.* A request for reinstatement ~~which will~~ shall be handled under the terms established by rule 657—36.13(17A,124B,147,155A,272C).

ITEM 33. Renumber rule **657—36.17(272C)** as **657—36.18(272C)** and adopt **new** rule 657—36.17(155A,272C) as follows:

**657—36.17(155A,272C)** Order for mental or physical examination. A pharmacist, pharmacist-intern, or pharmacy technician who is licensed or registered by the board is, as a condition of licensure or registration, under a duty to submit to a mental or physical examination within a time period specified by order of the board. Such examination may be ordered upon a showing of probable cause and shall be at the expense of the pharmacist, pharmacist-intern, or pharmacy technician.

**36.17(1)** Content of order. A board order for mental or physical examination shall include the following items:

a. A description of the type of examination to which the pharmacist, pharmacist-intern, or pharmacy technician must submit.

b. The name and address of the examiner or treatment facility that the board has identified to perform the examination on the pharmacist, pharmacist-intern, or pharmacy technician.

c. The time period in which the pharmacist, pharmacist-intern, or pharmacy technician must schedule the required examination.

d. The amount of time in which the pharmacist, pharmacist-intern, or pharmacy technician is required to complete the examination.

e. A requirement that the pharmacist, pharmacist-intern, or pharmacy technician cause a report of the examination results to be provided to the board within a specified period of time.

f. A requirement that the pharmacist, pharmacist-intern, or pharmacy technician communicate with the board regarding the status of the examination.

g. A provision allowing the pharmacist, pharmacist-intern, or pharmacy technician to request additional time to schedule or complete the examination or to request that the board approve an alternative examiner or treatment facility. The board shall, in its sole discretion, determine whether to grant such a request.

**36.17(2)** Objection to order. A licensee or registrant who is the subject of a board order and who objects to the order may file a request for hearing. The request for hearing shall specifically identify the factual and legal issues upon which the licensee or registrant bases the objection. The hearing shall be considered a contested case proceeding and shall be governed by the provisions of 657—Chapter 35. A contested case involving an objection to an examination order will be captioned in the name of Jane or John Doe in order to maintain the licensee's or registrant's confidentiality.

**36.17(3)** Closed hearing. Any hearing on an objection to the board order shall be closed pursuant to Iowa Code section 272C.6(4).

**36.17(4)** Order and reports—confidential. An examination order and any subsequent examination reports issued in the course of a board investigation are confidential investigative information pursuant to Iowa Code section 272C.6(4).

ITEM 34. Amend renumbered subrule 36.18(2) as follows:

**36.18(2)** Hearing fee and recoverable costs. The board may charge a fee not to exceed \$75 for conducting a disciplinary hearing ~~which that~~ results in disciplinary action taken by the board against the license or registration. In addition to the fee, the board may recover from the licensee or registrant costs for the following procedures and personnel:

a. Transcript.

b. Witness fees and expenses.

c. Depositions.

d. Medical examination fees incurred relating to a person licensed or registered under Iowa Code ~~chapters~~ *chapter* 147, 154A, 155, or 169.

ITEM 35. Amend renumbered subrule 36.18(3) as follows:

**36.18(3)** Fees, costs are part of disciplinary order. Fees and costs assessed by the board pursuant to subrule ~~36.17(2)~~ *36.18(2)* shall be calculated by the board's executive secretary/director and shall be entered as part of the board's final disciplinary order. The board's final disciplinary order

## PHARMACY EXAMINERS BOARD[657](cont'd)

shall specify the time period in which the *licensee or registrant shall pay the assessed fees and costs shall be paid by the licensee or registrant.*

ITEM 36. Amend renumbered subrule 36.18(4) as follows:

**36.18(4) Board treatment of collected fees, costs.** Fees and costs collected by the board pursuant to subrule ~~36.17(2) 36.18(2)~~ shall be allocated ~~pursuant to rule 641-173.20(272C)~~ to the expenditure category of the board in which the hearing costs were incurred. The fees and costs shall be considered repayment receipts as defined in Iowa Code section 8.2.

ITEM 37. Amend renumbered subrule 36.18(5) as follows:

**36.18(5) Failure to pay assessed fees, costs.** Failure of a licensee or registrant to pay the fees and costs assessed herein ~~in~~ within the time period specified in the board's final disciplinary order shall constitute a violation of a lawful order of the board.

ITEM 38. Amend ~~657—Chapter 36~~, implementation clause, as follows:

These rules are intended to implement Iowa Code sections 17A.10 to 17A.23 ~~as amended by 1998 Iowa Acts, chapter 1202, 124.301, 124.304, 124B.12, 126.16 to 126.18, 155A.6, 155A.12, 155A.13, 155A.13A, 155A.15 to 155A.18, 155A.25, 205.11, 272C.3 to 272C.6, 272C.9, and 272C.10.~~

**ARC 1828B****PROFESSIONAL LICENSURE  
DIVISION[645]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Behavioral Science Examiners hereby gives Notice of Intended Action to amend Chapter 31, “Licensure of Marital and Family Therapists and Mental Health Counselors,” Iowa Administrative Code.

The proposed amendment postpones the date by which students graduating from a mental health counselor program must find individuals who are licensed as marital and family therapists to provide supervision.

Any interested person may make written comments on the proposed amendment no later than August 13, 2002, addressed to Ella Mae Baird, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

This subrule was revised in accordance with Executive Order Number 8. Staff and Board members had input on this amendment. Decisions were made based on need, clarity, intent and statutory authority, cost and fairness.

A public hearing will be held on August 13, 2002, from 9 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, per-

sons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

This amendment is intended to implement Iowa Code chapter 154D.

The following amendment is proposed.

Amend subrule 31.7(3) as follows:

**31.7(3)** All supervision beginning on or after January 1, ~~2003 2006~~, shall be provided by a person licensed as a mental health counselor.

**ARC 1827B****PROFESSIONAL LICENSURE  
DIVISION[645]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Chiropractic Examiners hereby gives Notice of Intended Action to rescind Chapter 40 and adopt new Chapter 40, “Administrative and Regulatory Authority for the Board of Chiropractic Examiners,” Iowa Administrative Code.

The proposed amendment rescinds the current rules about the organization and purpose of the Board and adopts new rules regarding the purpose of the Board, organization and proceedings of the Board, official communications, office hours, and public meetings.

Any interested person may make written comments on the proposed amendment no later than August 13, 2002, addressed to Ella Mae Baird, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

These rules were revised in accordance with Executive Order Number 8. Staff and Board members had input on these rules. Decisions were made based on need, clarity, intent and statutory authority, cost and fairness.

A public hearing will be held on August 13, 2002, from 9 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

This amendment is intended to implement Iowa Code section 147.76 and chapters 17A, 151 and 272C.

The following amendment is proposed.

Rescind 645—Chapter 40 and adopt the following new chapter in lieu thereof:

**CHAPTER 40  
ADMINISTRATIVE AND REGULATORY AUTHORITY  
FOR THE BOARD OF CHIROPRACTIC EXAMINERS****645—40.1(17A) Definitions.**

“Board” means the board of chiropractic examiners.

“Board office” means the office of the administrative staff.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

“Department” means the department of public health.

“Disciplinary proceeding” means any proceeding under the authority of the board pursuant to which licensee discipline may be imposed.

“License” means a license to practice chiropractic.

“Licensee” means a person licensed to practice chiropractic.

“Peer review” means evaluation of professional services rendered by a professional practitioner.

“Peer reviewer(s)” means one or more persons acting in a peer review capacity who have been appointed by the board for such purpose.

**645—40.2(17A) Purpose of board.** The purpose of the board is to administer and enforce the provisions of Iowa Code chapters 17A, 147, 151 and 272C with regard to the practice of chiropractic. The mission of the board is to protect the public health, safety and welfare by licensing qualified individuals who provide services to consumers and by fair and consistent enforcement of the statutes and rules of the licensure board. Responsibilities include, but are not limited to:

**40.2(1)** Licensing qualified applicants by examination, renewal, endorsement, and reciprocity.

**40.2(2)** Developing and administering a program of continuing education to ensure the continued competency of individuals licensed by the board.

**40.2(3)** Imposing discipline on licensees as provided by statute or rule.

**645—40.3(17A,147,272C) Organization of board and proceedings.**

**40.3(1)** The board is composed of seven members appointed by the governor and confirmed by the senate.

**40.3(2)** The members of the board shall include five members licensed to practice chiropractic and two members who are not licensed to practice chiropractic and who shall represent the general public.

**40.3(3)** The board shall elect a chairperson, vice chairperson, and secretary from its membership at the first meeting after April 30 of each year.

**40.3(4)** The board shall hold at least four meetings annually.

**40.3(5)** A majority of the members of the board shall constitute a quorum.

**40.3(6)** Board meetings shall be governed in accordance with Iowa Code chapter 21, and the board’s proceedings shall be conducted in accordance with Robert’s Rules of Order, Revised.

**40.3(7)** The professional licensure division shall furnish the board with the necessary facilities and employees to perform the duties required by this chapter, but shall be reimbursed for all costs incurred from funds appropriated to the board.

**40.3(8)** The board has the authority to:

a. Develop and implement a program of continuing education to ensure the continued competency of individuals licensed by the board.

b. Establish fees.

c. Establish committees of the board, the members of which shall be appointed by the board chairperson and shall not constitute a quorum of the board. The board chairperson shall appoint committee chairpersons.

d. Hold a closed session if the board votes to do so in a public roll-call vote with an affirmative vote of at least two-thirds if the total board is present or a unanimous vote if fewer are present. The board will recognize the appropriate statute allowing for a closed session when voting to go into closed session. The board shall keep minutes of all discus-

sion, persons present, and action occurring at a closed session and shall tape-record the proceedings. The records shall be stored securely in the board office and shall not be made available for public inspection.

e. Investigate alleged violations of statutes or rules that relate to the practice of chiropractic upon receipt of a complaint or upon the board’s own initiation. The investigation will be based on information or evidence received by the board.

f. Initiate and impose licensee discipline.

g. Monitor licensees who are restricted by a board order.

h. Establish and register peer reviewers.

i. Refer a complaint to one or more registered peer reviewers for investigation and review. The peer reviewers will review cases and recommend appropriate action. However, the referral of any matter shall not relieve the board of any of its duties and shall not divest the board of any authority or jurisdiction.

j. Perform any other function as authorized by a provision of law.

**645—40.4(17A) Official communications.**

**40.4(1)** All official communications, including submissions and requests, may be addressed to the Board of Chiropractic Examiners, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

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

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

**645—40.5(17A) Office hours.** The board office is open for public business from 8 a.m. to 4:30 p.m., Monday through Friday of each week, except holidays.

**645—40.6(17A) Public meetings.** Members of the public may be present during board meetings unless the board votes to hold a closed session. Dates and location of board meetings may be obtained from the board’s Web site (<http://www.idph.state.ia.us/licensure>) or directly from the board office.

**40.6(1)** At every regularly scheduled board meeting, time will be designated for public comment. During the public comment period, any person may speak for up to two minutes. Requests to speak for two minutes per person later in the meeting when a particular topic comes before the board should be made at the time of the public comment period and will be granted at the discretion of the chairperson. No more than ten minutes will be allotted for public comment at any one time unless the chairperson indicates otherwise.

**40.6(2)** Persons who have not asked to address the board during the public comment period may raise their hands to be recognized by the chairperson. Acknowledgment and an opportunity to speak will be at the discretion of the chairperson.

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

## REVENUE AND FINANCE DEPARTMENT

### Notice—Rate Correction

The notice of electric and natural gas delivery tax rates published in the June 26, 2002, Iowa Administrative Bulletin contained an inaccurate rate for Interstate Power (Co. #7272). The correct rate is 0.00112694.

## ARC 1825B

## REVENUE AND FINANCE DEPARTMENT[701]

### 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 421.17(19) and 422.68, the Department of Revenue and Finance hereby gives Notice of Intended Action to amend Chapter 50, "Apportionment of Income for Resident Shareholders of S Corporations," Iowa Administrative Code.

These amendments are proposed because of 2002 Iowa Acts, House File 2078.

Item 1 amends rule 701—50.5(422) to indicate that 100 percent of the federal tax can be deducted from distributions received from the S corporation in determining the amount of S corporation income reported to Iowa for tax periods beginning on or after January 1, 2002.

Item 2 amends rule 701—50.9(422) to clarify that these examples are only applicable for tax periods beginning prior to January 1, 2002.

New rule 701—50.10(422) in Item 3 provides an example for tax periods beginning on or after January 1, 2002.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than August 26, 2002, to the Policy Section, Compliance Division, Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before Au-

gust 23, 2002. Such written comments should be directed to the Policy Section, Compliance Division, Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Compliance Division, Department of Revenue and Finance, at (515)281-8036 or at the Department of Revenue and Finance offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by August 16, 2002.

These amendments are intended to implement Iowa Code chapter 422 as amended by 2002 Iowa Acts, House File 2078.

The following amendments are proposed.

ITEM 1. Amend rule 701—50.5(422) as follows:

**701—50.5(422) Computation of federal tax on S corporation income.** The amount of federal income tax related to the items of income, losses, and expenses from an S corporation is to be computed by dividing the sum of the items of income, losses, and expenses by federal adjusted gross income, and the result multiplied ~~times~~ by the sum of the federal income tax and the federal alternative minimum tax. This resulting tax figure is to be reduced by the nonrefundable federal tax credits relating to the S corporation income which are a reduction in tax rather than a payment of tax. ~~A noninclusive list of credits~~ Credits that are deemed to be a payment of tax ~~are include, but are not limited to,~~ backup withholding on interest, dividends and other types of income, and credit for motor vehicle fuel taxes.

*For tax periods beginning prior to January 1, 2002, the distribution received from the S corporation is reduced by 50 percent of the federal tax paid by the shareholder on the S corporation income. For tax periods beginning on or after January 1, 2002, the distribution received from the S corporation is reduced by 100 percent of the federal tax paid by the shareholder on the S corporation income.*

This rule is intended to implement Iowa Code section 422.8, subsection 2, as amended by 2002 Iowa Acts, House File 2078.

ITEM 2. Amend rule 701—50.9(422), catchwords, as follows:

**701—50.9(422) Examples for tax periods beginning prior to January 1, 2002.**

ITEM 3. Amend 701—Chapter 50 by adopting the following new rule:

**701—50.10(422) Example for tax periods beginning on or after January 1, 2002.**

**EXAMPLE.** The following example is based on the following facts. The taxpayers are a husband and wife who have two dependent children. Their income consists of husband's wages of \$50,000; rental loss (\$5,000); wife's S corporation income of \$500,000; joint interest income of \$35,000. They have Iowa itemized deductions of \$20,000, and an out-of-state tax credit of \$1,150 on the S corporation income. The actual cash distribution from the S corporation was \$289,840, none of which has been previously taxed by Iowa. Federal income tax paid during the year totals \$191,214. The S corporation is a value-added corporation which carries on business within and without Iowa with 10 percent of its sales in Iowa.

## REVENUE AND FINANCE DEPARTMENT[701](cont'd)

## a. Computation of tax on a joint return basis.

Wages	\$50,000
S corporation income	500,000
Interest	35,000
Rent	(5,000)
Total income	\$580,000
Less federal tax deduction	(191,214)
Subtotal	\$388,786
Less itemized deductions	(20,000)
Taxable income	\$368,786
Tax	\$31,696
Less personal credits husband & wife & two dependents	(160)
Subtotal	\$31,536
Less out-of-state tax credit	(1,150)
Iowa individual tax	\$30,386

## Computation of refund

Total income	\$580,000
Less S corporation income	(500,000)
Subtotal	\$80,000
Add the greater of cash distributions not previously taxed, \$289,840 less 100% federal taxes on S corporation income of \$164,840 = \$125,000, or income attributable to Iowa sources \$50,000	125,000

Income attributable to Iowa sources	\$205,000
Total income	\$580,000
Taxable percentage	35.3449%
Iowa individual tax before credit	\$31,696
Credit percentage	64.6551%
Subtotal	\$20,493
Less out-of-state tax credit	(1,150)
S corporation tax credit	\$19,343
Amount of refund	\$19,343

## Computation of 100 percent of federal income tax attributable to S corporation income:

$$\$191,214 \times \$500,000 / \$580,000 = \$164,840.$$

## Computation of percent of income attributable to Iowa sources:

$$100 \times \$205,000 / \$580,000 = 35.3449\%.$$

## Computation of percent income attributable to non-Iowa sources:

$$100 - 35.3449\% = 64.6551\%.$$

## b. Computation on a separate filing on a combined return basis.

	Spouse	Taxpayer
Wages	\$50,000	-0-
S corporation income	-0-	\$500,000
Interest	17,500	17,500
Rent	(5,000)	-0-
Total income	\$62,500	\$517,500
Less federal tax deduction	(20,613)	(170,601)
Subtotal	\$41,887	\$346,899
Less itemized deductions	(2,156)	(17,844)
Taxable income	\$39,731	\$329,055
Tax	\$2,293	\$28,128

Less personal credits taxpayer & spouse & two dependents	(120)	(40)
Subtotal	\$2,173	\$28,088
Less out-of-state tax credit	(-0-)	(1,150)
Iowa individual tax	\$2,173	\$26,938

## Computation of refund

Total income	\$517,500
Less S corporation income	(500,000)
Subtotal	\$17,500

Add the greater of cash distributions not previously taxed \$289,840 less 100% of federal taxes on S corporation income of \$164,840 = \$125,000, or income attributable to Iowa sources \$50,000

Income attributable to Iowa sources	125,000
Total income	\$142,500

Taxable percentage 27.5362%

Iowa individual tax before credit \$28,128

Credit percentage 72.4638%

Subtotal \$20,383

Less out-of-state tax credit (1,150)

S corporation tax credit \$19,233

Amount of refund \$19,233

Taxpayer's computation of 100 percent of federal income tax attributable to S corporation income:

$$\$170,601 \times \$500,000 / \$517,500 = \$164,832.$$

Taxpayer's computation of percent of income attributable to Iowa sources:

$$100 \times \$142,500 / \$517,500 = 27.5362\%.$$

Taxpayer's computation of percent income attributable to non-Iowa sources:

$$100 - 27.5362\% = 72.4638\%.$$

This rule is intended to implement Iowa Code section 422.8, subsection 2, paragraph "b," as amended by 2002 Iowa Acts, House File 2078.

## NOTICE—PUBLIC FUNDS INTEREST RATES

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions James E. Forney, Superintendent of Banking Thomas B. Gronstal, and Auditor of State Richard D. Johnson have established today the following rates of interest for public obligations and special assessments. The usury rate for July is 7.25%.

### INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants . . . . . Maximum 6.0%

74A.4 Special Assessments . . . . . Maximum 9.0%

**RECOMMENDED** for 74A.3 and 74A.7: A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities.

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 institu-

NOTICE—PUBLIC FUNDS INTEREST RATES(cont'd)

tions. 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 July 9, 2002, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7-31 days . . . . .	Minimum 1.40%
32-89 days . . . . .	Minimum 1.50%
90-179 days . . . . .	Minimum 1.50%
180-364 days . . . . .	Minimum 1.50%
One year to 397 days . . . . .	Minimum 1.90%
More than 397 days . . . . .	Minimum 2.90%

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

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

NOTICE—USURY

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

July 1, 2001 — July 31, 2001	7.50%
August 1, 2001 — August 31, 2001	7.25%
September 1, 2001 — September 30, 2001	7.25%
October 1, 2001 — October 31, 2001	7.00%
November 1, 2001 — November 30, 2001	6.75%
December 1, 2001 — December 31, 2001	6.50%
January 1, 2002 — January 31, 2002	6.75%
February 1, 2002 — February 28, 2002	7.00%
March 1, 2002 — March 31, 2002	7.00%
April 1, 2002 — April 30, 2002	7.00%
May 1, 2002 — May 31, 2002	7.25%
June 1, 2002 — June 30, 2002	7.25%
July 1, 2002 — July 31, 2002	7.25%
August 1, 2002 — August 31, 2002	7.00%

ARC 1836B

UTILITIES DIVISION[199]

Notice of Intended Action

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

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

Pursuant to Iowa Code sections 17A.4, 476.1, and 476.2, the Utilities Board (Board) gives notice that on June 28, 2002, the Board issued an order in Docket No. RMU-02-6, In re: Natural Gas and Electric Master Metering, "Order Commencing Rule Making." The Board is proposing to rescind 199 IAC 19.3(1)"b" and adopt new paragraphs 19.3(1)"b," "c," "d," and "e" and reletter current paragraphs "c" and "d" to establish standards for master metering of natural gas service to multioccupancy premises. The Board is proposing to rescind 199 IAC 20.3(1)"b" and adopt new paragraphs 20.3(1)"b," "c," "d," and "e" and reletter current paragraphs "c" and "d" to establish standards for master metering of electricity to multioccupancy premises.

On February 15, 2000, the Board issued an order commencing a rule making to receive public comment on the rescission of existing rules and adoption of new rules concerning individual meter measurement and master metering of natural gas and electric service. Notice of Intended Action was published in the Iowa Administrative Bulletin (IAB) Vol. XXII, No. 18 (3/8/00) p. 1358, as **ARC 9716A**. The Board terminated the rule making by order issued September 5, 2000, and by Notice of Termination published in the IAB on October 4, 2000, as **ARC 0184B**.

The Board terminated the rule making to allow for a more extensive consideration of the changes to the rules. On November 20, 2001, the Board issued an order opening a Notice of Inquiry, Docket No. NOI-01-2, to receive recommendations on revisions to the individual metering rules and comments from representatives of all persons who might be affected by changes to the rules. Notice was sent to gas and electric utilities and various groups and associations of potentially interested parties.

Responses were received from the City of Guttenberg; the Iowa Association of Municipal Utilities; Peoples Natural Gas Company, Division of UtiliCorp Inc., n/k/a Aquila, Inc., d/b/a Aquila Networks; Landlords of Iowa; United Cities Gas Company, a Division of Atmos Energy Corporation; Energy Billing Systems, Inc.; Interstate Power and Light Company, f/k/a IES Utilities, Inc. and Interstate Power Company; Iowa Association of Electric Cooperatives; MidAmerican Energy Company; and the Consumer Advocate Division of the Department of Justice (Consumer Advocate).

After considering the comments, the Board has determined that the existing rules need to be modified. In order to clarify the current rules and establish more specific standards, the Board has restructured the paragraphs. The Board proposes to adopt additional language to the definition of "impractical" suggested by Consumer Advocate in Docket No. NOI-01-2. This additional language will allow for master metering in certain situations other than for safety and structural reasons.

The Board has included a prohibition of master metering in multiple buildings based upon the rules promulgated by the federal Office of Pipeline Safety (OPS). If the Board

## UTILITIES DIVISION[199](cont'd)

were to allow master metering of multiple buildings, the Board, as the agent of the federal Department of Transportation, would be required to find and inspect each of these installations. This could include mobile home parks, multiple building apartment complexes, and similar locations. The Board anticipates that master metering of these types of locations would increase its staff's workload so that it could not perform other duties concerning pipeline safety.

The Board is proposing a definition of "master meter" that is consistent with OPS rules. This definition allows separate garages at residences and multiple buildings owned by the same person or entity to be master-metered. The Board has included the definition of "master meter" and the prohibition against master metering in multiple buildings in Chapter 20 even though OPS rules do not apply to electric service. The Board believes these are reasonable restrictions and should also be applied to electric service.

Pursuant to Iowa Code sections 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before August 13, 2002, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author's name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

A public hearing to receive oral comments on the proposed amendments will be held at 10 a.m. on August 21, 2002, in the Board's hearing room at the address listed above. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at (515)281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

These amendments are intended to implement Iowa Code sections 17A.4, 476.1, and 476.2.

The following amendments are proposed.

ITEM 1. Rescind paragraph 19.3(1)"b," reletter paragraphs "c" and "d" as "f" and "g," and adopt new paragraphs "b," "c," "d," and "e" as follows:

b. All gas delivered to multioccupancy premises within a single building, where units are separately rented or owned, shall be sold by the utility on the basis of individual meter measurement for each unit, except in the following circumstances:

(1) Where gas is used in centralized heating, cooling or water-heating systems;

(2) Where a facility is designated for elderly or handicapped persons;

(3) Where submetering or resale of service was permitted prior to 1966; or

(4) Where individual metering is impractical. "Impractical" means: (1) where conditions or structural barriers exist in the multioccupancy building that would make individual meters unsafe or physically impossible to install; (2) where the cost of providing individual metering exceeds the long-

term benefits of individual metering; or (3) where the benefits of individual metering (reduced and controlled energy consumption) are more effectively accomplished through a master meter arrangement.

c. Master metering to multiple buildings is prohibited, except for interior piping in buildings downstream from the customer's meter or the start of customer piping where there is no submetering.

d. If a multioccupancy building is master-metered, the end-user occupants may be charged for natural gas as an unidentified portion of the rent, condominium fee, or similar payment, or, if some other method of allocating the cost of gas service is used, the total charge for gas service passed through to the end users shall not exceed the total gas bill charged by the utility for the same period.

e. For purposes of this subrule, a "master meter" means a single meter used in determining the amount of natural gas provided to a multioccupancy building or multiple buildings.

ITEM 2. Rescind paragraph 20.3(1)"b," reletter paragraphs "c" and "d" as "f" and "g," and adopt new paragraphs "b," "c," "d," and "e" as follows:

b. All electricity delivered to multioccupancy premises within a single building where units are separately rented or owned must be sold by the utility on the basis of individual meter measurement for each unit, except in the following instances:

(1) Where electricity is used in centralized heating, cooling, water-heating, or ventilation systems;

(2) Where a facility is designated for elderly or handicapped persons;

(3) Where submetering or resale of service was permitted prior to 1966; or

(4) Where individual metering is impractical. "Impractical" means: (1) where conditions or structural barriers exist in the multioccupancy building that would make individual meters unsafe or physically impossible to install; (2) where the cost of providing individual metering exceeds the long-term benefits of individual metering; or (3) where the benefits of individual metering (reduced and controlled energy consumption) are more effectively accomplished through a master meter arrangement.

c. Master metering to multiple buildings is prohibited, except for interior wiring in buildings located behind the customer's meter or the start of customer wiring where there is no submetering.

d. If a multioccupancy building is master-metered, the end-user occupants may be charged for electricity as an unidentified portion of the rent, condominium fee, or similar payment, or, if some other method of allocating the cost of electric service is used, the total charge for electric service passed through to the end users shall not exceed the total electric bill charged by the utility for the same period.

e. For purposes of this subrule, a "master meter" means a single meter used in determining the amount of electricity provided to a multioccupancy building or multiple buildings.

## ARC 1814B

ELDER AFFAIRS  
DEPARTMENT[321]

## Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 231C.3, the Department of Elder Affairs hereby amends Chapter 27, "Assisted Living Programs," Iowa Administrative Code.

The purpose of these amendments is the addition of operational adjustments to be made to service plans, staffing levels and staffing skills when an assisted living program serves persons with dementia or cognitive disorder. Amendments to the occupancy criteria are intended to enhance informed decision making by consumers, as well as to provide added protection for persons with dementia.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 12, 2001, as **ARC 1180B**. A public hearing was conducted on Thursday, January 3, 2002. There were several changes made from the Notice of Intended Action as a result of many oral and written comments and further consideration by a special workgroup. The special workgroup focused on comments received and recommended many of the following changes to the Department. The changes incorporated represent effort to add protections for tenants with dementia.

In response to comments received, the following revisions were made to the Notice of Intended Action:

In rule 27.1(231C), several definitions are amended and new definitions are adopted. Throughout these rules, the term "cognitive impairment" has been changed to "cognitive disorder" to be consistent with the new definition. The current definition of "dementia-specific assisted living program" has been modified to include programs serving five or more tenants with dementia or cognitive disorder at Stage 4 or above on the Global Deterioration Scale. The definition of "health care professional" has been changed to refer to "registered" nurse rather than "licensed" nurse.

Changes made to rule 27.3(231C) more clearly state the level of care that is not appropriate for assisted living and focus on assessment of functional status of tenants. The changes also strengthen the rule so that the provisions in occupancy agreements are more clear to consumers and providers. In regard to comments related to tenant rights and appeal processes, the Department will further review the extent to which these issues are currently addressed and determine need for any further rule making. Subrule 27.3(2), related to the signed agreement, has been modified to specify the "policy disclosure" statement. Subrule 27.3(3), related to occupancy and transfer criteria, has been changed to include "who is bed bound" and to specify that daily medication injections related to diabetes and provision of daily assessment and treatment of open wounds be provided by a "licensed nurse." New paragraphs have been added to address unmanageable incontinence, and the paragraph related to routine two-person transfers now refers to "standing" rather than "positioning."

New subrule 27.3(5) has been added, which allows tenants to designate a responsible party to assist with decision making related to care and services.

Changes to subrule 27.4(1) specify that the preliminary service plan be developed by a "health care or human services professional"; that, for the tenant needing personal or health care, the service plan be updated within 30 days of occupancy and not less than annually and that the team include

a "human services professional"; and that the service plan includes activities for those tenants "who are unable to plan their own activities," including those with dementia.

Subrules 27.5(1) to 27.5(3) have been changed to clarify training requirements for employees. The changes specify who must complete the training, the content of the training, permitted exemptions, and continuing education for employees. Paragraph 27.5(3)"b" related to the content of dementia-specific training applies to dementia-specific assisted living programs, as well as to assisted living programs serving persons with dementia. Upon review of comments related to the timing, content, and to which employees the training requirement applies, the Department has adopted the subrules as a minimum requirement to help ensure the safety and care of tenants with dementia.

Subrule 27.7(1), paragraph "b," subparagraph (9), has been changed to require a description of services and programming for tenants in a dementia-specific setting.

In compliance with Iowa Code section 17A.5(2)"b"(2), the Department finds that the normal effective date for these amendments should be waived and the amendments be made effective upon filing. The Department finds that these amendments confer a benefit on the tenants who reside in certified assisted living programs by clarifying consumer expectations of assisted living, adding further definition to the level of care not appropriate to assisted living, and enhancing staffing and training requirements in assisted living programs, thus providing added protections for consumers, especially those with dementia or cognitive disorder. Consumers with dementia will have greater protections. There is also a benefit to the providers since these amendments provide clarification regarding conditions for occupancy and transfer, as well as service plans and staffing.

The Commission on Elder Affairs adopted these amendments on June 28, 2002.

These amendments became effective July 1, 2002.

These amendments are intended to implement Iowa Code chapter 231C.

The following amendments are adopted.

ITEM 1. Amend rule **321—27.1(231C)** as follows:

Amend the following definitions:

"Dementia-specific assisted living program" means an assisted living program certified under this chapter that *either serves five or more tenants with dementia or cognitive disorder at Stage 4 or above on the Global Deterioration Scale or holds itself out as providing special care for persons with cognitive impairment disorder or dementia, such as Alzheimer's disease, in a dedicated setting.*

"Health care professional" means a physician, physician's assistant, or ~~licensed~~ *registered* nurse.

"Part-time or intermittent" means ~~the less than daily provision of skilled licensed nursing services and professional therapies that are provided no more than five days per week; or the daily provision of skilled licensed nursing services and professional therapies that are provided six or seven days per week for temporary, but not indefinite, periods of time with a predictable end within of up to 21 days; or licensed nursing services and professional therapies in combination with nurse-delegated assistance with medications or activities of daily living that do not exceed 28 hours per week. a month; but does not include 24-hour care provided by a licensed nurse or other licensed health care professional. Skilled nursing services and professional therapies which are provided daily shall be for no more than 8 hours a day when combined with nurse-delegated activities and personal care.~~

## ELDER AFFAIRS DEPARTMENT[321](cont'd)

Adopt the following **new** definitions in alphabetical order:

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

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

“Designated responsible party” means the person who signs or cosigns the occupancy agreement required in subrule 27.7(1) or the tenant’s guardian or conservator if one has been appointed. In the event that a tenant has neither a guardian, conservator nor person who signed or cosigned the tenant’s occupancy agreement, the term “responsible party” shall include the tenant’s sponsoring agency, e.g., the department of human services, Veterans Administration, religious groups, fraternal organizations, or foundations that assume responsibility and advocate for their client tenants and pay for their client tenants’ health care.

“Human service professional” means an individual with a bachelor’s degree in a human service field including, but not limited to, human services, gerontology, social work, sociology, and family science. Experience in a human service field may be substituted for up to two years of required education.

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

ITEM 2. Amend subrule 27.2(4) as follows:

**27.2(4)** Blueprint reviews for assisted living programs.

a. Blueprints must be reviewed prior to construction or remodeling of a building for use as an assisted living program.

b. The blueprint review fee must accompany the blueprints.

c. Blueprints must be wet-sealed by an Iowa-licensed architect or engineer and must include all supporting plumbing, electrical and mechanical system documentation. Other documentation that must be provided with the blueprints for review prior to construction or remodeling includes:

(1) The evacuation ~~and~~ emergency plan that covers all tenant use areas, including any secured outdoor areas;

(2) The product data and shop drawings for the fire alarm, smoke detection and sprinkler systems.

d. Blueprints, supporting documentation and the review fee are to be sent to Assisted Living Blueprint Review, Department of Elder Affairs, Clemens Building, Third Floor, 200 Tenth Street, Des Moines, Iowa 50309-3609 Department of Inspections and Appeals, Health Facilities Division, Lucas State Office Building, Third Floor, Des Moines, Iowa 50319.

ITEM 3. Amend rule 321—27.3(231C) as follows:

**321—27.3(231C) Conditions for occupancy and transfer.**

**27.3(1)** Evaluation of tenant. Each assisted living program shall have written policies and procedures for the evaluation of each tenant’s functional ~~and cognitive ability~~ *abilities* and health status and the determination of needed services by a health care or human services professional prior to occupancy, within 30 days of occupancy, and as needed, but not less than annually.

**27.3(2)** Signed agreement. Each tenant shall sign an occupancy agreement and managed risk *policy disclosure* statement prior to occupancy.

**27.3(3)** Occupancy and transfer criteria.

a. An assisted living program shall not knowingly admit or retain a tenant:

(1) *Who is bed bound; or*

~~(1)~~ (2) *Who requires more than part-time or intermittent health-related care, including, but not limited to, a person who requires:*

1. *Licensed nursing care for an unstable medical condition; or*

2. *Daily medication injections with the exception of a person with stable diabetes who receives subcutaneous injections from a licensed nurse; or*

3. *Daily assessment or treatment by a licensed nurse of conditions such as an open wound or pressure ulcer; or*

4. *Staff provision of total care for unmanageable incontinence on a routine basis to keep the tenant clean and dry; or*

5. *Routine two-person assistance with standing, transfer or evacuation; or*

~~(2)~~ (3) *Who is dangerous to self or others, including but not limited to a tenant who:*

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

2. *Has a diagnosis of an active-stage contagious disease such as tuberculosis; or*

~~(3)~~ (4) *Who is in an acute stage of alcoholism, drug addiction, or mental illness; or*

~~(4)~~ (5) *Who is under the age of 18; or*

~~(5)~~ (6) *Who meets the assisted living program’s transfer criteria as disclosed in the occupancy agreement.*

b. An assisted living program may have additional occupancy or transfer criteria if disclosed in ~~writing the written~~ *occupancy agreement* prior to occupancy.

c. An assisted living program may request an exception to the provision of 27.3(3)“a”~~(1)~~ (2) in accordance with the requirements of 321—27.6(231C).

**27.3(4)** Transfer planning. The assisted living program shall assist a tenant who requires more services than the assisted living program is able to provide in making arrangements for care in an alternative setting.

**27.3(5)** *Substitute decision makers. Each tenant may designate a responsible party to be available to assist the tenant in making decisions regarding care and services.*

ITEM 4. Amend subrule 27.4(1) as follows:

**27.4(1)** Service plan required.

a. An individualized service plan shall be developed for each tenant:

~~(1) In consultation with the tenant and, at the tenant’s request, with the family member(s) or designated responsible party;~~

~~(2) (1) Prior to occupancy and updated at least annually or whenever changes in need are identified~~ *Prior to occupancy, a preliminary service plan shall be developed by a health care professional or human services professional in consultation with the tenant and, at the tenant’s request, with the family member(s) or designated responsible party. The service plan shall subsequently be updated at least annually or whenever changes are needed; and*

~~(3) (2) When the tenant needs personal care or health-related care, the service plan shall be developed~~ *updated within 30 days of occupancy and as needed, but not less than annually, in consultation with a multidisciplinary team, which consists of no less than three individuals, including a health care professional and a person with a bachelor’s de-*

## ELDER AFFAIRS DEPARTMENT[321](cont'd)

~~gree in a human services-related field a human services professional.~~

b. The service plan shall be individualized and shall indicate, at a minimum:

(1) The tenant's identified needs and requests for assistance;

(2) Any services and care to be provided per agreement with tenant;

(3) The provider(s) if other than the assisted living program; and

~~(4) Transfer and referral arrangements for health care providers selected by each tenant. The tenant's preference for transfer to other health care facilities and referral to other health care providers; and~~

(5) *For persons who are unable to plan their own activities, including persons with dementia, planned and spontaneous activities based on the individual's abilities and personal interests.*

ITEM 5. Amend subrules 27.5(1) to 27.5(3) as follows:

**27.5(1)** Sufficient trained staff shall be available at all times to fully meet ~~tenant's~~ tenants' identified needs. *A dementia-specific assisted living program shall have one or more staff persons awake and on duty 24 hours a day in the proximate area, who check on tenants as indicated in the tenants' service plans.*

**27.5(2)** Each tenant shall have access to a 24-hour personal emergency response system ~~which~~ that automatically identifies the tenant in distress and can be activated with one touch. *An assisted living program that serves a tenant or tenants with cognitive disorder or dementia shall have a system, program or staff procedure that responds to the emergency needs of a tenant or tenants with cognitive disorder or dementia in lieu of a personal emergency response system.*

**27.5(3)** The owner or sponsor of the assisted living program is responsible for ensuring that both management and ~~direct service~~ employees receive training appropriate to the ~~task assigned~~ tasks.

a. *In a dementia-specific assisted living program, training for all employees shall include a minimum of six hours of dementia-specific education and training prior to or within 90 days of employment.*

b. *The dementia-specific education or training for all employees of assisted living programs that serve individuals with dementia and for all employees of dementia-specific assisted living programs shall include, but not be limited to:*

(1) *Explanation of Alzheimer's disease and related disorders;*

(2) *The assisted living program's specialized dementia care philosophy and program;*

(3) *Skills for communicating with persons with dementia;*

(4) *Skills for communicating with family and friends of persons with dementia;*

(5) *Family issues such as role reversal, grief and loss, guilt, relinquishing the caregiving role, and family dynamics;*

(6) *Importance of planned and spontaneous activities;*

(7) *Providing assistance with activities of daily living;*

(8) *Importance of the service plan and social history information;*

(9) *Working with challenging tenants;*

(10) *Simplifying, cueing, and redirecting; and*

(11) *Staff support and stress reduction.*

c. *An employee who provides documentation of completion of a dementia-specific education or training program within the past 12 months shall be exempt from the education*

*and training requirement of 321—paragraphs 27.5(3) "a" and 27.5(3) "b."*

d. *All employees of a dementia-specific assisted living program shall receive a minimum of two hours of dementia-specific continuing education annually; direct-contact employees shall receive a minimum of six hours of dementia-specific continuing education annually.*

ITEM 6. Amend subrule 27.7(1) as follows:

**27.7(1)** Occupancy agreement.

a. The assisted living program shall enter *into* an occupancy agreement with each tenant for assisted living housing and services that clearly describes the rights and responsibilities of the tenant and of the provider.

b. The occupancy agreement shall also include, but not be limited to, the following:

(1) Description of all fees, charges and rates describing tenancy and basic services covered, any additional and optional services and related costs;

(2) Statement regarding the impact of the fee structure on third-party payments and whether third-party payments and resources will be accepted by the assisted living program;

(3) Procedure for nonpayment of fees;

(4) Identification of party responsible for payment of fees;

(5) Guarantee that the assisted living program will notify the tenant in writing at least 30 days in advance of any changes to the occupancy agreement and guarantee that all tenant information will be maintained in a confidential manner to the extent allowable under state and federal law;

(6) Occupancy and transfer criteria;

(7) Emergency response policy; and

(8) The staffing policy which identifies whether or not staff is available 24 hours a day, whether or not task delegation will be used, and how staffing will be adapted to changing tenant needs; and

*(9) In a dementia-specific assisted living program, a description of the services and programming provided to meet the life skills and social activity needs of tenants.*

[Filed Emergency After Notice 7/1/02, effective 7/1/02]

[Published 7/24/02]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/24/02.

**ARC 1837B**

## **INSPECTIONS AND APPEALS DEPARTMENT[481]**

### **Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 99B.13, the Department of Inspections and Appeals hereby amends Chapter 100, "Administration," Chapter 102, "Social Gambling," and Chapter 103, "Bingo," Iowa Administrative Code.

The purpose of these amendments is to bring the administrative rules into conformance with 2002 Iowa Acts, House File 2109, by changing the raffle amounts for fairs and small, large and real property raffles; reflecting that raffle tickets cannot be used as door prizes; adding provisions for annual raffle licenses; including rules which state that qualified organizations can hold up to eight annual raffles provided that each raffle is held in a different county; noting that the cost

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

for a raffle ticket is now unlimited; specifying which organizations qualify to conduct gambling occasions; specifying that annual game nights for nonqualified organizations cannot include raffles; reflecting the increase in the amount that participants can wager at an annual game night; and adding pool and darts as legal contests. In addition, changes were made in accordance with the rule reviews required by Executive Order Number 8.

These amendments are in response to 2002 Iowa Acts, House File 2109, which was signed into law by Governor Thomas J. Vilsack on April 4, 2002, and became effective July 1, 2002.

These rules are subject to waiver pursuant to the Department's waiver provisions contained in 481—Chapter 6.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are impracticable because of the immediate need for rule making to implement 2002 Iowa Acts, House File 2109.

The Department finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of these amendments should be waived and these amendments should be made effective upon filing with the Administrative Rules Coordinator on July 5, 2002, as they confer a benefit upon nonprofit organizations that engage in charitable gambling.

The Department adopted these amendments on July 5, 2002.

These amendments are also published herein under Notice of Intended Action as **ARC 1834B** to allow public comment. This emergency filing permits the Department to implement new provisions of the law.

These amendments are intended to implement Iowa Code chapter 99B as amended by 2002 Iowa Acts, House File 2109.

These amendments became effective on July 5, 2002.

The following amendments are adopted.

**ITEM 1. Amend rule 481—100.1(10A,99B) as follows:**

Amend the following definitions:

“Active in Iowa” means that the primary place for conducting legal activities or transactions is the state of Iowa. Maintaining a checking account, *listing a telephone number* or conducting minor business *in Iowa* is not considered being active in Iowa.

“Political party organization” means a group affiliated with and authorized by a political party. This includes a state, county or district central committee or an auxiliary group or committee appointed for a special purpose such as fund-raising. *Political action committees are not eligible for gambling licenses.*

Adopt the following **new** definition in alphabetical order:

“Calendar raffle” means a grid which denotes the days, weeks and months of a year and from which prizes are awarded on different dates.

**ITEM 2. Amend rule 481—100.2(99B) as follows:**

**481—100.2(99B) Licensing.** Before the sale of any bingo equipment or supplies to a licensee by a bingo manufacturer or bingo distributor, or before any gambling may occur, a gambling license application must be approved by the department.

Gambling is restricted to the location applied for *by the qualified organization* and approved by the department. A license may be transferred to a different location only after application by the licensee and approval by the department. Permission for temporary off-site use of a license may be

granted upon request to the department ~~at the address listed in the next paragraph.~~

Application forms are available from the ~~Inspections Division~~ *Social and Charitable Gambling Unit*, Department of Inspections and Appeals, Lucas State Office Building, ~~Second Floor~~, Des Moines, Iowa 50319-0083, or by calling (515)281-6848. A short-form application for school district boards of directors is also available from the department.

Licenses are valid for two years after the date issued. Exemptions are:

1. The 14-consecutive-day ~~sponsor~~ *amusement sponsor's* license;

2. to 4. No change.

5. The ~~length of the fair raffle license is indefinite and shall not be longer than two years, which shall be valid for the length of the fair;~~

6. and 7. No change.

8. *The one-year statewide raffle license.*

**100.2(1)** No change.

**100.2(2)** There are ~~nine~~ *11* types of gambling licenses:

a. One-year *license* for an amusement concession described in 481—Chapter 101;

b. ~~Fourteen days~~ *Fourteen-day sponsor's license* for a carnival, bazaar, centennial or celebration as described in 481—Chapter 101;

c. ~~Two years~~ *Two-year license* for social gambling *in beer and liquor establishments* described in 481—Chapter 102;

d. *Two-year license for social gambling in public places described in 481—Chapter 102;*

~~d e. Fair raffles~~ *License for fair raffle* conducted by a bona fide fair or qualified organization described in rules 100.50(99B) to 100.52(99B);

e f. ~~Annual License for an annual game night~~ described in rules 100.60(99B) to 100.63(99B);

f g. ~~Two years~~ *Two-year license* for a qualified organization described in 481—Chapters 100 and 103;

g h. Limited ~~14 days~~ *14-day license* for a qualified organization described in 481—Chapters 100 and 103;

h i. Limited ~~90 days~~ *90-day license* for a qualified organization for raffles only, as described in 481—Chapter 100; ~~and~~

i j. Limited ~~180 days~~ *180-day license* for a qualified organization for raffles only, as described in 481—Chapter 100; ~~and~~

k. *One-year statewide raffle license described in 481—Chapter 100.*

**100.2(3)** A game or occasion shall not occur until a license is issued by the department. The license shall be prominently displayed at the gambling location. *An authorization number to operate may be issued to an applicant until a license is issued.*

**NOTE:** Iowa Code section 99B.2(1) contains an exception.

This rule is intended to implement Iowa Code sections 99B.2 and 99B.7.

**ITEM 3. Amend subrule 100.3(8) as follows:**

**100.3(8)** Any qualified organization conducting gambling activities must be ~~eligible for tax-exempt status~~ *one of the following types of organizations:*

a. *The organization is tax-exempt* under Section 501(c)(3), 501(c)(4), 501(c)(5), 501(c)(6), 501(c)(7), 501(c)(8), 501(c)(10), or 501(c)(19) of the Internal Revenue Code, as defined in Iowa Code section 422.3. A letter of determination from the IRS must be attached to the application, or proof of filing IRS Form 1023 or 1024 may be accepted if the department is satisfied *that the organization is eligible;*

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

b. The organization is an agency or instrumentality of the United States government, this state, or a political subdivision of this state; or

c. The organization is a parent-teacher organization or booster club that is recognized as a fund-raiser and supporter for a school district organized pursuant to Iowa Code

chapter 274 or for a school within the school district. A notarized letter signed by the president of the board of directors, the superintendent of the school district, or a principal of a school within that school district must accompany the application.

ITEM 4. Amend subrule 100.6(1), paragraphs "b" and "d," as follows:

b. Qualified organizations.

- Games of skill and games of chance . . . . . \$1,000 in merchandise
- Small raffles . . . . . ~~\$1,000~~ aggregate value of all prizes up to and including \$10,000 in cash ~~or~~ and merchandise
- Annual raffles . . . . . ~~Aggregate~~ aggregate value of all cash and merchandise prizes must exceed ~~\$1,000~~ \$10,000 in merchandise
- Raffles at a fair . . . . . ~~\$200~~ aggregate value of all prizes up to and including \$1,000 in merchandise
- Real property raffle in lieu of annual raffle . . . . . aggregate value of real property must exceed \$10,000
- Annual raffles at a fair . . . . . ~~Aggregate~~ aggregate value of all cash and merchandise prizes must exceed ~~\$200~~ \$1,000 in cash and merchandise
- ~~Bingo games~~ Single bingo game . . . . . up to \$100 cash or merchandise
- Bingo jackpots . . . . . \$800 cash or merchandise

See 481—subrule 103.6(6) for exception for a bingo jackpot game.

d. Annual game night. An individual shall not spend more than ~~\$50~~ \$250 for entrance fees and wagers. There is no limit on winning.

ITEM 5. Amend subrule 100.7(1), paragraph "b," by adopting **new** subparagraph (5) as follows:

(5) Any amount withheld for federal income tax (deduction of 20 percent federal withholding taxes is required on cash prizes over \$1,000).

ITEM 6. Amend rule 481—100.7(10A,99B), implementation sentence, as follows:

This rule is intended to implement Iowa Code ~~section~~ sections 99B.2 and 422.16.

ITEM 7. Amend subrule 100.12(2) as follows:

100.12(2) A license remains effective until a final decision is issued if the *denied* renewal application ~~denied~~ was timely and sufficient.

ITEM 8. Amend subrule 100.30(4) by adopting the following **new** unnumbered paragraph at the end thereof:

Political action committees are not eligible for gambling licenses.

ITEM 9. Amend subrule 100.31(1) as follows:

100.31(1) Only a qualified organization may charge an entrance fee. Participants may wager with their own money, and shall not spend more than ~~\$50~~ \$250 for entrance fees and wagers.

ITEM 10. Amend rule 481—100.32(99B) as follows:

**481—100.32(99B) Raffles.** A valid raffle shall only occur during the period of the license. *The license must be in effect before promotions for the raffle can begin.* The gambling event begins when the first ticket is sold and ends when winning numbers are drawn. *Calendar raffles do not comply with raffle criteria and are not allowed.*

100.32(1) A licensee may conduct an unlimited number of *small* raffles during a license period. Cash or merchandise prizes may be awarded. ~~Except in a large annual raffle, individual~~ Individual prizes or aggregate prizes for one small raffle may not exceed ~~\$50~~ \$10,000 in value. Raffle winners cannot be required to be present to win. The prize may be a single item or several items. ~~The cost to a participant for a~~

~~chance or ticket in a small raffle shall be no more than \$1. The cost to play is not limited.~~

100.32(2) A ~~"large"~~ An annual raffle (also referred to as a large raffle) may be held once per calendar year with prizes, including real property or merchandise, having a combined value greater than ~~\$50~~ \$10,000. ~~The total value of all prizes shall not exceed \$20,000.~~ The cost to play is not limited. If a raffle licensee holds a statewide raffle license, the licensee may hold not more than eight raffles per calendar year at which real property or one or more merchandise prizes having a combined value of more than \$10,000 may be awarded. Each such raffle held under a statewide license shall be held in a separate county. Withholding requirements are explained in department of revenue and finance 701—subrule 46.1(1).

100.32(3) If a prize is merchandise, its value shall be determined by the purchase price paid by the organization or donor.

100.32(4) A qualified organization licensee may hold one real property raffle per calendar year in lieu of an annual raffle. The department shall conduct a special audit to verify compliance with the following requirements:

- a. The licensee has submitted a real property raffle license application and a fee of \$100 to the department.
- b. The license is prominently displayed at the drawing area.
- c. The real property was acquired by gift or donation or has been owned by the licensee for a period of at least five years.
- d. Receipts from the raffle are kept in a separate financial account.
- e. A cumulative report for the raffle on a form determined by the department and 1 percent of gross receipts are submitted to the department within 60 days of the raffle drawing. The payment of 1 percent of the gross receipts shall be made payable to the Iowa Department of Inspections and Appeals.
- f. All other requirements of Iowa Code sections 99B.2 and 99B.7 are met.

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

**100.32(3.5)** A licensee may offer raffle tickets for sale at a discounted rate if the discount is applied in a nondiscriminatory manner. The discount must be available to all persons throughout the duration of the raffle and must be posted on all promotional material.

**100.32(6)** *A ticket, coupon, or card shall not be used as a door prize or given to a participant of a raffle, game of bingo, or game of chance if the use of the ticket, coupon, or card would change the odds of winning for participants of the raffle, game of bingo, or game of chance.*

This rule is intended to implement Iowa Code sections 99B.1(21), 99B.1(22) and 99B.7(1).

ITEM 11. Amend subrule **100.33(2)**, paragraph "g," as follows:

g. ~~Bingo worker compensation as allowed in 481—subrule 103.7(2) Worker compensation; and~~

ITEM 12. Amend rule 481—100.50(99B), introductory paragraph, as follows:

**481—100.50(99B) Raffles conducted at a fair.** Each raffle begins when the first ticket is sold and ends when winning numbers are drawn. *The raffle shall be conducted within the duration of the fair.*

ITEM 13. Amend rule 481—100.51(99B) as follows:

**481—100.51(99B) Raffle prizes at a fair.** Cash prizes shall not be awarded and merchandise prizes shall not be repurchased. An unlimited number of raffles may be conducted. An unlimited number of people may win in a raffle. No one may win more than \$50 \$1,000 in merchandise. A gift certificate prize shall not be redeemed for cash.

ITEM 14. Amend rule 481—100.52(99B) as follows:

**481—100.52(99B) Exceptions for an annual raffle.** A fair sponsor or a qualified organization, but not both, may hold one raffle per calendar year at a fair for which the cost per chance or ticket is unlimited and for which cash prizes may be awarded.

**100.52(1)** The value of prizes in this raffle ~~may shall~~ be greater than \$50, but not greater than \$20,000 \$1,000. The value is the purchase price paid by the fair sponsor or qualified organization. ~~The total value of all prizes shall not exceed \$20,000.~~

**100.52(2)** The conductor of the game shall deduct state income tax from cash prizes in excess of \$600. Tax withheld shall be remitted to the department of revenue and finance on behalf of the winner. See Iowa department of revenue and finance 701—subrule 46.1(1). *The deduction of 20 percent federal withholding taxes on all cash prizes over \$1,000 is also required and shall be remitted to the Internal Revenue Service.*

Rules 100.50(99B) to 100.52(99B) are intended to implement Iowa Code sections 99B.1(22), 99B.5, and 99B.21, and 422.16.

ITEM 15. Amend subrule **100.63(2)**, paragraph "b," as follows:

b. Participants may be charged an entrance fee or participation fee and may wager their own funds. The sponsor shall ensure that a participant's maximum loss will be no more than \$50 \$250 in entrance fees and wagers during an annual game night.

ITEM 16. Amend rule 481—102.1(99B) as follows:

**481—102.1(99B) License requirements.** Premises which have a Class "A," Class "B," Class "C," or Class "D" liquor

control license, or Class "B" beer permit shall have a social gambling license in order to allow gambling between individuals or sports *betting* pools on the premises. Social gambling shall not be conducted until an application is approved and a license is issued by the department. *The license fee is \$150.*

~~102.1(1) Reserved. Substance transferred to 102.2(4), IAB 5/1/94. Except as provided in Iowa Code sections 99B.11 and 99B.12, a social gambling license is required in order to allow gambling between individuals of any age in a public place that does not serve beer or liquor. The license fee is \$100. Sports betting pools are not allowed under this license.~~

**102.1(2)** and **102.1(3)** No change.

This rule is intended to implement Iowa Code section sections 99B.6 and 99B.9.

ITEM 17. Amend subrules 102.2(1), 102.2(3) and 102.2(4) as follows:

**102.2(1)** The licensee and the licensee's agents or employees shall not sponsor, conduct or promote any game. They may participate the same as any other participant *under a social gambling license where beer or liquor is sold. They may not participate under a social gambling license in a public place.* For purposes of this chapter, ~~sport~~ sports betting pools are not considered games.

**102.2(3)** No person under 21 years of age may participate in social gambling ~~covered by this chapter~~ *where beer or liquor is sold.*

**102.2(4)** Sports *betting* pools are allowed only in licensed establishments *where beer or liquor is sold and must conform to Iowa Code section 99B.6(7).* No participant may wager more than \$5 and the maximum winnings to all participants from the pool shall not exceed \$500.

ITEM 18. Amend subrule 102.3(1) as follows:

**102.3(1)** Card and parlor games in the following list may be played:

1. to 11. No change.
12. Backgammon, ~~or~~
13. Darts, ~~or~~
14. Pool.

ITEM 19. Amend rule 481—103.2(10A,99B) as follows:

**481—103.2(10A,99B) License.** Licenses are issued for two years or 14 days. Licenses issued for 14 days are called limited licenses. Before any organization may conduct bingo games or occasions, an application must be approved by the department. The license shall be prominently displayed and is valid only at the gambling location named.

Bingo occasions are restricted to the location applied for *by the qualified organization* and approved by the department. A license may be transferred to a different location only after application by the licensee and approval by the department.

Application forms are available from the *Social and Charitable Gambling Unit Inspections Division*, Department of Inspections and Appeals, Lucas State Office Building, ~~Second Floor~~, Des Moines, Iowa 50319-0083, or by calling (515)281-6848. A short-form application for school district boards of directors is available from the department.

Examples of various circumstances that affect whether a license is granted are:

1. ~~ABC organization applies for and is issued a 14-day limited license for the period of September 1, 1981, to September 14, 1981, to conduct bingo occasions at 1100 Grand, Des Moines, Iowa. On September 10, 1981, XYZ organiza-~~

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

tion applies for a 14-day limited license to conduct bingo occasions at the same location. XYZ's license is denied because only one 14-day limited license may be issued for the same location during any calendar year.

2 1. Qualified organization X applies for and is issued a two-year license to conduct bingo occasions at 313 Cherry Street, Des Moines, Iowa. The license is effective from August 1, 1981, to July 31, 1983. On October 1, 1981, qualified organization Y applies for a 14-day limited license to conduct bingo at the same location. The license is approved and issued because a limited license can be issued ~~once during any calendar year~~ for the same location used for a two-year bingo license.

3 2. ABC qualified organization applies for and is issued a two-year qualified organization license to conduct bingo at 1002 West 2nd Avenue in Jones Town, Iowa. The license is effective from October 1, 1981, to September 30, 1983. On November 15, 1981, EFG qualified organization applies for a two-year qualified organization license for the same location. A license may be issued to EFG organization for the same location during the same period to conduct any games of chance, games of skill or raffles. EFG organization shall not conduct bingo at the location.

4 3. Hometown community school district applies for and is issued a two-year qualified organization license to conduct games of skill, games of chance and raffles at the grade school building. The license is effective from September 1, 1981, to August 31, 1983. During the time *that* the Hometown school license is in effect, the school-sponsored pep club applies for a 14-day limited license to conduct games of skill at the grade school building. The school-sponsored pep club may be issued a limited license for the same location during the same time. ~~However, only one limited license will be issued during a calendar year.~~ Under this example, the school-sponsored pep club would not be required to obtain a separate license, because school-affiliated organizations may operate separate events under a school district's two-year license.

This rule is intended to implement Iowa Code section 99B.7.

ITEM 20. Amend subrule 103.3(1) as follows:

**103.3(1)** No admission fee may be charged. However, a person may be required to purchase one game for \$1 or less to enter the room where bingo is being played.

ITEM 21. Amend subrule **103.3(3)**, paragraph "e," subparagraph (3), as follows:

(3) Submit, *upon request*, records of daily activities referred to in paragraphs "f" and "g"; and

ITEM 22. Amend rule 481—103.5(99B), introductory paragraph, as follows:

**481—103.5(99B) State and house rules.** Iowa administrative rules and specific house rules must be readily available to every bingo player. *The house has discretion regarding reserved seating and age restrictions for children to play, but must post such restrictions in the house rules.*

ITEM 23. Amend subrule **103.5(2)**, paragraph "b," subparagraph (3), as follows:

(3) House rules for the game.

1. House rules shall include how to indicate "bingo" to halt the game, collect a prize, and verify winners' names and addresses.

2. *Reserved seating may be observed if the house so chooses and posts the information.*

3. *People of any age are allowed to play bingo. The house may choose to restrict children of certain ages, as long as the restriction is posted in the house rules.*

ITEM 24. Amend subrule 103.6(2) as follows:

**103.6(2) Merchandise door prizes** with a value of \$10 or less may be awarded. *A ticket, coupon, or card shall not be used as a door prize or given to a participant of a raffle, game of bingo, or game of chance if the use of the ticket, coupon, or card would change the odds of winning for participants of the raffle, game of bingo, or game of chance.*

ITEM 25. Amend subrule **103.6(6)**, paragraph "g," as follows:

g. Cash prizes over \$600 require the deduction of 5 percent withholding tax, *plus any applicable local option or school tax.* This tax is to be withheld by the organization conducting the game. The amount deducted shall be remitted to the state department of revenue and finance on behalf of the prize winner. ~~Also required is the deduction of 20 percent federal withholding taxes on all cash prizes over \$1000. For example, the federal withholding requirements could apply to cash prizes won in a raffle.~~

ITEM 26. Amend rule 481—103.7(10A,99B), introductory paragraph, as follows:

**481—103.7(10A,99B) Workers.** *Only volunteers may assist in conducting bingo except as in subrule 103.7(2).*

ITEM 27. Rescind and reserve subrule **103.7(3)**.

ITEM 28. Amend rule 481—103.9(99B) as follows:

**481—103.9(99B) Location.** Bingo may be conducted on premises either owned or leased by the qualified organization. All buildings in which bingo is conducted must meet state or local standards for occupancy and safety. ~~Each building or location which is identified by a sign as doing bingo shall use the name of the licensee. The name of the licensee shall be posted on the sign of each building or location where bingo occasions are held.~~ A name which is closely associated with the licensee and which clearly identifies the lawful uses of the proceeds may also be used. Generic-type names, such as "Nelson Street Bingo" or "Uncle Bob's Bingo," shall not be used.

1. No change.

2. The licensee may terminate any lease or rental agreement without paying a penalty or forfeiting money or a deposit. *Damage deposit money is excepted.*

3. Alcoholic beverages may be served in a bingo location ~~only if the licensed organization also if that location possesses a beer permit or liquor license.~~

4. and 5. No change.

6. Only one licensed organization may hold bingo occasions at a location. However, the following exception applies: ~~Once per year,~~ A 14-day limited licensee may hold bingo occasions at the same location.

This rule is intended to implement Iowa Code section 99B.7.

ITEM 29. Rescind and reserve rule **481—103.10(10A,99B)**.

ITEM 30. Amend subrule **103.13(2)**, paragraph "b," subparagraph (4), as follows:

(4) Each hard card must be receipted. The number of cards sold, the cost (price) per card, and the gross receipts must be recorded for each game in which hard cards are sold.

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

ITEM 31. Amend subrule **103.14(2)**, paragraph “b,” as follows:

b. All checks, including void *and voided* checks, shall be kept and accounted for.

[Filed Emergency 7/5/02, effective 7/5/02]  
[Published 7/24/02]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/24/02.

**ARC 1826B****PERSONNEL DEPARTMENT[581]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 97B.15, the Department of Personnel hereby amends Chapter 21, “Iowa Public Employees’ Retirement System,” Iowa Administrative Code.

Paragraph 21.4(1)“f” is amended to establish a prospective enforcement date for excluding recruitment bonuses from the definition of covered wages.

Subrule 21.4(2) is amended to allocate wages restored under new subrule 21.6(12) to the quarters in which wages would have been received but for employer-mandated reduction in hours (EMRH).

Paragraph 21.4(3)“a” is amended to reflect the limit of covered wages pursuant to Section 401(a)(17) of the Internal Revenue Code effective January 1, 2002.

New subrule 21.4(4) is adopted to allow employer contributions to Internal Revenue Code Section 125 plans, also known as cafeteria plans, to be treated as covered wages under certain conditions.

Subparagraph 21.5(1)“a”(5) is amended pursuant to 2002 Iowa Acts, House File 2532, to specify that full-time county medical examiners and deputy county medical examiners are considered covered employees under IPERS effective January 1, 1995.

New subparagraph 21.5(1)“a”(51) is adopted to clarify that employees of the Iowa student loan liquidity corporation are not considered covered employees under IPERS.

Paragraphs 21.6(9)“b,” “c,” and “e” are amended to implement the statutory contribution rates for special service members recommended by IPERS’ actuary pursuant to Iowa Code sections 97B.49B and 97B.49C.

Subparagraph 21.6(9)“d”(1) is amended to include coverage for county conservation peace officers as described in Iowa Code section 350.5 for county employees and Iowa Code section 456A.13 for state employees.

New subrule 21.6(12) is adopted to allow restoration of covered wages caused by an employer-mandated reduction in hours (EMRH).

Paragraph 21.8(4)“e” and subrule 21.8(9) are amended pursuant to 2002 Iowa Acts, House File 2532, to reflect the reduction in the severance period from 4 months to 30 days after the last paycheck including IPERS-covered wages is issued for members who have previously requested refunds from IPERS.

Subrule 21.19(1) is amended pursuant to 2002 Iowa Acts, House File 2532, to increase the wage-earning disqualifications for retired members.

Paragraph 21.22(1)“a” is amended to clarify that eligibility for a disability retirement allowance is conditioned upon the existence of a disability at the time of termination.

Rule 581—21.27(97B) is amended to remove the minimum rollover amount requirement.

In compliance with Iowa Code section 17A.4(2), the Department finds that, because these amendments are beneficial to members and necessary to the current and ongoing administration of the System, additional notice and public participation prior to implementation are impracticable, unnecessary, and contrary to the public interest, and that these amendments should be implemented immediately.

The Department also finds, pursuant to Iowa Code section 17A.5(2)“b,” that the normal effective date of these amendments should be waived and these amendments should be made effective upon filing with the Administrative Rules Coordinator on June 28, 2002, because the amendments confer benefits, or are required to implement the System’s governing statutes, or both. To give interested persons adequate notice of the changes and an opportunity to respond, a Notice of Intended Action regarding these amendments is also published herein as **ARC 1815B**.

New subrule 21.4(4) may be subject to requests for waivers. None of the other amendments will be subject to requests for waivers. The amendments to paragraph 21.4(1)“f,” subrule 21.4(2), paragraph 21.4(3)“a,” subparagraph 21.5(1)“a”(5), new subparagraph 21.5(1)“a”(51), paragraphs 21.6(9)“b,” “c,” and “e,” subparagraph 21.6(9)“d”(1), new subrule 21.6(12), paragraph 21.8(4)“e,” subrules 21.8(9) and 21.19(1), paragraph 21.22(1)“a” and rule 581—21.27(97B) confer benefits, prevent abuse, or are required by statute.

The Department adopted these amendments on June 28, 2002.

These amendments are intended to implement Iowa Code chapter 97B.

These amendments became effective June 28, 2002.

The following amendments are adopted.

ITEM 1. Amend subrule **21.4(1)**, paragraph “f,” as follows:

f. Special lump sum payments. Wages do not include special lump sum payments made during or at the end of service as a payoff of unused accrued sick leave or of unused accrued vacation. Wages do not include special lump sum payments made during or at the end of service as an incentive to retire early or as payments made upon dismissal, severance, or a special bonus payment intended as an early retirement incentive. Wages do not include catastrophic leave paid in a lump sum, recruitment bonuses, tips or honoraria. The foregoing items are excluded whether paid in a lump sum or in a series of installment payments. *Enforcement of the exclusion of recruitment bonuses from the definition of covered wages shall commence beginning with payments made on or after July 1, 2002.*

ITEM 2. Amend subrule 21.4(2) to read as follows:

**21.4(2)** Wages are reportable in the quarter in which they are actually paid to the employee, except in cases where employees are awarded lump sum payments of back wages, whether as a result of litigation or otherwise, in which case the employer shall file wage adjustment reporting forms with IPERS allocating said wages to the periods of service for which such payments are awarded. Employers shall forward the required employer and employee contributions and interest to IPERS.

An employer cannot report wages as having been paid to employees as of a quarterly reporting date if the employee has not actually or constructively received the payments in question. For example, wages that are mailed, transmitted

## PERSONNEL DEPARTMENT[581](cont'd)

via electronic funds transfer for direct deposit, or handed to an employee on June 30 would be reported as second quarter wages, but wages that are mailed, transmitted via electronic funds transfer for direct deposit, or handed to an employee on July 3 would be reported as third quarter wages.

IPERS contributions must be calculated on the gross amount of a back pay settlement before the settlement is reduced for taxes, interim wages, unemployment compensation, and similar mitigation of damages adjustments. IPERS contributions must be calculated by reducing the gross amount of a back pay settlement by any amounts not considered covered wages such as, but not limited to, lump sum payments for medical expenses.

Notwithstanding the foregoing, a back pay settlement that does not require the reinstatement of a terminated employee and payment of the amount of wages that would have been paid during the period of severance (before adjustments) shall be treated by IPERS as a "special lump sum payment" under subrule 21.4(1) above and shall not be covered.

*Notwithstanding the foregoing, wages restored following the receipt of contributions forwarded pursuant to 21.6(12) shall be credited to quarterly wages which would have been received but for employer-mandated reduction in hours (EMRH).*

**ITEM 3. Amend paragraph 21.4(3)"a" as follows:**

a. "Covered wages" means wages of a member during periods of service that do not exceed the annual covered wage maximum. Effective January 1, ~~2000~~ 2002, and for each subsequent calendar year, covered wages shall not exceed ~~\$170,000~~ 200,000 or the amount permitted for that year under Section 401(a)(17) of the Internal Revenue Code.

**ITEM 4. Amend rule 581—21.4(97B) by adopting the following new subrule:**

**21.4(4)** If certain conditions are met, employer contributions to fringe benefit programs that qualify under IRC Section 125 may be treated as covered wages. The following paragraphs set forth IPERS' regulations for determining covered wage treatment and for making wage adjustments when employer-paid contributions have been covered or excluded in violation of the standards set forth below.

a. Section 125 plans. For purposes of this subrule, a Section 125 plan means an employer-sponsored fringe benefit plan that qualifies under Section 125 of the federal Internal Revenue Code. Some of the common names for this type of plan are cafeteria plan, flexible benefits plan, flex plan, and flexible spending arrangement.

b. Elective employer contributions. For purposes of this subrule, "elective employer contributions" means employer contributions made to a Section 125 plan that can be received in cash or used to purchase benefits under the Section 125 plan. Generally, elective employer contributions that are not subject to special eligibility requirements qualify as covered wages.

c. Mandatory minimum coverage requirements. The term "elective employer contributions" does not include employer contributions that must be used to purchase benefits under a Section 125 plan. For example, if an employer provides \$2,500 to its employees to purchase benefits in a Section 125 plan, but requires that all employees must use \$1,000 of that amount to purchase single health coverage, the cost of the single coverage is deducted. In this example, \$1,000 would be subtracted from the \$2,500 provided, resulting in \$1,500 of covered wages.

d. Uniformity may be determined coverage group by coverage group. Iowa Code section 97B.1A(26)"a"(1)"b"

states that elective employer contributions shall be treated as covered wages only if made uniformly available and not limited to highly compensated employees. The application of the uniformity concept may be illustrated as follows. Employer Z has two major groupings of employees covered under its cafeteria plan, teaching staff and support staff. Teaching staff is provided \$3,000 to purchase benefits under the Section 125 plan. Every member of the teaching staff must take single coverage costing \$1,500. Every member of the support staff is provided \$2,500 and must also take the single coverage costing \$1,500. Each member of the teaching staff would have \$1,500 treated as covered wages, and each member of the support staff would have \$1,000 treated as covered wages. This would be considered uniform treatment.

Uniformity is not destroyed by the fact that the amount available to members of a coverage group varies because the actual cost of mandatory minimum coverage varies depending on actuarial factors that apply to each individual. For example, assume Employer Z above also required each employee to have long-term disability coverage. In Employer Z's case, the actual cost of disability coverage will vary from individual to individual. In that case, Employer Z would also deduct the actual cost of the required disability coverage, individual by individual, when determining IPERS covered wages.

Uniformity is not destroyed by reason of the fact that an employer has two groups of employees who, as a result of collective bargaining, have differing entitlements to employer contributions. For example, suppose Employer Y has a contract that provides \$3,500 to each employee to purchase benefits under the Section 125 plan. Every employee can take all the cash by waiving participation in the plan, or can use all or part of the employer contributions to the Section 125 plan. In the collective bargaining process, a new contract is adopted which states that the employer will still provide \$3,500 to each employee to purchase benefits under the Section 125 plan. However, under the new contract, persons who waived participation before April 15 can still waive participation in the plan and take all the cash, but persons who did not waive participation and those hired after April 15 must have single coverage costing \$1,700. Employer Y would be treated as having two groups of employees with different elective employer contribution amounts. The grandfathered group (employees who waived participation before April 15) would have covered wages of \$3,500, and the group consisting of those who did not waive participation before April 15 and new employees would have covered wages of \$1,800.

e. Highly compensated employee test. Iowa Code chapter 97B provides that in addition to being uniformly available, employer contributions must not discriminate in favor of highly compensated employees (HCEs). For purposes of this subrule, an HCE is an employee who has reported wages and tips subject to Medicare tax in excess of the IRC 414(q) limit then in effect. IPERS shall apply the HCE limitation as follows. If elective employer contributions are made available to HCEs, the total elective employer contributions made available to the HCE group must not exceed 25 percent of the total elective employer contributions made available under the Section 125 plan to all employees, including the HCEs. If the elective employer contributions available to the HCE group exceed the 25 percent limit (or if it is determined that the Section 125 plan discriminates in favor of HCEs under other IRS rules), elective employer contributions for HCEs shall not exceed the highest amount available to a nonexecutive coverage group of employees covered under such plan.

## PERSONNEL DEPARTMENT[581](cont'd)

The general application of these principles is illustrated below, using the 2002 HCE limit of \$90,000.

Employer W has a Section 125 plan that provides elective employer contributions totaling \$7,000 to executive staff, \$4,500 to teaching staff, and \$3,500 to support staff. There are no other limits or exclusions that apply. It will be acceptable to include these amounts as covered wages for each member of each group, provided that the total amount of contributions made available to HCEs does not exceed 25 percent of the total elective employer contributions for all employees covered under the plan. If elective employer contributions for the executive staff totaled \$70,000, and total elective employer contributions for the remainder of the staff totaled \$500,000, the HCE percentage of total elective employer contributions would be 12 percent (\$70,000 divided by \$570,000), and all elective employer contributions would be treated as covered wages for all groups. However, if elective employer contributions for the executive staff totaled \$70,000, and elective employer contributions for the remainder of the staff totaled \$200,000, the HCE percentage would be 26 percent (\$70,000 divided by \$270,000), and HCEs' elective employer contributions would be limited to \$4,500 per HCE for covered wage purposes.

f. Elective employer contributions limited to dual coverage employees. In some cases, a Section 125 plan provides for what appear to be mandatory employer contributions for health plan coverage, but the terms of the Section 125 plan permit dual coverage employees to waive coverage and receive the employer contributions in cash, if the employee can prove coverage under another health care plan. IPERS shall continue to treat the full amount of employer contributions in such cases as not being IPERS-covered wages, even though individual employees with the described dual coverage may actually receive the employer contribution in cash.

g. Bounties. In some cases, an employer has a Section 125 plan with employer contributions, and what IPERS refers to as a bounty option. A bounty is an amount that may be elected by all employees, or by a subset of that group, such as employees with coverage under another health care plan, either in lieu of any coverage under the employer's health care plan, or in lieu of family coverage. A bounty is generally set at an amount that is less than the amount that would otherwise be available to purchase benefits under the Section 125 plan. IPERS does not treat bounties as covered wages. The uniformity and nondiscrimination principles described in this subrule do not apply to such benefits.

h. Corrections for overpayments and underpayments of contributions and benefits caused by Section 125 plan covered wage errors. IPERS shall use the following guidelines in requiring corrections for overpayments and underpayments of contributions and benefits caused by the erroneous inclusion or exclusion of employer contributions to a Section 125 plan.

(1) Corrections must be made for all active, terminated and retired members, subject to the following limitations.

(2) If elective employer contributions that should have been covered were not covered, wage adjustments shall be filed, and employers shall be billed for all shortages plus interest. Employers shall be entitled to collect reimbursement for the employee share of contributions as provided in Iowa Code section 97B.9. If retirement benefits, death benefits or refunds have been underpaid as a result of the error, IPERS shall, upon receipt of the contribution shortage, make the appropriate adjustments and pay all back benefits.

(3) If employer contributions that should not have been covered were covered, wage adjustments shall be filed, and

the appropriate contribution amounts shall be repaid to employers for distribution to the respective employee and employer contributors. If the reporting error caused an overpayment of retirement benefits, death benefits, or refunds, IPERS shall offset excess contributions received against overpayments and shall request a repayment of the remainder of the overpayment, if any, from the recipient.

(4) Wage adjustments, overpayments, and underpayments shall be determined as of the onset of the error, but shall be limited to three years before the beginning of the current contract year for school employers, or current fiscal year for all other covered employers. The foregoing sentence shall apply to unintentional reporting errors. IPERS may go back to the onset of the error, even if the period exceeds three years, if the error is caused by intentional misconduct or gross neglect. Notwithstanding the foregoing principles, IPERS reserves the right to negotiate adjustments with individual employers in special situations, and no negotiated settlement with an employer shall be deemed to constitute a waiver of this subrule, or a binding precedent for other employers.

(5) This subrule shall be in effect until March 1, 2003, except as amended before then.

ITEM 5. Amend subparagraph **21.5(1)“a”(5)** as follows:

(5) Office and clerical staff of a county medical examiner's office are included, ~~but and, effective January 1, 1995,~~ county medical examiners and deputy county medical examiners ~~who are full-time county employees are excluded included.~~

ITEM 6. Amend paragraph **21.5(1)“a”** by adopting the following new subparagraph **(51)**:

(51) Persons employed by the Iowa student loan liquidity corporation are excluded.

ITEM 7. Amend paragraphs **21.6(9)“b”** and **“c”** as follows:

b. Sheriffs, deputy sheriffs, and airport firefighters, effective ~~July 1, 2001~~ *July 1, 2002*.

(1) Member's rate—~~5.50%~~ *5.37%*.

(2) Employer's rate—~~8.25%~~ *8.05%*.

c. Members employed in a protection occupation, effective ~~July 1, 2001~~ *July 1, 2002*.

(1) Member's rate—~~6.20%~~ *6.04%*.

(2) Employer's rate—~~9.29%~~ *9.07%*.

ITEM 8. Amend subparagraph **21.6(9)“d”(1)** as follows:

(1) Conservation peace officers. *Effective July 1, 2002, all conservation peace officers, state and county, as described in Iowa Code sections 350.5 and 456A.13 shall be considered members in a “protection occupation.”*

ITEM 9. Amend paragraph **21.6(9)“e”** as follows:

e. Prior special rates are as follows:

~~Effective July 1, 2000~~ *July 1, 2001*, through ~~June 30, 2001~~ *June 30, 2002*:

(1) Sheriffs, deputy sheriffs, and airport firefighters—member's rate—~~5.59%~~ *5.50%*; employer's rate—~~8.39%~~ *8.25%*.

(2) Protection occupation—member's rate—~~5.90%~~ *6.20%*; employer's rate—~~8.86%~~ *9.29%*.

ITEM 10. Amend rule 581—**21.6(97B)** by adopting the following new subrule:

**21.6(12)** Additional employer contributions from employer-mandated reduction in hours. This subrule applies only to the restoration of covered wages caused by an employer-mandated reduction in hours (EMRH). It does not

## PERSONNEL DEPARTMENT[581](cont'd)

apply to reductions in base wages, or to permanent layoffs or other termination of employment situations.

a. A member may restore the member's three-year average covered wage to the amount that it would have been but for an EMRH by completing the IPERS application for additional employer contributions and payroll deduction authorization.

b. A member cannot pay the additional employer contributions described under this subrule in any manner except through payroll deductions.

c. The payroll deductions authorization described under this subrule shall be irrevocable, except upon death, retirement or termination of employment. If revoked by the member's death, retirement, or termination of employment, all amounts held by an employer in the member's name shall be forwarded to the member along with the member's final wages.

d. A member may obtain a refund of amounts contributed under this subrule as part of a refund of the member's entire account balance, but a member who chooses a retirement allowance shall not receive a refund of any amounts contributed, even if the covered wages being restored are not used in the member's three-year average covered wage.

e. A member may have the payroll deductions authorized in this subrule made in more than one installment, but if the amount to be contributed to IPERS is less than \$100, the full amount must be deducted from one payroll payment, if the member has at least \$100 of wages available after other deductions required by law.

f. A covered employer must cooperate with an eligible employee's request for payroll deductions using the applicable IPERS forms. Employers collecting the additional retirement contributions authorized in this subrule shall be required to complete a certificate showing the covered wages actually paid to the member in the affected quarters, and the covered wages that would have been reported but for the EMRH.

g. Employers shall collect and hold amounts to be contributed in this subrule until the full amount can be forwarded to IPERS in one installment.

h. In completing the federal wage reporting forms to be filed with the federal and state tax authorities, an employer shall treat amounts collected and forwarded the same as pre-tax IPERS employee contributions.

i. Upon receipt, IPERS shall credit the amounts collected and forwarded in this subrule to the member's account as pre-tax employee contributions. Adjustments to the employee's wage records shall be made as indicated in the employer's certification of covered wages that would have been reported but for the EMRH.

j. The collection of contributions under this program shall terminate as of midnight, December 31, 2003. Amounts collected must be forwarded by a covered employer no later than the March 31, 2004, contribution filing deadline.

ITEM 11. Amend paragraph 21.8(4)"e" as follows:

e. An employee must sever all covered employment for ~~four months 30 days~~ after the date of the last paycheck containing IPERS covered wages. The employee, upon returning to covered employment, ~~and cannot shall not file an a new application after returning to covered employment,~~ even if

more than ~~four months 30 days~~ have elapsed since the ~~original termination date of the last paycheck containing IPERS covered wages.~~ If the employee returns to covered employment before ~~four months 30 days~~ have passed, the refund will be revoked and the amounts paid plus interest must be repaid to the system.

ITEM 12. Amend subrule 21.8(9) as follows:

**21.8(9)** Reinstatement following an employment dispute. If an involuntarily terminated employee is reinstated in covered employment as a remedy for an employment dispute, the member may restore membership service credit for the period covered by the refund by repaying the amount of the refund plus interest within 90 days after the date of the order or agreement requiring reinstatement. A reinstatement following an employment dispute shall not constitute a violation of Iowa Code section 97B.53(4), even if the reinstatement occurs less than ~~four months 30 days~~ after the last wages for employment are paid. Accordingly, the restoration described above or, if later, a buy-back, shall be permitted but is not required. However, if the employee is retroactively reinstated and the previously reported termination is expunged, the reemployment shall be treated as falling within the scope of Iowa Code section 97B.53(4) and a previously paid refund shall be repaid with interest.

ITEM 13. Amend subrule 21.19(1) as follows:

**21.19(1)** Effective July 1, 1998, the monthly benefit payments for a member under the age of 65 who has a bona fide retirement and is then reemployed in covered employment shall be reduced by 50 cents for each dollar the member earns in excess of the amount of remuneration permitted for a calendar year for a person under the age of 65 before a reduction in federal Social Security retirement benefits is required, or ~~\$14,000~~ \$30,000, whichever is greater. The foregoing reduction shall apply only to IPERS benefits payable for the applicable year that the member has reemployment earnings, and after the earnings limit has been reached. Said reductions shall be applied as provided in subrule 21.19(2) below.

Effective January 1, 1991, this earnings limitation does not apply to covered employment in an elective office. A member aged 65 or older who has completed at least four full calendar months of bona fide retirement and is later reemployed in covered employment shall not be subject to any wage-earning disqualification.

ITEM 14. Amend subrule 21.22(1), paragraph "a," as follows:

a. *In order to qualify for a disability retirement allowance, a member must terminate covered employment due to a disability. The member must inform IPERS at retirement that the retirement is due to an illness, injury or similar condition that existed at termination of covered employment. The member must also ~~initiate an application~~ inform IPERS at retirement that the member has applied for federal Social Security disability benefits or federal Railroad Retirement Act disability benefits due to the disabling condition that caused the member to terminate covered employment. IPERS disability benefits shall begin as of the month the first Social Security or Railroad Retirement payment is actually received.*

PERSONNEL DEPARTMENT[581](cont'd)

ITEM 15. Amend rule 581—21.27(97B), introductory paragraph, as follows:

**581—21.27(97B) Rollovers.** If a member who is paid a lump sum distribution, or a beneficiary who is the member's spouse and is paid a lump sum death benefit which qualifies to be rolled over, requests that the taxable portion be rolled over to more than one IRA or other qualified plan, IPERS ~~will~~ *may* assess a \$5 administrative fee for each additional rollover beyond the first one. The fee will be deducted from the gross amount of each distribution, less federal and state in-

~~come tax. All amounts that would otherwise be eligible for rollover and are paid in the same taxable year shall be aggregated to determine if a distribution equals or exceeds the \$200 minimum rollover amount.~~

[Filed Emergency 6/28/02, effective 6/28/02]

[Published 7/24/02]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/24/02.

## ARC 1829B

PROFESSIONAL LICENSURE  
DIVISION[645]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Chiropractic Examiners hereby rescinds Chapter 40, "Chiropractic Examiners," and adopts new Chapter 40, "Board of Chiropractic Examiners"; adopts new Chapter 41, "Licensure of Chiropractic Physicians," and Chapter 42, "Schools for Chiropractic Physicians"; rennumbers Chapter 43, "Continuing Education for Chiropractic Physicians," and Chapter 44, "Discipline for Chiropractic Physicians," as Chapter 44 and Chapter 45; adopts new Chapter 43, "Practice of Chiropractic Physicians"; amends renumbered Chapter 44, "Continuing Education for Chiropractic Physicians"; and adopts new Chapter 46, "Fees," Iowa Administrative Code.

These amendments rescind the current licensure rules and fees; adopt new chapters for licensure, schools, practice and fees; renumber chapters on continuing education and discipline; and amend the chapter on continuing education. The contents of the chapters covering schools and practice have not been revised and are scheduled for review later this year.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 1, 2002, as **ARC 1588B**. A public hearing was held on May 21, 2002, from 9 to 11 a.m. in the Professional Licensure Conference Room, Fifth Floor, Lucas State Office Building, Des Moines, Iowa. Five written comments were received.

The Board discussed the comments that were received and has made the following changes based on those comments:

- Definitions in rule 645—41.1(151) have been changed as follows: (1) the Board's mailing and Web site addresses are added to the definitions for "Council on Chiropractic Education" and "National Board of Chiropractic Examiners"; (2) "C.C.E." is changed to "CCE" and the definition is reworded; (3) the term "national board" is changed to "NBCE" throughout the amendments; and (4) the definition for "SPEC" is reworded for clarification. The definitions now read as follows:

"Council on Chiropractic Education" or "CCE" means the organization that establishes the Educational Standards of Chiropractic Colleges and Bylaws. A copy of the standards may be requested from the Council on Chiropractic Education. CCE's address and Web site may be obtained from the board's Web site at <http://www.idph.state.ia.us/licensure>.

"NBCE" means the National Board of Chiropractic Examiners. The mailing address and Web site address may be obtained from the board's Web site at <http://www.idph.state.ia.us/licensure>.

"SPEC" means Special Purposes Examination for Chiropractic, which is an examination provided by the NBCE that is designed specifically for utilization by state or foreign licensing agencies."

- In subrule 41.2(5), the requirement covering notice of change of address is revised to include a statement requiring notification of the change of address within 30 days after the change of address occurs. The subrule now reads as follows:

"41.2(5) Licensees are required to notify the board of chiropractic examiners of changes in residence or place of practice within 30 days after the change of address occurs."

- The phrase "that is accredited by a credential evaluation service approved by the board" was not adopted in subrule 41.4(1) because applicants might find the statement confusing. All board-approved colleges are accredited by the CCE.

- Subrule 41.5(2) is reformatted and reworded to clarify that applicants must meet only one of the listed requirements for a temporary certificate, and that, if the temporary certificate is based on the illness of an Iowa-licensed chiropractic physician, the illness must be a disability or long-term illness. The subrule now reads as follows:

"41.5(2) Demonstrated need. An applicant must establish that a need exists for the issuance of a temporary license and that the need serves the public interest. An applicant may meet the demonstrated need requirement by proving that the need meets one of the following conditions:

"a. The applicant will provide chiropractic services in connection with a special activity, event or program conducted in this state;

"b. The applicant will provide chiropractic services in connection with a state emergency as proclaimed by the governor;

"c. The applicant previously held an unrestricted license to practice chiropractic in this state and will provide gratuitous chiropractic services as a voluntary public service; or

"d. The applicant will provide chiropractic services during a disability or long-term illness of an Iowa-licensed chiropractic physician.

"The temporary certificate shall be issued only for conditions stated in paragraphs 'a' through 'd.'"

- Subrule 41.5(4) is reworded as follows:

"41.5(4) If the application is approved by the board, a temporary certificate shall be issued authorizing the applicant to practice chiropractic for one year to fulfill the demonstrated need for temporary licensure as stated on the application and described in subrule 41.5(2)."

- Subrule 41.5(5), which covers the renewal of a temporary certificate, was not adopted, and the subrules are renumbered accordingly. The provision for renewal of a temporary certificate is sufficiently explained in Iowa Code chapter 151.

- Subrule 41.5(6) sets forth the appeal process if an applicant or temporary certificate holder is denied a temporary certificate, and now reads as follows:

"41.5(6) Cancellation of a temporary certificate shall be effective three days after the mailing of the notice of cancellation by registered mail."

- A phrase was added to subrule 41.6(2), paragraph "f," to clarify that the chiropractic practice must have occurred immediately prior to the applicant's applying for licensure in Iowa. Paragraph "f" now reads as follows:

"f. Provides certified evidence of two or more years of actual practice as a chiropractic physician in a state of the United States or in the District of Columbia immediately prior to applying for licensure in Iowa."

- The word "waiver" was replaced with "exemption" for consistency in subrule 41.8(2), paragraph "c," and subrules 41.9(1) and 41.9(2).

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

These amendments were adopted by the Board of Chiropractic Examiners on June 26, 2002.

These amendments will become effective August 28, 2002.

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

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [Chs 40 to 46] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 1588B**, IAB 5/1/02.

[Filed 7/3/02, effective 8/28/02]  
[Published 7/24/02]

[For replacement pages for IAC, see IAC Supplement 7/24/02.]

**ARC 1835B****UTILITIES DIVISION[199]****Adopted and Filed**

Pursuant to Iowa Code sections 17A.4 and 476.102, and 476 U.S.C. § 254(e) and (f), the Utilities Board (Board) gives notice that on July 5, 2002, the Board issued an order in Docket No. RMU-01-14, In re: Certification of Rural and Nonrural Telecommunication Carriers, "Order Adopting Rules." The Board adopted new subrule 22.2(7) containing the certification requirements for carriers wishing to continue receiving federal high-cost universal service support pursuant to 47 CFR §§ 54.301, 54.305, 54.307, and Part 36, Subpart F, of Federal Communications Commission (FCC) regulations. Notice of Intended Action was published in IAB Vol. XXIV, No. 14 (1/9/02), p. 1076, as **ARC 1277B**.

This subrule is intended to implement a self-certification process for eligible telecommunication carriers that wish to continue to receive federal high-cost universal service support. The FCC recently modified its regulations for providing high-cost universal service support to rural telephone companies for the next five years. (See "Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256," In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, and Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket No. 96-256 (May 23, 2001).) The FCC now requires that each state public utility regulatory authority file an annual certification with the FCC to ensure that rural telecommunication carriers receiving federal funds under this program use that support "only for the provision, maintenance and upgrading of facilities and service for which the support is intended," as required by 47 U.S.C. § 254(e). The state certification must be filed no later than October 1 of each year if the certified carriers are to receive support for the following year. (See 47 CFR § 54.314(d) (2001).)

In response to these modifications, the Board issued an order on August 13, 2001, in Docket No. USP-01-1, which established the procedures by which the Board intended to fulfill the federal mandate by the October 1 deadline. The order required any carrier wanting to continue to receive federal high-cost universal service support to file an original and two copies of an affidavit with the Board (with another copy to the Consumer Advocate Division of the Department of Justice). Each affidavit was to be titled "Certification of [Company Name]" (the company name must be the same name shown on the carrier's tariff as filed with the Board). The affidavit was to be sworn and notarized, executed by an authorized corporate officer, and certified that the carrier will use the support it receives pursuant to 47 CFR §§ 54.301, 54.305, 54.307, and Part 36, Subpart F, of FCC regulations only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. All affidavits were to become part of the public record maintained by the Board. Affidavits complying with the order were the basis for the Board's certification to the FCC.

The amendment implements the previously described certification process as a Board rule and establishes filing requirements for carriers that wish to continue to receive federal high-cost universal service support. Comments were to be filed on or before January 29, 2002, and no oral presentation was scheduled. No comments were filed regarding the proposed rule making.

This amendment is intended to implement Iowa Code chapter 17A and section 476.102 and 47 U.S.C. § 254(e) and (f).

This amendment will become effective August 28, 2002. The following amendment is adopted.

Amend rule 199—22.2(476) by adopting the following new subrule:

**22.2(7) Universal service certification application.**

a. Certification to be filed with the board. Any carrier desiring to continue to receive federal high-cost universal service support shall file no later than September 10 of each year an original and two copies of an affidavit with the board and one copy to the consumer advocate division of the department of justice.

b. Content of certification. Each affidavit shall be titled "Certification of [Company Name]." The company name shall be the same name shown on the carrier's tariff as filed with the board. The affidavit shall include the study area code (SAC) number associated with the company. The affidavit shall be sworn and notarized and shall be executed by an authorized corporate officer. The affidavit shall certify that the carrier will use the support the carrier receives pursuant to 47 CFR § 54.301, 54.305, or 54.307, or Part 36, Subpart F, of FCC regulations, or successor regulations concerning high-cost universal service support, only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

c. Certifications subject to complaint or investigation. Any certification filed by a carrier shall be subject to complaint or investigation or both by the board.

UTILITIES DIVISION[199](cont'd)

**Exhibit A**  
CERTIFICATION OF [COMPANY NAME]

STATE OF IOWA  
COUNTY OF \_\_\_\_\_

I, [authorized corporate officer], [office], [Company Name], being of lawful age and duly sworn, depose and state:

[Company Name], [SAC number], will use the support [Company Name] received pursuant to 47 CFR §§ 54.301, 54.305, and/or 54.307, and/or Part 36, Subpart F, of FCC regulations or successor regulations concerning high-cost universal service support, only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

I further state that I am authorized by [Company Name] to make this statement.

\_\_\_\_\_  
[authorized officer]

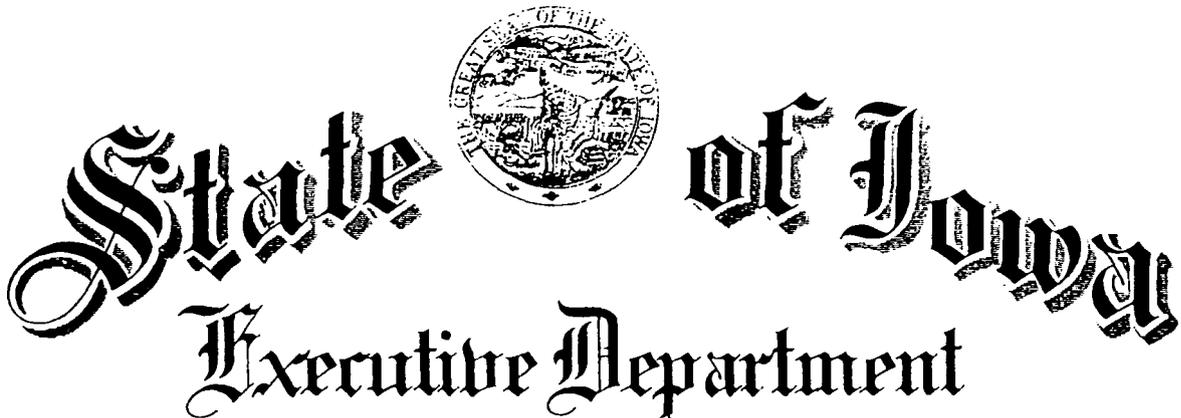
Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
Notary Public

[Filed 7/5/02, effective 8/28/02]  
[Published 7/24/02]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/24/02.

AGENCY	RULE	DELAY
Environmental Protection Commission[567]	Amendments to 107.1 to 107.15 [IAB 4/17/02, <b>ARC 1538B</b> ]	Effective date of May 22, 2002, delayed until adjournment of the 2003 Session of the General Assembly by the Administrative Rules Review Committee at its meeting held July 9, 2002. [Pursuant to §17A.8(9)]
General Services Department[401]	Rule 3.4 [IAB 5/15/02, <b>ARC 1624B</b> ]	Effective date of July 1, 2002, delayed 70 days by the Administrative Rules Review Committee at its meeting held June 11, 2002; delay lifted by the Committee at its meeting held July 9, 2002, effective July 10, 2002. [Pursuant to §17A.4(5)]



IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

**\*EXECUTIVE ORDER NUMBER TWENTY-SIX**

**WHEREAS,** the United States Congress approved and the President signed Public Law 105-124, the "Fifty States Commemorative Coin Program Act" to "promote the diffusion of knowledge among the youth of the United States about the individual States, their history and geography, and the rich diversity of the national heritage" and in hopes of encouraging "young people and their families to collect memorable tokens of all the States for the face value of the coins"; and

**WHEREAS,** five state quarters will be issued every year beginning in 1999 in the order in which the States ratified the Constitution or were admitted into the Union; and

**WHEREAS,** Iowa was the twenty-ninth state to join the union on December 28, 1846; and

**WHEREAS,** Iowa will submit a coin design for release in 2004; and

**WHEREAS,** under the "Fifty States Commemorative Coin Program Act," the governor of the state of Iowa is charged with establishing a selection process and submitting coin concepts reflecting Iowa's heritage and values; and

**WHEREAS,** the "Fifty States Commemorative Coin Program Act," provides the following guidelines for the design of the coin:

Designs shall not contain frivolous or inappropriate design.

Designs shall not include head-and-shoulders portrait or bust of any person, living or dead, and no portrait of a living person may be included in the design.

Designs shall maintain a dignity befitting the nation's coinage.

Designs shall have broad appeal to the citizens of the state and avoid controversial subjects or symbols that are likely to offend.

Suitable subject matter for designs include state landmarks (natural and man-made), landscapes, historically significant buildings, symbols of state resources or industries, official state flora and fauna, state icons (e.g., Texas Lone Star, Wyoming bronco, etc.), and outlines of the state.

State flags and state seals are not considered suitable for designs.

Consistent with the authorizing legislation, that states are encouraged to submit designs that promote the diffusion of knowledge among the youth of the United States about the state, its history and geography, and the rich diversity of our national heritage.

Priority consideration will be given to designs that are enduring representations of the state. Coins have a commercial life span of at least 30 years and are collected for generations.

Inappropriate design concepts include, but are not limited to logos or depictions of specific commercial, private, educational, civic, religious, sports, or other organizations whose membership or ownership is not universal:

**NOW, THEREFORE**, I, Thomas J. Vilsack, Governor of the State of Iowa, by the power vested in me by the Constitution and laws of the State of Iowa, do hereby order and direct the establishment of a **COMMEMORATIVE QUARTER COMMITTEE** (hereinafter Committee), and a process by which all Iowans may participate in selection of the Iowa 2004 Commemorative Quarter.

- I. The COMMITTEE shall be comprised of thirteen (13) members, who shall be appointed by the Governor. The Committee shall be Chaired by The State of Iowa Treasurer, Michael Fitzgerald, and by the Director of Cultural Affairs for the State of Iowa, Anita Walker. Elisabeth Buck shall serve as the Governor's Designee. Two members shall be numismatics, one member shall be a student, one member shall be a teacher, and one member shall be an artist. Eight Iowa citizens shall be appointed at large.
- II. Iowa Citizens are encouraged to submit Iowa Quarter design concepts for consideration to the following address postmarked no later than July 30<sup>th</sup>, 2002.

Governor Tom Vilsack's Office  
Attn: Quarter Committee  
State Capitol  
Des Moines, IA 50319

- III. The Committee shall meet and review the coin designs submitted by the citizens of this state. The Committee shall abide by the design guidelines of the "Fifty States Commemorative Coin Program Act" outlined in this Executive Order; review submissions and recommend five (5) ideas to the Governor no later than August 25, 2002.

IV. This office shall submit up to five (5) selected designs to the US Mint no later than August 27, 2002.



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this 21<sup>st</sup> day of June, in the year of our Lord two thousand two.

  
\_\_\_\_\_  
THOMAS J. VILSACK  
GOVERNOR

ATTEST:

  
\_\_\_\_\_  
CHESTER J. CULVER  
SECRETARY OF STATE

**\*SUMMARY OF OPINIONS OF THE ATTORNEY GENERAL**

**THOMAS J. MILLER**

**April through June, 2002**

**PROPERTY TAX; COUNTY AND COUNTY OFFICERS; STATE OFFICERS  
AND DEPARTMENTS**

Pollution-control property. Iowa Code §§ 421.17, 427.1 (2001). A county assessor does not have authority under county home rule to deny exemptions to taxpayers for pollution-control property when the Iowa Department of Natural Resources has certified their property as pollution-control property. (Kempkes to Bonnett, Taylor County Attorney, 5-1-02) #02-5-1

**PUBLIC EMPLOYEES; GROUP INSURANCE**

Continuance of group insurance for retirees under the age of sixty-five. Iowa Code §§ 509A.13, 509B.3(5), 509B.4(3) (2001). Retired public employees under the age of sixty-five who continue group insurance under Iowa Code section 509A.13 must be placed in the same risk pool as all other participants in the group plan for purposes of determining premiums. (Johnson to McCoy, State Senator, 5-14-02) #02-5-2

**2001 IOWA CODE**

421.17  
427.1  
509A.13  
509B.3(5)  
509B.4(3)

**OPINION**

#02-5-1  
#02-5-1  
#02-5-2  
#02-5-2  
#02-5-2



**IOWA ADMINISTRATIVE BULLETIN**  
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**Department of General Services**  
**Hoover State Office Building, Level A**  
**Des Moines, Iowa 50319**

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