



IOWA ADMINISTRATIVE BULLETIN

Published Biweekly

VOLUME XLI
December 19, 2018

NUMBER 13
Pages 1365 to 1458

CONTENTS IN THIS ISSUE

Pages 1376 to 1457 include **ARC 4172C** to **ARC 4195C**

ADMINISTRATIVE SERVICES

DEPARTMENT[11]

- Filed, Applicants for executive branch positions—disclosure requirements, 50.1, 54.2, 54.8 **ARC 4180C**..... 1399
- Filed, Capitol complex operations, 100.3, 100.4(12) **ARC 4181C**..... 1401
- Filed, Procurement policies and procedures, amendments to chs 103, 117, 118 **ARC 4182C**..... 1403

AGENDA

- Administrative rules review committee..... 1369

ALL AGENCIES

- Agency identification numbers..... 1374
- Citation of administrative rules..... 1367
- Schedule for rule making..... 1368

COLLEGE STUDENT AID COMMISSION[283]

EDUCATION DEPARTMENT[281]“umbrella”

- Filed, All Iowa opportunity scholarship program, 8.2, 8.4(2) **ARC 4183C**..... 1407
- Filed, Iowa national guard educational assistance program—application requirements, 20.1(2) **ARC 4184C**..... 1409
- Filed, Rural Iowa advanced registered nurse practitioner and physician assistant loan repayment program, amendments to ch 25 **ARC 4185C**..... 1410
- Filed, Health care loan repayment program, ch 26 **ARC 4186C**..... 1412

DENTAL BOARD[650]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

- Filed, Review of applications for license, permit, or registration, 11.8, 20.7(5) **ARC 4187C**..... 1415

ENVIRONMENTAL PROTECTION

COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

- Notice, Air quality, amendments to chs 20, 22, 23, 25 **ARC 4178C**..... 1376

LABOR SERVICES DIVISION[875]

WORKFORCE DEVELOPMENT DEPARTMENT[871]“umbrella”

- Notice, ASME code cases for regulated objects—adoption by reference, 91.1(2) **ARC 4179C**..... 1383

PHARMACY BOARD[657]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

- Amended Notice, Universal practice standards—protection from exposure to hazardous drugs, 8.5 **ARC 4172C**..... 1385
- Filed, Board membership and responsibilities, amendments to ch 1 **ARC 4188C**..... 1417
- Filed, Dispensing and electronic transfer of prescriptions by pharmacy technicians, 3.21, 3.22(1), 3.23, 6.7, 6.9 **ARC 4189C**..... 1420
- Filed, Wholesale distributor licenses, ch 17 **ARC 4190C**..... 1424
- Filed, Limited distributor licenses, ch 42 **ARC 4191C**..... 1431
- Filed, Third-party logistics provider licenses, ch 43 **ARC 4192C**..... 1438

PUBLIC HEALTH DEPARTMENT[641]

Filed, Concussion or other brain injury
return-to-play protocol, ch 54 **ARC 4193C** 1442

PUBLIC HEARINGS

Summarized list 1372

RACING AND GAMING COMMISSION[491]

INSPECTIONS AND APPEALS DEPARTMENT[481]“umbrella”

Filed, Problem gambling; test sample;
Iowa-foaled horse allowance, 5.4(12),
10.1, 10.2(7), 10.4(5)“g,” 10.5(1)“a,”
10.7 **ARC 4194C** 1445

REVENUE DEPARTMENT[701]

Notice, Surcharge for enhanced 911
service—update of terminology,
18.20(1)“c,” 40.3, 40.39, 224.4(7),
224.8 **ARC 4176C** 1387

Notice, Deferred life estates and
remainder interest, 86.14(9) **ARC 4177C** 1390

Notice, Flood mitigation program—use
of moneys from a flood mitigation
fund, 238.4 **ARC 4175C** 1392

Filed, State-imposed and locally imposed
hotel and motel taxes, amend chs 103,
241; rescind chs 104, 105 **ARC 4195C** 1447

TREASURER OF STATE[781]

Notice—Public funds interest rates 1394

USURY

Notice 1394

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]“umbrella”

Notice, Natural gas safety standards,
10.12(1), 19.2(5), 19.5(2), 19.8(3)
ARC 4173C 1395

WORKFORCE DEVELOPMENT**DEPARTMENT[871]**

Notice, Eligibility requirements for
vocational training programs, 24.39(2)
ARC 4174C 1397

PREFACE

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

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

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

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

JACK EWING, Administrative Code Editor
Publications Editing Office (Administrative Code)

Telephone: (515)281-6048
Telephone: (515)281-3355

Email: Jack.Ewing@legis.iowa.gov
Email: AdminCode@legis.iowa.gov

CITATION of Administrative Rules

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

| | |
|-----------------------|----------------|
| 441 IAC 79 | (Chapter) |
| 441 IAC 79.1 | (Rule) |
| 441 IAC 79.1(1) | (Subrule) |
| 441 IAC 79.1(1)“a” | (Paragraph) |
| 441 IAC 79.1(1)“a”(1) | (Subparagraph) |

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

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

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

Schedule for Rule Making 2019

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

PRINTING SCHEDULE FOR IAB

| <u>ISSUE NUMBER</u> | <u>SUBMISSION DEADLINE</u> | <u>ISSUE DATE</u> |
|---------------------|------------------------------|-------------------|
| 15 | Wednesday, December 26, 2018 | January 16, 2019 |
| 16 | Friday, January 11, 2019 | January 30, 2019 |
| 17 | Friday, January 25, 2019 | February 13, 2019 |

PLEASE NOTE:

Rules will not be accepted by the Publications Editing Office after **12 o'clock noon** on the filing deadline unless prior approval has been received from the Administrative Rules Coordinator and the Administrative Code Editor.

†To allow time for review by the Administrative Rules Coordinator prior to the Notice submission deadline, Notices should generally be submitted in RMS four or more working days in advance of the deadline.

*****Note change of filing deadline*****

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, January 8, 2019, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

NOTE: See also Supplemental Agenda to be published in the January 2, 2019, Iowa Administrative Bulletin.

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Applicants for executive branch positions—disclosure requirements, 50.1, 54.2, 54.8

| | |
|---|----------|
| Filed ARC 4180C | 12/19/18 |
| Capitol complex operations, 100.3, 100.4(12) Filed ARC 4181C | 12/19/18 |
| Procurement policies and procedures, amendments to chs 103, 117, 118 Filed ARC 4182C | 12/19/18 |

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

| | |
|--|---------|
| Noxious weeds, amendments to ch 58 Notice ARC 4151C | 12/5/18 |
| Meat and poultry regulations, 76.1 to 76.4 Notice ARC 4150C | 12/5/18 |

COLLEGE STUDENT AID COMMISSION[283]

EDUCATION DEPARTMENT[281]“umbrella”

| | |
|---|----------|
| All Iowa opportunity scholarship program, 8.2, 8.4(2) Filed ARC 4183C | 12/19/18 |
| Iowa national guard educational assistance program—application requirements, 20.1(2) Filed ARC 4184C | 12/19/18 |
| Rural Iowa advanced registered nurse practitioner and physician assistant loan repayment program, amendments to ch 25 Filed ARC 4185C | 12/19/18 |
| Health care loan repayment program, ch 26 Filed ARC 4186C | 12/19/18 |

CORRECTIONS DEPARTMENT[201]

Areas of responsibility; risk assessments, 1.2, 1.7, 1.8, 38.2(3), 42.1(4), 43.1(18), 44.1(5)“c,”

| | |
|--|---------|
| 45.1(2)“b” Notice ARC 4153C , also Filed Emergency ARC 4152C | 12/5/18 |
|--|---------|

DENTAL BOARD[650]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

| | |
|---|----------|
| Review of applications for license, permit, or registration, 11.8, 20.7(5) Filed ARC 4187C | 12/19/18 |
|---|----------|

ECONOMIC DEVELOPMENT AUTHORITY[261]

| | |
|---|---------|
| Iowa energy center grant program, ch 404 Notice ARC 4149C | 12/5/18 |
| Alternate energy revolving loan program, ch 405 Notice ARC 4148C | 12/5/18 |

EDUCATIONAL EXAMINERS BOARD[282]

EDUCATION DEPARTMENT[281]“umbrella”

| | |
|---|---------|
| Code of professional ethics and conduct—violations of contractual obligations, 25.3(5) Notice ARC 4147C | 12/5/18 |
|---|---------|

EDUCATION DEPARTMENT[281]

| | |
|---|---------|
| Suicide prevention, identification of adverse childhood experiences, strategies to mitigate toxic stress response, amendments to ch 14 Notice ARC 4157C | 12/5/18 |
| Use of online learning and telecommunications for instruction by schools, amendments to ch 15 Notice ARC 4158C | 12/5/18 |
| Open enrollment—participation in cocurricular or extracurricular activities, amendments to ch 17 Notice ARC 4159C | 12/5/18 |
| Summer college credit program, 22.33 Notice ARC 4155C | 12/5/18 |
| Career and technical education, 46.1, 46.6, 46.7, 46.9, 46.10, 46.11(4) Filed ARC 4163C | 12/5/18 |
| Supplemental career information systems for use in career and academic planning, 49.6(4) Filed ARC 4164C | 12/5/18 |
| Supplementary weighting, amendments to ch 97 Notice ARC 4156C | 12/5/18 |
| Financial management of categorical funding, amendments to ch 98 Notice ARC 4160C | 12/5/18 |

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

| | |
|---|----------|
| Air quality, amendments to chs 20, 22, 23, 25 Notice ARC 4178C | 12/19/18 |
|---|----------|

HUMAN SERVICES DEPARTMENT[441]

Medical assistance provider eligibility—behavioral health services providers, psychologists,

| | |
|--|---------|
| 77.22, 77.26 Filed ARC 4165C | 12/5/18 |
| Subsidized adoptions, amendments to ch 201 Filed ARC 4166C | 12/5/18 |
| Subsidized guardianship program, amendments to ch 204 Filed ARC 4167C | 12/5/18 |

INSPECTIONS AND APPEALS DEPARTMENT[481]

Design and construction standards for nursing facilities, 61.2(3), 61.6, 61.9 Notice **ARC 4162C** 12/5/18

IOWA FINANCE AUTHORITY[265]

Manufactured housing program fund, ch 45 Filed **ARC 4168C** 12/5/18

LABOR SERVICES DIVISION[875]

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

ASME code cases for regulated objects—adoption by reference, 91.1(2) Notice **ARC 4179C** 12/19/18

PHARMACY BOARD[657]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Board membership and responsibilities, amendments to ch 1 Filed **ARC 4188C** 12/19/18

Dispensing and electronic transfer of prescriptions by pharmacy technicians, 3.21, 3.22(1),
3.23, 6.7, 6.9 Filed **ARC 4189C** 12/19/18

Universal practice standards—protection from exposure to hazardous drugs, 8.5
Amended Notice **ARC 4172C** 12/19/18

Wholesale distributor licenses, ch 17 Filed **ARC 4190C** 12/19/18

Limited distributor licenses, ch 42 Filed **ARC 4191C** 12/19/18

Third-party logistics provider licenses, ch 43 Filed **ARC 4192C** 12/19/18

PUBLIC HEALTH DEPARTMENT[641]

Concussion or other brain injury return-to-play protocol, ch 54 Filed **ARC 4193C** 12/19/18

RACING AND GAMING COMMISSION[491]

INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"

Problem gambling; test sample; Iowa-foaled horse allowance, 5.4(12), 10.1, 10.2(7),
10.4(5)"g," 10.5(1)"a," 10.7 Filed **ARC 4194C** 12/19/18

REAL ESTATE APPRAISER EXAMINING BOARD[193F]

Professional Licensing and Regulation Bureau[193]

COMMERCE DEPARTMENT[181]"umbrella"

Real estate appraiser qualification criteria, amendments to chs 1, 3 to 6, 15 Filed **ARC 4169C** 12/5/18

REVENUE DEPARTMENT[701]

Surcharge for enhanced 911 service—update of terminology, 18.20(1)"c," 40.3, 40.39,
224.4(7), 224.8 Notice **ARC 4176C** 12/19/18

Assessment/sales ratio study—supplementary tools, 71.12 Filed **ARC 4170C** 12/5/18

Deferred life estates and remainder interest, 86.14(9) Notice **ARC 4177C** 12/19/18

State-imposed and locally imposed hotel and motel taxes, amend chs 103, 241; rescind chs
104, 105 Filed **ARC 4195C** 12/19/18

Flood mitigation program—use of moneys from a flood mitigation fund, 238.4 Notice **ARC 4175C** 12/19/18

TRANSPORTATION DEPARTMENT[761]

Minors' school licenses; licensing information and forms; waiver of accompanying driver
for intermediate licensee, amendments to ch 602 Notice **ARC 4161C** 12/5/18

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]"umbrella"

Natural gas safety standards, 10.12(1), 19.2(5), 19.5(2), 19.8(3) Notice **ARC 4173C** 12/19/18

Electric utility services, amendments to ch 20 Filed **ARC 4171C** 12/5/18

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Eligibility requirements for vocational training programs, 24.39(2) Notice **ARC 4174C** 12/19/18

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

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

Senator Jim Carlin
43 Arlington Road
Sioux City, Iowa 51106

Senator Mark Chelgren
819 Hutchinson
Ottumwa, Iowa 52501

Senator Mark Costello
37265 Rains Avenue
Imogene, Iowa 51645

Senator Robert E. Dvorsky
450 Third Avenue, #3
Coralville, Iowa 52241

Senator Pam Jochum
2368 Jackson Street
Dubuque, Iowa 52001

Jack Ewing
Legal Counsel
Capitol
Des Moines, Iowa 50319
Telephone: (515)281-6048
Fax: (515)281-8451
Email: Jack.Ewing@legis.iowa.gov

Representative Steven Holt
1430 Third Avenue South
Denison, Iowa 51442

Representative Megan Jones
4470 Highway 71
Sioux Rapids, Iowa 50585

Representative Amy Nielsen
168 Lockmoor Circle
North Liberty, Iowa 52317

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

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

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

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

| | | |
|---|--|-----------------------------|
| Noxious weeds, amendments to ch 58 IAB 12/5/18 ARC 4151C | Second Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa | December 26, 2018 9 a.m. |
|---|--|-----------------------------|

EDUCATIONAL EXAMINERS BOARD[282]

| | | |
|--|---|---------------------------|
| Code of professional ethics and conduct—violations of contractual obligations, 25.3(5) IAB 12/5/18 ARC 4147C | Room 3 Southwest Grimes State Office Bldg. Des Moines, Iowa | January 2, 2019 1 p.m. |
|--|---|---------------------------|

EDUCATION DEPARTMENT[281]

| | | |
|--|---|---------------------------------|
| Suicide prevention, identification of adverse childhood experiences, strategies to mitigate toxic stress response, amendments to ch 14 IAB 12/5/18 ARC 4157C | State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa | January 8, 2019 9 to 10 a.m. |
|--|---|---------------------------------|

| | | |
|--|---|----------------------------------|
| Use of online learning and telecommunications for instruction by schools, amendments to ch 15 IAB 12/5/18 ARC 4158C | State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa | January 8, 2019 10 to 11 a.m. |
|--|---|----------------------------------|

| | | |
|--|---|---------------------------------------|
| Open enrollment—participation in cocurricular or extracurricular activities, amendments to ch 17 IAB 12/5/18 ARC 4159C | State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa | January 8, 2019 11 a.m. to 12 noon |
|--|---|---------------------------------------|

| | | |
|---|---|--------------------------------|
| Summer college credit program, 22.33 IAB 12/5/18 ARC 4155C | State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa | January 8, 2019 3 to 4 p.m. |
|---|---|--------------------------------|

| | | |
|---|---|--------------------------------|
| Supplementary weighting, amendments to ch 97 IAB 12/5/18 ARC 4156C | State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa | January 8, 2019 1 to 2 p.m. |
|---|---|--------------------------------|

| | | |
|--|---|--------------------------------|
| Financial management of categorical funding, amendments to ch 98 IAB 12/5/18 ARC 4160C | State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa | January 8, 2019 2 to 3 p.m. |
|--|---|--------------------------------|

ENVIRONMENTAL PROTECTION COMMISSION[567]

| | | |
|---|--|---------------------------------|
| Air quality, amendments to chs 20, 22, 23, 25 IAB 12/19/18 ARC 4178C | Conference Room 4 East Wallace State Office Bldg. Des Moines, Iowa | January 21, 2019 1 to 2 p.m. |
|---|--|---------------------------------|

LABOR SERVICES DIVISION[875]

ASME code cases for regulated
objects—adoption by reference,
91.1(2)
IAB 12/19/18 **ARC 4179C**

150 Des Moines St.
Des Moines, Iowa

January 9, 2019
9 a.m.
(If requested)

TRANSPORTATION DEPARTMENT[761]

Minors' school licenses; licensing
information and forms; waiver
of accompanying driver
for intermediate licensee,
amendments to ch 602
IAB 12/5/18 **ARC 4161C**

Department of Transportation
Motor Vehicle Division
6310 SE Convenience Blvd.
Ankeny, Iowa

December 28, 2018
10 a.m.
(If requested)

The following list will be updated as changes occur.

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

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

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

ADMINISTRATIVE SERVICES DEPARTMENT[11]
 AGING, DEPARTMENT ON[17]
 AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
 Soil Conservation and Water Quality Division[27]
 ATTORNEY GENERAL[61]
 AUDITOR OF STATE[81]
 BEEF CATTLE PRODUCERS ASSOCIATION, IOWA[101]
 BLIND, DEPARTMENT FOR THE[111]
 CAPITAL INVESTMENT BOARD, IOWA[123]
 CHIEF INFORMATION OFFICER, OFFICE OF THE[129]
 OMBUDSMAN[141]
 CIVIL RIGHTS COMMISSION[161]
 COMMERCE DEPARTMENT[181]
 Alcoholic Beverages Division[185]
 Banking Division[187]
 Credit Union Division[189]
 Insurance Division[191]
 Professional Licensing and Regulation Bureau[193]
 Accountancy Examining Board[193A]
 Architectural Examining Board[193B]
 Engineering and Land Surveying Examining Board[193C]
 Landscape Architectural Examining Board[193D]
 Real Estate Commission[193E]
 Real Estate Appraiser Examining Board[193F]
 Interior Design Examining Board[193G]
 Utilities Division[199]
 CORRECTIONS DEPARTMENT[201]
 Parole Board[205]
 CULTURAL AFFAIRS DEPARTMENT[221]
 Arts Division[222]
 Historical Division[223]
 EARLY CHILDHOOD IOWA STATE BOARD[249]
 ECONOMIC DEVELOPMENT AUTHORITY[261]
 City Development Board[263]
 IOWA FINANCE AUTHORITY[265]
 EDUCATION DEPARTMENT[281]
 Educational Examiners Board[282]
 College Student Aid Commission[283]
 Higher Education Loan Authority[284]
 Iowa Advance Funding Authority[285]
 Libraries and Information Services Division[286]
 Public Broadcasting Division[288]
 School Budget Review Committee[289]
 EGG COUNCIL, IOWA[301]
 ENERGY INDEPENDENCE, OFFICE OF[350]
 ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]
 EXECUTIVE COUNCIL[361]
 FAIR BOARD[371]
 HUMAN RIGHTS DEPARTMENT[421]
 Community Action Agencies Division[427]
 Criminal and Juvenile Justice Planning Division[428]
 Deaf Services Division[429]
 Persons With Disabilities Division[431]
 Latino Affairs Division[433]
 Status of African-Americans, Division on the[434]

Status of Women Division[435]
Status of Iowans of Asian and Pacific Islander Heritage[436]
HUMAN SERVICES DEPARTMENT[441]
INSPECTIONS AND APPEALS DEPARTMENT[481]
Employment Appeal Board[486]
Child Advocacy Board[489]
Racing and Gaming Commission[491]
State Public Defender[493]
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]
IOWA PUBLIC INFORMATION BOARD[497]
LAW ENFORCEMENT ACADEMY[501]
LIVESTOCK HEALTH ADVISORY COUNCIL[521]
LOTTERY AUTHORITY, IOWA[531]
MANAGEMENT DEPARTMENT[541]
Appeal Board, State[543]
City Finance Committee[545]
County Finance Committee[547]
NATURAL RESOURCES DEPARTMENT[561]
Energy and Geological Resources Division[565]
Environmental Protection Commission[567]
Natural Resource Commission[571]
Preserves, State Advisory Board for[575]
PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]
PREVENTION OF DISABILITIES POLICY COUNCIL[597]
PROPANE EDUCATION AND RESEARCH COUNCIL, IOWA[599]
PUBLIC DEFENSE DEPARTMENT[601]
Military Division[611]
HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605]
PUBLIC EMPLOYMENT RELATIONS BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
Professional Licensure Division[645]
Dental Board[650]
Medicine Board[653]
Nursing Board[655]
Pharmacy Board[657]
PUBLIC SAFETY DEPARTMENT[661]
RECORDS COMMISSION[671]
REGENTS BOARD[681]
Archaeologist[685]
REVENUE DEPARTMENT[701]
SECRETARY OF STATE[721]
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]
TRANSPORTATION DEPARTMENT[761]
TREASURER OF STATE[781]
TURKEY MARKETING COUNCIL, IOWA[787]
UNIFORM STATE LAWS COMMISSION[791]
VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]
VETERINARY MEDICINE BOARD[811]
VOLUNTEER SERVICE, IOWA COMMISSION ON[817]
VOTER REGISTRATION COMMISSION[821]
WORKFORCE DEVELOPMENT DEPARTMENT[871]
Labor Services Division[875]
Workers' Compensation Division[876]
Workforce Development Board and Workforce Development Center Administration Division[877]

ARC 4178C

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Proposing rule making related to air quality and providing an opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to amend Chapter 20, “Scope of Title—Definitions,” Chapter 22, “Controlling Pollution,” Chapter 23, “Emission Standards for Contaminants,” and Chapter 25, “Measurement of Emissions,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 455B.133.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 455B.133.

Purpose and Summary

The purposes of this rule making are to:

1. Reduce the cost of government while providing streamlined services to the public and regulated community.

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

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

Items 1 and 6 propose to amend the definition of “EPA reference method” to adopt the technical corrections that EPA made to continuous methods for measuring air pollutant emissions. The corrections were published on August 7, 2017, in the Federal Register and codified in 40 Code of Federal Regulations (CFR) Part 60, Appendix B. **Item 15** also proposes to adopt these federal updates into the methods and procedures established in Chapter 25 for continuous monitoring systems. Adopting EPA’s updates ensures that state reference methods match current federal reference methods and are no more stringent than the federal methods.

Item 2 proposes to add a cross reference to the rules for nonattainment areas specified in Chapter 31 of the Commission’s rules.

Items 3, 4, 5, 7, 9, 10 and 11 update the location and mailing address for the Department’s Air Quality Bureau.

Item 8 proposes to establish electronic submittal of the annual emissions inventories required under the Title V operating permit program. To simplify the reporting requirements for industry, increase reporting efficiency and reduce cost to the state, the Commission is proposing to require the use of electronic reporting for all Title V facilities, beginning with reports due to the Department by March 31, 2019.

Facilities required to obtain Title V permits are required to annually report their actual air pollution emissions. “Title V facilities” are those that are permitted to emit over 100 tons of air pollution annually (or significant levels of specified hazardous air pollutants). There are currently 289 Title V facilities in Iowa, including electric generating utilities, grain-processing facilities, manufacturing plants, and others.

The Department has since 2002 offered an electronic submission system for reporting air pollution emissions. In 2015, SLEIS (the State and Local Emissions Inventory System) was introduced, offering a

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

significantly more streamlined method for reporting. This year, 82 percent of Title V facilities submitted their inventories on SLEIS, the current e-submittal system for emissions inventories. Annually, the Department provides in-person emissions inventory and SLEIS user training at several locations in the state. Online training tutorials also are available on demand on the Department's website.

Item 12 amends subrule 23.1(2) to adopt by reference new and revised New Source Performance Standards (NSPS).

The Commission proposes to adopt the federal NSPS for sewage sludge incineration (SSI) units. The federal regulation was published in the Federal Register on March 21, 2011, and applies to SSI units for which construction or reconstruction commenced after October 14, 2010, or for which modification commenced after September 21, 2011. Since its publication, the SSI NSPS has been subject to reconsideration petitions and litigation. The Commission is proposing adoption of these federal amendments because EPA's reconsiderations and the litigation of the federal standards have recently been resolved. At this time, no facilities in Iowa are affected by this NSPS. A facility that constructs a new SSI unit, or an existing facility that modifies its SSI unit, could become subject to this NSPS in the future. (See Item 14 for a related amendment.)

The amendment in Item 12 also adopts the changes EPA made to the NSPS test methods, as explained in the description above for Items 1, 6 and 15. The amendments to the NSPS are adopted by reference through revision of the adoption date specified in the introductory paragraph of subrule 23.1(2).

Item 13 amends subrule 23.1(4) to adopt federal amendments to the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) for source categories, as described below. The federal amendments are adopted by reference through revision of the adoption date specified in the introductory paragraph of subrule 23.1(4). The text in parentheses in each section heading below indicates the applicable subpart in 40 CFR Part 63 and the corresponding paragraph in subrule 23.1(4).

Phosphoric Acid Manufacturing and Phosphate Fertilizer Production (Subpart AA; paragraph "aa")

Updates to this NESHAP were published in the Federal Register on September 28, 2017. In response to petitions for reconsideration from stakeholders, EPA extended some compliance dates for affected sources and clarified one option and added a new option for monitoring requirements. At this time, no facilities in Iowa are affected by this NESHAP. New facilities, or existing facilities that change their production lines, could become subject to this NESHAP in the future.

Offsite Waste and Recovery Operations (Subpart DD; paragraph "ad")

The amendment adopts changes to the standards for offsite waste and recovery operations published in the Federal Register on January 29, 2018. EPA's final amendments address petitions for reconsideration regarding requirements for continuous monitoring of pressure relief devices (PRDs) on containers. EPA's action removes the additional monitoring requirements for PRDs on containers because EPA determined that the requirements were unnecessary. At this time, no facilities in Iowa are affected by this NESHAP. New facilities, or existing facilities that change their production lines, could become subject to this NESHAP in the future.

Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills (Subpart MM; paragraph "am")

EPA's rule amendments published in the Federal Register on October 11, 2017, include reducing the opacity (visible emissions) monitoring allowance for recovery furnaces and for lime kilns, adding electronic reporting requirements for semiannual compliance reports, updating monitoring and testing requirements, and requiring periodic stack testing and electronic reporting of stack test results. At this time, no facilities in Iowa are affected by this NESHAP. New facilities, or existing facilities that change their production lines, could become subject to this NESHAP in the future.

Portland Cement Manufacturing (Subpart LLL, paragraph "bl")

EPA's amendments to this NESHAP were published in the Federal Register on July 25, 2018, and August 3, 2018, and reflect corrections and clarifications of the rule requirements and provisions. EPA states that the amendments result in improved monitoring, compliance, and implementation of the rule. This NESHAP affects three facilities in Iowa (one facility is currently idled).

Wool Fiberglass Manufacturing (Subpart NNN; paragraph "bn")

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Amendments to this NESHAP were published in the Federal Register on December 26, 2017. EPA revised the federal standard to require affected facilities to conduct additional monitoring and record-keeping activities. In addition, affected facilities with flame attenuation lines will need to demonstrate compliance with new emission standards. EPA provided existing affected facilities a three-year period in which to comply with new NESHAP requirements. At this time, no facilities in Iowa are affected by this NESHAP. New facilities, or existing facilities that change their production lines, could become subject to this NESHAP in the future.

Item 14 proposes to adopt by reference the federal Emission Guidelines for existing SSI units. EPA's Emission Guidelines provide "model rules" that states may adopt by reference in setting the requirements for existing sources. When a state does not have an approved State Plan by EPA's specified deadline, EPA promulgates a Federal Plan for affected facilities in 40 CFR Part 62 with rules essentially identical to the model rules. EPA's Federal Plan for existing SSI is set forth in 40 CFR Part 62.

Concurrent with the NSPS for SSI units described above in Item 12, EPA published the Emission Guidelines for SSI units in the Federal Register on March 21, 2011. The standards apply to SSI units for which construction or reconstruction commenced on or before October 14, 2010. As with the NSPS, the Emission Guidelines have been subject to reconsideration petitions and litigation since publication. The Commission is proposing adoption of the federal regulations for existing SSI units because EPA's reconsiderations and the litigation of the federal standards have recently been resolved. One facility in Iowa is currently affected by these amendments.

As with the NSPS and NESHAP, the Commission adopts EPA's Emission Guidelines by reference so that the requirements are no more or less stringent than federal requirements. In this case, the Commission is proposing to adopt EPA's Federal Plan for SSI units (rather than the model rules for states) because the one facility affected by the Emission Guidelines is already complying with the Federal Plan, as set forth in 40 CFR Part 62, Subpart LLL. Adoption of the provisions in Subpart LLL will provide regulatory certainty and continuity for the affected facility.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. After analysis and review of this rule making, the Commission has determined that most of the proposed changes will have a neutral fiscal impact on affected facilities, the general public, and counties or local governments. The Commission does note that some of the amendments may benefit the private sector because they streamline current air quality programs. Affected businesses and the public benefit from up-to-date air quality requirements and increased effectiveness. A copy of the fiscal impact statement is available from the Department upon request.

Jobs Impact

After analysis and review of this rule making, the Commission has determined that the proposed amendments specified in Items 1 through 11 and Item 15 will have a neutral impact on private sector jobs. The Commission does note that some of the amendments may benefit the private sector because they streamline current air quality programs. For the amendments specified in Items 12, 13 and 14, the Commission has determined that there may be jobs impacts to Iowa businesses. However, the amendments are only implementing federally mandated regulations. The amendments are identical to the federal regulations and would not impose any regulations on Iowa businesses not already required by federal law. In some cases, the revised federal standards being proposed for adoption provide more flexibility and potential cost savings for affected businesses, offering a positive impact on private sector jobs. A copy of the complete jobs impact statement is available from the Department upon request.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on January 21, 2019. Comments should be directed to:

Christine Paulson
Department of Natural Resources
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
Email: christine.paulson@dnr.iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows. Upon arrival, attendees should proceed to the fourth floor to check in at the Department reception desk and be directed to the appropriate hearing location.

January 21, 2019
1 to 2 p.m.

Conference Room 4 East
Wallace State Office Building
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing will be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule **567—20.2(455B)**, definition of “EPA reference method,” as follows:
“EPA reference method” means the following methods used for performance tests and continuous monitoring systems:

1. No change.
2. Continuous monitoring systems. Minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are as specified in 40 CFR 60, Appendix B (as amended through ~~August 30, 2016~~ August 7, 2017); 40 CFR 60, Appendix F (as amended through August 30, 2016); 40 CFR 75, Appendix A (as amended through August 30, 2016); 40 CFR 75, Appendix B (as amended through August 30, 2016); and 40 CFR 75, Appendix F (as amended through August 30, 2016).

ITEM 2. Amend subrule 22.1(1) as follows:

22.1(1) Permit required. Unless exempted in subrule 22.1(2) or to meet the parameters established in paragraph “c” of this subrule, no person shall construct, install, reconstruct or alter any equipment, control equipment or anaerobic lagoon without first obtaining a construction permit, or permit pursuant to rule 567—22.8(455B), or permits required pursuant to rules 567—22.4(455B), 567—22.5(455B), 567—31.3(455B), and 567—33.3(455B) as required in this subrule. A permit shall be obtained prior to

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

the initiation of construction, installation or alteration of any portion of the stationary source or anaerobic lagoon.

a. and *b.* No change.

c. New, reconstructed, or modified sources may initiate construction prior to issuance of the construction permit by the department if they meet the eligibility requirements stated in subparagraph (1) below. The applicant must assume any liability for construction conducted on a source before the permit is issued. In no case will the applicant be allowed to hook up the equipment to the exhaust stack or operate the equipment in any way that may emit any pollutant prior to receiving a construction permit.

(1) Eligibility.

1. and 2. No change.

3. The source is not subject to rule 567—22.4(455B), 567—subrule 23.1(2), 567—subrule 23.1(3), 567—subrule 23.1(4), 567—subrule 23.1(5), rule 567—31.3(455B), or paragraph “*b*” of this subrule. Prevention of significant deterioration (PSD) provisions and prohibitions remain applicable until a proposed project legally obtains PSD synthetic minor status (i.e., obtains permitted limits which limit the source below the PSD thresholds).

(2) to (4) No change.

d. No change.

ITEM 3. Amend subrule 22.1(3), introductory paragraph, as follows:

22.1(3) Construction permits. The owner or operator of a new or modified stationary source shall apply for a construction permit. One copy of a construction permit application for a new or modified stationary source shall be presented or mailed to Department of Natural Resources, Air Quality Bureau, ~~7900 Hickman Road, Suite 1, Windsor Heights, Iowa 50324~~ 502 East 9th Street, Des Moines, Iowa 50319. Alternatively, the owner or operator may apply for a construction permit for a new or modified stationary source through the electronic submittal format specified by the department. An owner or operator applying for a permit as required pursuant to rule 567—31.3(455B) (nonattainment new source review) or 567—33.3(455B) (prevention of significant deterioration (PSD)) shall present or mail to the department one hard copy of a construction permit application to the address specified above and, upon request from the department, shall also submit one electronic copy and one additional hard copy of the application. Application submission methods may include, but are not limited to, U.S. Postal Service, private parcel delivery services, and hand delivery. Applications are not required to be submitted by certified mail. The owner or operator of any new or modified industrial anaerobic lagoon shall apply for a construction permit as specified in this subrule and as provided in 567—Chapter 22. The owner or operator of a new or modified anaerobic lagoon for an animal feeding operation shall apply for a construction permit as provided in 567—Chapter 65.

ITEM 4. Amend subrule 22.3(8), introductory paragraph, as follows:

22.3(8) Ownership change of permitted equipment. The new owner shall notify the department in writing no later than 30 days after the change in ownership of equipment covered by a construction permit pursuant to rule 567—22.1(455B). The notification to the department shall be mailed to the Air Quality Bureau, Iowa Department of Natural Resources, ~~7900 Hickman Road, Suite 1, Windsor Heights, Iowa 50324~~ 502 East 9th Street, Des Moines, Iowa 50319, and shall include the following information:

ITEM 5. Amend subrule 22.9(3) as follows:

22.9(3) Duty to self-identify. The owner or operator or designated representative of a facility meeting the conditions of subrule 22.9(2) shall submit two copies of a completed BART Eligibility Certification Form #542-8125, which shall include all information necessary for the department to complete eligibility determinations. The information submitted shall include source identification, description of processes, potential emissions, emission unit and emission point characteristics, date construction commenced and date of startup, and other information required by the department. The completed form was required to be submitted to the Air Quality Bureau, Department of Natural Resources, ~~7900 Hickman Road, Suite 1, Windsor Heights, Iowa 50324~~, by September 1, 2005.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

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

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

1. No change.

2. Continuous monitoring systems. Minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are as specified in 40 CFR 60, Appendix B (as amended through ~~August 30, 2016~~ August 7, 2017); 40 CFR 60, Appendix F (as amended through August 30, 2016); 40 CFR 75, Appendix A (as amended through August 30, 2016); 40 CFR 75, Appendix B (as amended through August 30, 2016); and 40 CFR 75, Appendix F (as amended through August 30, 2016).

ITEM 7. Amend subrule 22.105(1), introductory paragraph, as follows:

22.105(1) Duty to apply. For each source required to obtain a Title V operating permit, the owner or operator or designated representative, where applicable, shall present or mail a complete and timely permit application in accordance with this rule to the following locations: Iowa Department of Natural Resources, Air Quality Bureau, ~~7900 Hickman Road, Suite 1, Windsor Heights, Iowa 50324~~ 502 East 9th Street, Des Moines, Iowa 50319 (one copy); and U.S. EPA Region VII, 11201 Renner Boulevard, Lenexa, Kansas 66219 (one copy); and, if applicable, the local permitting authority, which is either Linn County Public Health Department, Air Quality Division, 501 13th Street NW, Cedar Rapids, Iowa 52405 (one copy); or Polk County Public Works, Air Quality Division, 5885 NE 14th Street, Des Moines, Iowa 50313 (one copy). Application submission methods may include, but are not limited to, U.S. Postal Service, private parcel delivery services, or hand delivery. Applications are not required to be submitted by certified mail. Alternatively, an owner or operator may submit a complete and timely application through the electronic submittal format specified by the department. An owner or operator of a source required to obtain a Title V permit pursuant to subrule 22.101(1) shall submit all required fees as required in 567—Chapter 30.

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

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

~~Alternatively, an An~~ owner or operator ~~may shall, by March 31, submit the required emissions inventory information through the electronic submittal format specified by the department~~ documentation of actual emissions for the previous calendar year.

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

ITEM 9. Amend subrule 22.128(4) as follows:

22.128(4) Submission of copies. Two copies of all permit applications shall be presented or mailed to the Air Quality Bureau, Iowa Department of Natural Resources, ~~7900 Hickman Road, Suite 1, Windsor Heights, Iowa 50324~~ 502 East 9th Street, Des Moines, Iowa 50319.

ITEM 10. Amend subrule 22.300(8) as follows:

22.300(8) Registration and reporting requirements.

a. Duty to apply. Any person who owns or operates a source otherwise required to obtain a Title V operating permit and which would be eligible for an operating permit by rule for small sources must either register for an operating permit by rule for small sources or apply for a Title V operating permit. Any source determined not to be eligible for an operating permit by rule for small sources, and

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

operating without a valid Title V operating permit, shall be subject to enforcement action for operation without a Title V operating permit, except as provided for in the application shield provisions contained in rule 567—22.104(455B). For each source registering for an operating permit by rule for small sources, the owner or operator or designated representative, where applicable, shall present or mail to the Air Quality Bureau, Iowa Department of Natural Resources, ~~7900 Hickman Road, Suite 1, Windsor Heights, Iowa 50324~~ 502 East 9th Street, Des Moines, Iowa 50319, one original and one copy of a timely and complete registration form in accordance with this rule.

(1) to (4) No change.

b. No change.

ITEM 11. Amend subrule 22.300(12), introductory paragraph, as follows:

22.300(12) *Change of ownership.* The new owner shall notify the department in writing no later than 30 days after the change of ownership of equipment covered by an operating permit by rule for small sources. The notification to the department shall be mailed to Air Quality Bureau, Iowa Department of Natural Resources, ~~7900 Hickman Road, Suite 1, Windsor Heights, Iowa 50324~~ 502 East 9th Street, Des Moines, Iowa 50319, and shall include the following information:

ITEM 12. Amend subrule 23.1(2) as follows:

23.1(2) *New source performance standards.* The federal standards of performance for new stationary sources, as defined in 40 Code of Federal Regulations Part 60 as amended or corrected through ~~September 14, 2016~~ August 7, 2017, are adopted by reference, except § 60.530 through § 60.539b (Part 60, Subpart AAA), and shall apply to the following affected facilities. The corresponding 40 CFR Part 60 subpart designation is in parentheses. An earlier date for adoption by reference may be included with the subpart designation in parentheses. Reference test methods (Appendix A), performance specifications (Appendix B), determination of emission rate change (Appendix C), quality assurance procedures (Appendix F) and the general provisions (Subpart A) of 40 CFR Part 60 also apply to the affected facilities.

a. to *bbbb*. No change.

cccc. Sewage sludge incineration units. Each sewage sludge incineration (SSI) unit for which construction or reconstruction commenced after October 14, 2010, or for which modification commenced after September 21, 2011, must comply. (Subpart LLLL)

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

23.1(4) *Emission standards for hazardous air pollutants for source categories.* The federal standards for emissions of hazardous air pollutants for source categories, 40 Code of Federal Regulations Part 63 as amended or corrected through ~~September 14, 2016~~ August 3, 2018, are adopted by reference, except those provisions which cannot be delegated to the states. The corresponding 40 CFR Part 63 subpart designation is in parentheses. An earlier date for adoption by reference may be included with the subpart designation in parentheses. 40 CFR Part 63, Subpart B, incorporates the requirements of Clean Air Act Sections 112(g) and 112(j) and does not adopt standards for a specific affected facility. Test methods (Appendix A), sources defined for early reduction provisions (Appendix B), and determination of the fraction biodegraded (F_{bio}) in the biological treatment unit (Appendix C) of Part 63 also apply to the affected activities or facilities. For the purposes of this subrule, “hazardous air pollutant” has the same meaning found in 567—22.100(455B). For the purposes of this subrule, a “major source” means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless a lesser quantity is established, or in the case of radionuclides, where different criteria are employed. For the purposes of this subrule, an “area source” means any stationary source of hazardous air pollutants that is not a “major source” as defined in this subrule. Paragraph 23.1(4) “a,” general provisions (Subpart A) of Part 63, shall apply to owners or operators who are subject to subsequent subparts of 40 CFR Part 63 (except when otherwise specified in a particular subpart or in a relevant standard) as adopted by reference below.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

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

23.1(5) Emission guidelines. The emission guidelines and compliance times for existing sources, as defined in 40 Code of Federal Regulations Part 60 as amended through ~~June 9, 2006~~ March 21, 2011, shall apply to the following affected facilities. The corresponding 40 CFR Part 60 subpart designation is in parentheses. ~~An earlier A different CFR reference and date for adoption by reference may be included with the subpart designation in parentheses indicated in the paragraphs of this subrule.~~ The control of the designated pollutants will be in accordance with federal standards established in Sections 111 and 129 of the Act and 40 CFR Part 60, Subpart B (Adoption and Submittal of State Plans for Designated Facilities), and the applicable subpart(s) for the existing source. Reference test methods (Appendix A), performance specifications (Appendix B), determination of emission rate change (Appendix C), quality assurance procedures (Appendix F) and the general provisions (Subpart A) of 40 CFR Part 60 also apply to the affected facilities.

a. to d. No change.

e. Emission guidelines and compliance times for existing sewage sludge incineration units (40 CFR Part 62, Subpart LLL). Emission guidelines and compliance times for control of designated pollutants from affected sewage sludge incineration (SSI) units that commenced construction or reconstruction on or before October 14, 2010, shall be in accordance with federal standards established in Subpart LLL of 40 CFR Part 62, as amended through April 29, 2016.

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

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

a. No change.

b. *Continuous monitoring systems.* Minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are as specified in 40 CFR 60, Appendix B (as amended through ~~August 30, 2016~~ August 7, 2017); 40 CFR 60, Appendix F (as amended through August 30, 2016); 40 CFR 75, Appendix A (as amended through August 30, 2016); 40 CFR 75, Appendix B (as amended through August 30, 2016); and 40 CFR 75, Appendix F (as amended through August 30, 2016). The owner of the equipment or the owner's authorized agent may use an alternative methodology for continuous monitoring systems if the methodology is approved by the department in writing before the minimum performance specification and quality assurance procedure is conducted.

c. No change.

ARC 4179C

LABOR SERVICES DIVISION[875]

Notice of Intended Action

**Proposing rule making related to regulated objects
and providing an opportunity for public comment**

The Boiler and Pressure Vessel Board hereby proposes to amend Chapter 91, "General Requirements for All Objects," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 89.14.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 89.

LABOR SERVICES DIVISION[875](cont'd)

Purpose and Summary

The proposed amendment would adopt by reference four code cases of the American Society of Mechanical Engineers. The proposed amendment is the result of a petition for rule making filed by an equipment manufacturer.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 875—Chapter 81.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on January 9, 2019. Comments should be directed to:

Kathleen Uehling
Division of Labor Services
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Email: kathleen.uehling@iwd.iowa.gov

Public Hearing

If requested, a public hearing at which persons may present their views orally or in writing will be held as follows:

January 9, 2019
9 a.m.

150 Des Moines Street
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Board and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

LABOR SERVICES DIVISION[875](cont'd)

Adopt the following **new** subrule 91.1(2):

91.1(2) ASME code cases. If the manufacturer of an object listed ASME Code Case 2668-1, 2760, 2764-1, or 2869 on the manufacturer's data report for the object and the object is otherwise in compliance with all applicable provisions, the object is in compliance with these rules.

ARC 4172C

PHARMACY BOARD[657]

Amended Notice of Intended Action

Proposing rule making related to USP general chapter 800 and providing an opportunity for public comment

The Board of Pharmacy hereby proposes to amend Chapter 8, "Universal Practice Standards," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 147.76, 155A.2 and 155A.13.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 155A.2 and 155A.13.

Purpose and Summary

The United States Pharmacopeial Convention establishes national minimum standards for a number of health care related topics. United States Pharmacopeia (USP) General Chapter 800, enforceable by the federal Food and Drug Administration, provides the national minimum standard for the proper handling of hazardous drugs to protect health care workers, patients, and the environment and will become effective (enforceable) December 1, 2019. In advance of the effective date of USP General Chapter 800, this proposed amendment requires all pharmacies to ensure adequate protection of pharmacy personnel and patients from hazardous drugs and provides an official enforcement date for Iowa pharmacies to implement the standards identified in USP General Chapter 800.

Reason for Amendment of Notice of Intended Action

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 29, 2018, as **ARC 3978C**. The Board received two comments requesting clarification on the expected enforcement date in Iowa for standards identified in USP General Chapter 800. The proposed amendment has been changed to instead provide a date upon which the Board intends to enforce the standards of USP General Chapter 800, which is set for December 1, 2019, or later if so delayed by USP. The revision is substantial enough to warrant a second period for public comment.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs is anticipated or can be determined. It is unknown to what extent each individual pharmacy will need to implement protective measures to protect its personnel who handle hazardous drugs.

PHARMACY BOARD[657](cont'd)

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 657—Chapter 34.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on January 8, 2019. Comments should be directed to:

Sue Mears
Board of Pharmacy
400 S.W. 8th Street, Suite E
Des Moines, Iowa 50309
Email: sue.mears@iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Amend rule 657—8.5(155A) as follows:

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

8.5(1) to **8.5(10)** No change.

8.5(11) Hazardous drugs. The pharmacy shall ensure pharmacy personnel and patients are adequately protected from unnecessary exposure to hazardous drugs. As of December 1, 2019, or the enforcement date identified by the United States Pharmacopeia (USP), whichever is later, the pharmacy shall be in compliance with USP General Chapter 800 for handling hazardous drugs.

ARC 4176C**REVENUE DEPARTMENT[701]****Notice of Intended Action****Proposing rule making related to updating references to 911 and providing an opportunity for public comment**

The Revenue Department hereby proposes to amend Chapter 18, “Taxable and Exempt Sales Determined by Method of Transaction or Usage,” Chapter 40, “Determination of Net Income,” and Chapter 224, “Telecommunication Services,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 421.17.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2017 Iowa Acts, Senate File 500.

Purpose and Summary

These proposed amendments implement 2017 Iowa Acts, Senate File 500, which in large part amended Iowa Code chapter 34A. Senate File 500 changed the terms “Enhanced 911” and “E911” to “911” in order to reflect the merging of E911 and Next Generation 911 services. The Department is updating references to those terms.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on January 8, 2019. Comments should be directed to:

Tim Reilly
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306
Phone: 515.725.2294
Email: tim.reilly@iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental

REVENUE DEPARTMENT[701](cont'd)

subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend paragraph **18.20(1)“c”** as follows:

c. “Gross receipts” from the sale of communication service in this state shall mean all charges to any person which are necessary for the ultimate user to secure the service, except those charges which are in the nature of a sale for resale (see subrule 18.20(4)). Such charges shall be taxable if the charges are necessary to secure communication service in this state even though payment of the charge may also be necessary to secure other services. Any charge necessary to secure only interstate communication service shall not be subject to tax if the nature of the service is separately stated and the charge for the service separately billed. For the present, the charges imposed by the Federal Communications Commission and referred to as “access charges for interstate or foreign access services” to an “end user” shall not be subject to tax if separately stated and billed.

Charges imposed or approved by the utilities division of the department of commerce which are necessary to secure long distance service in this state, for example, “end user intrastate access charges,” are taxable. Such charges are taxable whether they result from an expense incurred from operations or are imposed by the mandate of the utilities division and unrelated to any expense actually incurred in providing the service.

If company A collects gross receipts from ultimate users for communication services performed in this state by company B, company A shall treat those gross receipts as its own, collect tax upon them, and remit the tax to the department. The situation is similar to a consignment sale of tangible personal property, and tax must be remitted by the company collecting the gross receipts from the users of the communication services.

~~As of April 4, 1990, the amount of a surcharge for enhanced 911 emergency telephone service shall not be subject to sales tax if the amount is no more than \$1 per month per telephone access line and the surcharge is separately identified and separately billed. An enhanced 911 emergency telephone service surcharge is one which routes a 911 call to the appropriate public safety answering point and automatically displays a name, address, and telephone number of an incoming 911 call at that answering point.~~

ITEM 2. Amend rule 701—40.3(422) as follows:

701—40.3(422) Interest and dividends from foreign securities and securities of state and other political subdivisions. Interest and dividends from foreign securities and from securities of state and other political subdivisions are to be included in Iowa net income. Certain types of interest and dividends, because of specific exemption, are not includable in income for federal tax purposes. To the extent such income has been excluded for federal income tax purposes, unless the item of income is specifically exempted from state taxation by the laws or constitution of Iowa or of the United States, it must be added to Iowa taxable income.

The following is a noninclusive listing of bonds issued by the state of Iowa and its political subdivisions, interest on which is exempt from both federal and state income taxes.

1. to 10. No change.

11. Iowa finance authority, ~~E911~~ 911 program notes and bonds: Bonds issued under Iowa Code section 34A.20(6).

REVENUE DEPARTMENT[701](cont'd)

12. to 22. No change.

Interest from repurchase agreements involving obligations of the type discussed in this rule is subject to Iowa income tax. *Nebraska Department of Revenue v. John Loewenstein*, 513 US 123 (1994). *Everett v. State Dept. of Revenue and Finance*, 470 N.W.2d 13 (Iowa 1991).

For the treatment of interest or dividends from regulated investment companies (mutual funds) that invest in obligations of the type discussed in this rule, see rule 701—40.52(422).

Gains and losses from the sale or other disposition of bonds issued by the state of Iowa or its political subdivisions, as distinguished from interest income, shall be taxable for state income tax purposes.

This rule is intended to implement Iowa Code section 422.7 as amended by 2014 Iowa Acts, House File 2438.

ITEM 3. Amend rule 701—40.39(422) as follows:

701—40.39(422) Exemption of interest from bonds or notes issued to fund the ~~E911~~ 911 emergency telephone system. Interest received on or after May 4, 1990, from bonds or notes issued by the Iowa finance authority to fund the ~~E911~~ 911 emergency telephone system is exempt from the state income tax.

This rule is intended to implement Iowa Code sections 422.7 and 477B.20.

ITEM 4. Amend subrule 224.4(7) as follows:

224.4(7) Enhanced 911 surcharge. An enhanced A 911 emergency telephone service surcharge is a surcharge for a service which routes a 911 call to the appropriate public safety answering point and automatically displays a name, address, and telephone number of an incoming 911 call at that answering point. A surcharge for enhanced 911 emergency telephone service is not subject to sales tax if:

- a. The amount is no more than \$1 per month per telephone access line; and
- b. The surcharge is separately identified and separately billed.

ITEM 5. Amend rule ~~701—224.8(34A)~~, catchwords, as follows:

701—224.8(34A) Prepaid wireless ~~E911~~ 911 surcharge.

ITEM 6. Amend subrule ~~224.8(1)~~, definition of “Prepaid wireless E911 surcharge,” as follows:

“~~Prepaid wireless E911~~ 911 surcharge” means the surcharge that is required to be collected by a seller from a consumer in the amount established under this rule.

ITEM 7. Rescind the definition of “E911” in subrule ~~224.8(1)~~.

ITEM 8. Amend paragraphs ~~224.8(3)~~“a,” “c,” “d,” “e” and “g” as follows:

a. Each seller is responsible for collecting the applicable ~~E911~~ 911 surcharge from the consumer with respect to each retail transaction occurring in this state. A seller may determine whether the transaction occurs in this state by referring to the department rules on the sourcing of sales of prepaid wireless telecommunications service located in paragraph 224.6(2)“b.” See also Iowa Code sections 34A.7B(4), 423.20 and 423.15.

c. The prepaid wireless ~~E911~~ 911 surcharge is the liability of the consumer and not of the seller or any provider, except that the seller shall be liable to remit all prepaid wireless ~~E911~~ 911 surcharges that the seller collects from consumers as provided in paragraph 224.8(3)“a,” including all such surcharges that the seller is deemed to collect where the amount of the surcharge has not been separately stated on an invoice, receipt, or similar document provided to the consumer by the seller.

d. The amount of the prepaid wireless ~~E911~~ 911 surcharge that is collected by a seller from a consumer, if such amount is separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller, shall not be included in the base for measuring any tax, fee, other surcharge, or other charge that is imposed by this state, any political subdivision of this state, or any intergovernmental agency.

e. The seller must complete an ~~E911~~ a 911 Surcharge Schedule and the surcharge portion of the Iowa Sales Tax and Surcharge Return or Iowa Retailer’s Use Tax and Surcharge Return and file the information with the department.

REVENUE DEPARTMENT[701](cont'd)

g. The seller may deduct and retain 3 percent of prepaid wireless ~~E911~~ 911 surcharges that are collected by the seller from consumers.

ITEM 9. Amend paragraph **224.8(4)“a”** as follows:

a. The audit and appeal procedures applicable to sales and use tax under Iowa Code chapter 423 shall apply to the prepaid wireless ~~E911~~ 911 surcharge. See also Iowa Code sections 421.10 and 421.60.

ITEM 10. Amend subrule 224.8(6) as follows:

224.8(6) Procedures for remitting the surcharge to the treasurer. The department shall transfer all remitted prepaid wireless ~~E911~~ 911 surcharges to the treasurer of state for deposit in the ~~E911~~ 911 emergency communications fund created under Iowa Code section ~~34A.7A, subsection 2, 34A.7A(2)~~ within 30 days of receipt of the ~~E911~~ 911 surcharge from sellers. Prior to remitting the surcharges to the treasurer, the department shall deduct and retain an amount, not to exceed 2 percent of collected surcharges, to reimburse the department's direct costs of administering the collection and remittance of prepaid wireless ~~E911~~ 911 surcharges.

ARC 4177C

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rule making related to securing payment of deferred inheritance tax and providing an opportunity for public comment

The Revenue Department hereby proposes to amend Chapter 86, “Inheritance Tax,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 421.17.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 450.48 as amended by 2018 Iowa Acts, Senate File 2303.

Purpose and Summary

Prior to July 1, 2018, estates containing personal property, real property, or a mix of both were required to provide a bond security to secure payment of deferred inheritance tax. During the 2018 Legislative Session, the Legislature amended Iowa Code section 450.48 to add other options, in lieu of a bond, for securing deferred payment. These proposed amendments reflect the statutory change.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. The Fiscal Note for 2018 Iowa Acts, Senate File 2303, also identified no fiscal impact.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

REVENUE DEPARTMENT[701](cont'd)

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on January 8, 2019. Comments should be directed to:

Tim Reilly
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306
Phone: 515.725.2294
Email: tim.reilly@iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend subrule 86.14(9) as follows:

86.14(9) *Deferred life estates and remainder interest.*

a. A deferred estate generally occurs as the result of a decedent granting a life estate in property to one person with remainder of the property to another. In such cases, the determination of the tax on the remainder interest to be received by the remainderman may be deferred until the determination of the previous life estate pursuant to Iowa Code section 450.46. Tax on a remainder interest that has been deferred is valued pursuant to Iowa Code section 450.37, with no reduction based on the previous life estate. Tax due on a deferred interest must be paid before the last day of the ninth month from the date of the death of life tenant pursuant to Iowa Code section 450.46. Penalty and interest is not imposed if the tax is paid before the last day of the ninth month from the date of the death of life tenant. If the death of the decedent occurred before July 1, 1981, the tax due on a deferred interest must be paid before the last day of the twelfth month from the date of the death of life tenant. Deferment may be elected due to the fact that the remainder interest is contingent and because the value of the remainder interest may be significantly altered from the time of the decedent’s death until the death of the life tenant. A request for deferment may be made on a completed department form and the completed form, with any required documentation, may be filed with the department on or before the due date of the inheritance tax return. Failure to file a completed department form requesting a deferral of tax on the remainder interest with the inheritance tax return will allow the department to provide an automatic deferral for qualifying remainder interests.

b. If deferral is chosen, an inheritance tax clearance cannot be issued for the estate. Expenses cannot be used to offset the value of the deferred remainder interest. Based upon Iowa Code section 450.12, deductible expenses must be expenses paid by the estate. Expenses incurred by a deferred remainder interest would not qualify based on Iowa Code section 450.12 as deductible expenses. Pursuant to Iowa Code section 450.52, the owner of a deferred remainder interest may choose to pay the

REVENUE DEPARTMENT[701](cont'd)

tax on the present value of the remainder interest and have the lien on such an interest removed prior to the termination of the previous life estate. If early termination of the deferred remainder interest occurs, the value of the remainder interest will be reduced by the value of remaining previous life estate.

c. If the tax on an estate is deferred, a bond may have to be filed with the proper clerk of the district court. This bond must remain effective until the tax on the deferred estate is paid. Failure to maintain or properly renew the bond will result in the bond's being declared forfeited, and the amount collected. For additional details regarding obtaining a bond, see Iowa Code sections 450.49 and 450.50. The estate may secure payment of the deferred tax by providing other security in lieu of a bond, including but not limited to securities named in Iowa Code section 450.48(2) and securities deemed satisfactory by the department.

ITEM 2. Amend rule 701—86.14(450), implementation sentence, as follows:

This rule is intended to implement Iowa Code ~~chapter~~ chapters 450, ~~Iowa Code Supplement chapter~~ and 633E, ~~and 2005 Iowa Acts, chapter 38.~~

ARC 4175C

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rule making related to the flood mitigation program and providing an opportunity for public comment

The Revenue Department hereby proposes to amend Chapter 238, "Flood Mitigation Program," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 421.17.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 418.13 as amended by 2018 Iowa Acts, House File 2258.

Purpose and Summary

During the 2018 Legislative Session, the Legislature added language to Iowa Code section 418.13 to specify that a governmental entity may use moneys from an account for reimbursements for funds advanced internally or to help make payments on bonds incurred to pay for projects approved by the Flood Mitigation Board before, on, or after July 1, 2018. These proposed amendments to rule 701—238.4(418) regarding the use of moneys from a flood mitigation fund reflect the statutory change.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. The Fiscal Note for 2018 Iowa Acts, House File 2258, estimates no impact to the General Fund and notes that the law change could have a positive fiscal impact for local governments.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

REVENUE DEPARTMENT[701](cont'd)

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on January 8, 2019. Comments should be directed to:

Tim Reilly
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306
Phone: 515.725.2294
Email: tim.reilly@iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend paragraph **238.4(4)“c”** as follows:

~~c. Requests for remittance shall be made for the amount of moneys in the governmental entity’s account necessary to pay the governmental entity’s costs or obligations related to the project, according to the sales tax revenue funding needs specified in the approved project plan. A governmental entity shall not, however, during any fiscal year receive remittances under this rule exceeding \$15 million or 70 percent of the total yearly amount of increased sales tax increment revenue in the governmental entity’s applicable area and deposited in the governmental entity’s account or the annual maximum amount established by the board pursuant to Iowa Code section 418.9(4), whichever is less.~~

ITEM 2. Renumber subrules **238.4(5)** to **238.4(7)** as **238.4(6)** to **238.4(8)**.

ITEM 3. Adopt the following **new** subrule 238.4(5):

238.4(5) Authorized expenditures.

a. Requests for remittance shall be made for the amount of moneys in the governmental entity’s account necessary to pay the governmental entity’s costs or obligations related to the project, according to the sales tax revenue funding needs specified in the approved project plan.

b. Allowed costs or obligations under Iowa Code section 418.13(1) include the costs of the approved project, reimbursements for funds advanced internally or to help make payments on bonds incurred to pay for approved projects, and principal and interest on bonds issued under Iowa Code section 418.14.

ITEM 4. Amend rule **701—238.4(418)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code ~~section~~ sections 418.12 and 418.13.

TREASURER OF STATE

Notice—Public Funds Interest Rates

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions Katie Averill, Superintendent of Banking Ronald L. Hansen, and Auditor of State Mary Mosiman has established today the following rates of interest for public obligations and special assessments. The usury rate for December is 5.25%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

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

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

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

New official state interest rates, effective December 11, 2018, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

| | |
|----------------------------|---------------|
| 7-31 days | Minimum .35% |
| 32-89 days | Minimum .35% |
| 90-179 days | Minimum .55% |
| 180-364 days | Minimum .70% |
| One year to 397 days | Minimum .95% |
| More than 397 days | Minimum 1.05% |

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

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

USURY

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

USURY(cont'd)

| | |
|--|-------|
| January 1, 2018 — January 31, 2018 | 4.25% |
| February 1, 2018 — February 28, 2018 | 4.50% |
| March 1, 2018 — March 31, 2018 | 4.50% |
| April 1, 2018 — April 30, 2018 | 4.50% |
| May 1, 2018 — May 31, 2018 | 4.50% |
| June 1, 2018 — June 30, 2018 | 4.50% |
| July 1, 2018 — July 31, 2018 | 5.00% |
| August 1, 2018 — August 31, 2018 | 5.00% |
| September 1, 2018 — September 30, 2018 | 5.00% |
| October 1, 2018 — October 31, 2018 | 5.00% |
| November 1, 2018 — November 30, 2018 | 5.00% |
| December 1, 2018 — December 31, 2018 | 5.25% |
| January 1, 2019 — January 31, 2019 | 5.00% |

ARC 4173C**UTILITIES DIVISION[199]****Notice of Intended Action****Proposing rule making related to natural gas safety standards and providing an opportunity for public comment**

The Utilities Board hereby proposes to amend Chapter 10, “Intrastate Gas and Underground Gas Storage,” and Chapter 19, “Service Supplied by Gas Utilities,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 476.2 and 479.1.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 476 and 479.

Purpose and Summary

Federal regulations require the Utilities Board, as an agent of the federal Pipeline and Hazardous Materials Safety Administration, to update its rules every two years so that the Board is applying the most recent federal regulations during inspections of natural gas pipelines. This proposed rule making updates the rules as required.

The Board issued an order commencing rule making on December 11, 2018. The order is available on the Board’s electronic filing system under Docket No. RMU-2018-0003.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

Since this is an update of existing safety standards, this rule making should result in no impact on jobs.

UTILITIES DIVISION[199](cont'd)

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to rule 199—1.3(17A,474,476).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Board no later than 4:30 p.m. on January 8, 2019. Comments should be directed to:

Iowa Utilities Board
Electronic Filing System (EFS) at efs.iowa.gov
Phone: 515.725.7337
Email: efshelpdesk@iub.iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend subrule 10.12(1) as follows:

10.12(1) All pipelines, underground storage facilities, and equipment used in connection therewith shall be designed, constructed, operated, and maintained in accordance with the following standards:

a. 49 CFR Part 191, “Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports,” as amended through ~~October 19, 2016~~ [\[the effective date of this amendment\]](#).

b. 49 CFR Part 192, “Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards,” as amended through ~~October 19, 2016~~ [\[the effective date of this amendment\]](#).

c. 49 CFR Part 199, “Drug and Alcohol Testing,” as amended through ~~October 19, 2016~~ [\[the effective date of this amendment\]](#).

d. ASME B31.8 - ~~2007~~ [2016](#), “Gas Transmission and Distribution Piping Systems.”

e. and *f.* No change.

Conflicts between the standards established in paragraphs 10.12(1)“a” through “f” or between the requirements of rule 199—10.12(479) and other requirements which are shown to exist by appropriate written documentation filed with the board shall be resolved by the board.

ITEM 2. Amend subrule 19.2(5) as follows:

19.2(5) *Annual, periodic and other reports to be filed with the board.*

a. to *f.* No change.

g. *Reports to federal agencies.* Copies of reports submitted to the U.S. Department of Transportation pursuant to 49 CFR Part 191, Part 192, or Part 199, as amended through ~~October 19,~~

UTILITIES DIVISION[199](cont'd)

2016 [the effective date of this amendment], shall be filed with the board. Utilities operating in other states shall provide to the board data for Iowa only.

h. to k. No change.

ITEM 3. Amend subrule 19.5(2) as follows:

19.5(2) Standards incorporated by reference.

a. The design, construction, operation, and maintenance of gas systems and liquefied natural gas facilities shall be in accordance with the following standards where applicable:

(1) 49 CFR Part 191, "Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports," as amended through ~~October 19, 2016~~ [the effective date of this amendment].

(2) 49 CFR Part 192, "Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards," as amended through ~~October 19, 2016~~ [the effective date of this amendment].

(3) 49 CFR Part 193, "Liquefied Natural Gas Facilities: Federal Safety Standards," as amended through ~~October 19, 2016~~ [the effective date of this amendment].

(4) 49 CFR Part 199, "Drug and Alcohol Testing," as amended through ~~October 19, 2016~~ [the effective date of this amendment].

(5) ASME B31.8 - ~~2007~~ 2016, "Gas Transmission and Distribution Piping Systems."

(6) NFPA 59-~~2004~~ 2018, "Utility LP-Gas Plant Code."

(7) At railroad crossings, 199—42.7(476), "Engineering standards for pipelines."

b. The following publications are adopted as standards of accepted good practice for gas utilities:

(1) ANSI Z223.1/NFPA 54-~~2015~~ 2018, "National Fuel Gas Code."

(2) NFPA 501A-~~2013~~ 2017, "Standard for Fire Safety Criteria for Manufactured Home Installations, Sites, and Communities."

ITEM 4. Amend subrule 19.8(3) as follows:

19.8(3) Turning on gas. Each utility upon the installation of a meter and turning on gas or the act of turning on gas alone shall take the necessary steps to assure itself that there exists no flow of gas through the meter which is a warning that the customer's piping or appliances are not safe for gas turn on (Ref: Sec. 8.2.3 and Annex D, ANSI Z223.1/NFPA 54-~~2015~~ 2018).

ARC 4174C

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Notice of Intended Action

Proposing rule making related to vocational training eligibility requirements and providing an opportunity for public comment

The Workforce Development Department hereby proposes to amend Chapter 24, "Claims and Benefits," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 96.11.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 96.

Purpose and Summary

This proposed amendment updates the Department's eligibility criteria for a waiver of work search requirements for claimants attending approved training programs. The proposed amendment would clearly state the expectations that must be met in order for a claimant to be approved for the program.

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on January 8, 2019. Comments should be directed to:

David Steen
Department of Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Email: david.steen@iwd.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Amend subrule 24.39(2) as follows:

24.39(2) A claimant may receive unemployment insurance while attending a training course approved by the department, under the following conditions:

- a. and b. No change.
- c. The individual must be enrolled and attending the training program in person as a full-time student.

While attending the approved training course, the claimant need not be available for work or actively seeking work, except if the hours of the training are outside the regular hours worked in the base period employment. After completion of department-approved training, the claimant must, in order to continue to be eligible for unemployment insurance, place no restriction on employability. The claimant must be able to work, be available for work and be actively searching for work. In addition, the claimant may be subject to disqualification for any refusal of work without good cause after the claimant has completed the training.

ARC 4180C

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Adopted and Filed

Rule making related to applicants for executive branch positions

The Department of Administrative Services hereby amends Chapter 50, "Human Resources Definitions," and Chapter 54, "Recruitment, Application and Examination," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 8A.104, 17A.3 and 17A.4 and sections 8A.403 and 8A.413(5A) as enacted by 2018 Iowa Acts, Senate File 2323.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 8A.403 and 8A.413(5A) as enacted by 2018 Iowa Acts, Senate File 2323.

Purpose and Summary

2018 Iowa Acts, Senate File 2323, relates to prohibitions and disclosure requirements concerning outside employment or activities requiring registration as a foreign agent and makes penalties applicable. 2018 Iowa Acts, Senate File 2323, requires the Department of Administrative Services to establish by rule procedures for applicants applying for both nonmerit and merit-covered executive branch positions to disclose in the application for employment whether the applicant has filed a registration statement pursuant to the federal Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. §611 et seq. These amendments comport with 2018 Iowa Acts, Senate File 2323.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 10, 2018, as **ARC 4045C**. A public hearing was held on October 30, 2018, at 1 p.m. in the Procurement Conference Room, A Level, Hoover State Office Building, Des Moines, Iowa. Kim Schmett spoke about the scope of the rule and included comments about the constitutionality of ex post facto laws which he said he felt applied to this rule. One change from the Notice was made. The Department dropped new paragraph "I" in Item 3, subrule 54.2(6).

Adoption of Rule Making

This rule making was adopted by the Department on November 30, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

The Department will not grant waivers under the provisions of these rules, other than as may be allowed under Chapter 9 of the Department's rules concerning waivers.

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on January 23, 2019.

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** definition of "Nonmerit" in rule **11—50.1(8A)**:
"Nonmerit" means a position that is exempt from the merit system.

ITEM 2. Amend subrule 54.2(1) as follows:

54.2(1) Applicant information. Applicant information shall be on forms prescribed by the director unless an alternate method has been authorized. Applicants must supply at least their name, current mailing address, signature and social security number; however, if an applicant requests, a nine-digit number will be assigned by the department to be used in lieu of the social security number. If other than the social security number is requested, it shall be the applicant's responsibility to ensure that all future correspondence directed to the department regarding the applicant's records contains the assigned nine-digit number. All other information requested on the application will assist the department in accurately and completely processing and evaluating the application. Applications that are not complete may not be regarded as an official application and may not be processed. The director may require an applicant to submit documented proof of the possession of any license, certificate, degree, or other evidence of eligibility or qualification to satisfactorily perform the essential duties of the job with or without a reasonable accommodation. An applicant shall also disclose in the application whether the applicant has filed a registration statement pursuant to the federal Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. §611 et seq.

ITEM 3. Amend subrule 54.2(6) as follows:

54.2(6) Disqualification or removal of applicants. The director may refuse to place an applicant on a list of eligibles, refuse to refer an applicant for a vacancy, refuse to approve the appointment of an applicant, or remove an applicant from a list of eligibles for a position if it is found that the applicant:

- a. Does not meet the minimum qualifications or selective requirements for the job class or position as specified in the job class description, vacancy announcement, administrative rules, or law.
- b. Is incapable of performing the essential functions of the job classification or position and a reasonable accommodation cannot be provided.
- c. Has knowingly misrepresented the facts when submitting information relative to an application, examination, certification, appeal, or any other facet of the selection process.
- d. Has used or attempted to use coercion, bribery or other illegal means to secure an advantage in the application, examination, appeal or selection process.
- e. Has obtained screening information to which applicants are not entitled.
- f. Has failed to submit the application within the designated time limits.
- g. Was previously discharged from a position in state government.
- h. Has resigned in lieu of discharge for cause.
- i. Has been convicted of a crime that is shown to have a direct relationship to the duties of a job class or position.
- j. Is proven to be an unrehabilitated substance abuser who would be unable to perform the duties of the job class or who would constitute a threat to state property or to the safety of others.
- k. Is not a United States citizen and does not have a valid permit to work in the United States under regulations issued by the U.S. Immigration and Naturalization Service.

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

Applicants disqualified or removed under this subrule shall be notified in writing by the director within five workdays following removal. Applicants may informally request that the director reconsider their disqualification or removal by submitting additional written evidence of their qualifications or reasons why they should not be removed ~~in accordance with rule 11—61.3(8A)~~. Formal appeal of disqualification or removal shall be in accordance with 11—subrule 61.2(4).

ITEM 4. Adopt the following new rule 11—54.8(8A):

11—54.8(8A) Nonmerit hiring procedure. An applicant for employment to a position that is not covered by the merit system shall disclose to the appointing authority, in writing, whether the applicant has filed a registration statement pursuant to the federal Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. §611 et seq.

[Filed 11/30/18, effective 1/23/19]

[Published 12/19/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/19/18.

ARC 4181C

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Adopted and Filed

Rule making related to capitol complex operations

The Department of Administrative Services hereby amends Chapter 100, "Capitol Complex Operations," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 8A.104, 8A.322, 17A.3 and 17A.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 8A.322 and 17A.7.

Purpose and Summary

These amendments update references and procedures in Chapter 100 of the Department's rules regarding capitol complex operations, including hours of operation at the Capitol Building. These amendments are adopted as part of the Department's five-year review of rules.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 24, 2018, as **ARC 4084C**. A public hearing was held on November 14, 2018, at 10 a.m. in the Procurement Conference Room, A Level, Hoover State Office Building, Des Moines, Iowa. No one attended the public hearing. No public comments were received. One change from the Notice was made. The Department did not adopt proposed language in subrule 100.3(3) which was taken from the State of Iowa Employee Handbook and pertained to a tobacco policy. The Department is keeping the underscored references to Iowa Code chapter 142D in Item 1, which refer to the correct Iowa Code reference.

Adoption of Rule Making

This rule making was adopted by the Department on November 29, 2018.

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

The Department will not grant waivers under the provisions of these rules, other than as may be allowed under Chapter 9 of the Department's rules concerning waivers.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on January 23, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend rule 11—100.3(142B) as follows:

11—100.3(142B) 142D) Smoking.

100.3(1) and **100.3(2)** No change.

100.3(3) This rule shall be enforced by peace officers of the department of public safety. Peace officers other than those employed by the department of public safety may enforce this rule at the request of the commissioner of public safety or at the request of a peace officer employed by the department of public safety.

This rule is intended to implement Iowa Code section 8A.322 and chapter ~~142B~~ 142D and Executive Order Number 68 signed November 23, 1998, by Governor Terry Branstad.

ITEM 2. Amend paragraphs **100.4(12)**“b” and “c” as follows:

b. For the Capitol Building, normal office hours are ~~6 a.m. to 6 p.m.~~ 7 a.m. to 5 p.m., Monday through Friday, ~~except that if a legislative session lasts past 6 p.m., the closing hour is extended until one-half hour beyond the session's end. Weekend hours of public access shall be posted at public entrances and 9 a.m. to 4 p.m. on Saturday. If the legislature is in session after normal office hours, the ground floor south door closing hour is extended until the session's end. Inquiries regarding the hours the building is open may be directed to the information desk at (515)281-5591.~~

c. For the Iowa Historical Building, normal office hours are 8 a.m. to 4:30 p.m. every day, excluding weekends and holidays. The Iowa Historical Museum and the State Historical Library, located within the Iowa Historical Building, have different hours. Hours of public access shall be posted at public entrances. Inquiries regarding the hours the building is open may be directed to the information desk at (515)281-5111.

[Filed 11/30/18, effective 1/23/19]

[Published 12/19/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/19/18.

ARC 4182C

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Adopted and Filed

Rule making related to procurement policies and procedures

The Department of Administrative Services hereby amends Chapter 103, “State Employee Driving Guidelines,” Chapter 117, “Procurement of Goods and Services of General Use,” and Chapter 118, “Purchasing Standards for Service Contracts,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 8A.104, 8A.311, 17A.3 and 17A.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 8A.104, 8A.311, 17A.7, 26.3 and 26.9.

Purpose and Summary

As a part of its five-year review of administrative rules, the Department amends three administrative rules chapters to update procurement policies and procedures and address the topics of state employee driving guidelines, procurement of goods and services of general use, and purchasing standards for service contracts.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 10, 2018, as **ARC 4050C**. A public hearing was held on October 31, 2018, at 10 a.m. in the Procurement Conference Room, A Level, Hoover State Office Building, Des Moines, Iowa. No one attended the public hearing. No public comments were received. One change from the Notice was made. The Department did not adopt proposed Item 1 and plans further review of all of Chapter 103.

Adoption of Rule Making

This rule making was adopted by the Department on November 29, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

The Department will not grant waivers under the provisions of these rules, other than as may be allowed under Chapter 9 of the Department’s rules concerning waivers.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on January 23, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 103.16(1) as follows:

103.16(1) ~~All fuel~~ Fuel used in state-owned automobiles ~~shall~~ may be purchased at cost from the various state installations or garages such as but not limited to those of the state department of transportation, state board of regents, department of human services, department of corrections, or state motor pools throughout the state, ~~unless the state-owned sources for the purchase of fuel are not reasonably accessible.~~ Fuel may also be purchased at retail locations if a state fueling facility is not readily available. When possible, purchases shall be made using a fuel purchase card issued by the department.

ITEM 2. Adopt the following new definition of “Purchasing card” in rule ~~11—117.2(8A)~~:

“*Purchasing card*” means a statewide commercial credit card for electronic purchasing transactions by any agency, department, division, bureau, enterprise, unit or other state entity to facilitate the acquisition of goods, services and select travel expenses.

ITEM 3. Amend subrule 117.6(7) as follows:

117.6(7) *Targeted small businesses.* The department and agencies may buy from a targeted small business if a targeted small business is able to provide the good or service, pursuant to Iowa Code section 73.20. ~~When enterprise master agreements with targeted small businesses are available, purchases shall be made through these master agreements.~~

ITEM 4. Amend subrule 117.7(2) as follows:

117.7(2) *Delegation of procurement authority.* The department shall establish guidelines for implementation of procurement authority delegated to agencies. The department shall assist agencies in developing purchasing and purchasing card procedures consistent with central purchasing policy and procedures and recommended governmental procurement standards.

ITEM 5. Adopt the following new subrule 117.7(4):

117.7(4) *Purchasing card program.* The department shall establish and administer a purchasing card program available to any state agency, department, division, bureau, enterprise, unit or other state entity to facilitate the acquisition of goods, services and select travel expenses. The department shall establish program policies and procedures in accordance with state procurement and accounting policies, and any applicable statutory and regulatory authority. Except for state vehicle fuel purchase cards assigned by the department, the purchasing card shall be the only commercial credit card authorized by the department.

ITEM 6. Amend subrule 117.8(2) as follows:

117.8(2) *Targeted small business notification.* ~~Targeted small businesses shall be notified of all solicitations at least 48 hours prior to the general release of the notice of solicitation. The notice shall be distributed to the state of Iowa’s 48-hour procurement notice website for posting~~ State agencies, when using formal competition, shall provide a 48-hour notice of each procurement for goods to the targeted small business portal located at the Iowa economic development authority’s website in conformance with Iowa Code section 73.16(2).

ITEM 7. Amend subrule 117.8(4) as follows:

117.8(4) *Advertisement of construction procurement.* Construction solicitations shall be advertised ~~twice in a newspaper of general circulation published in the county within which the~~ when work is to be done ~~when~~ and the cost of the work exceeds \$100,000 or the adjusted competitive threshold established in Iowa Code section 314.1B. ~~Additional means of advertisement used shall be consistent with practices~~

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

~~in the construction industry.~~ The department ~~may~~ shall publish an advertisement in an electronic format as an additional method of soliciting bids notice to bidders in accordance with Iowa Code section 26.3.

ITEM 8. Amend subrule 117.8(5) as follows:

117.8(5) *Vendor intent to participate.* In the event the department elects to conduct any procurement electronically or otherwise, it may require that vendors ~~prequalify or otherwise~~ indicate their intention to participate in the procurement process.

ITEM 9. Amend subrule 117.14(5) as follows:

117.14(5) *Establishment of agency internal procedures and controls.*

a. Agencies shall establish internal controls and procedures to initiate purchases, complete solicitations, make awards, approve purchases, and receive goods. The procedures shall address adequate public recordings of the purchases under the agency's authority consistent with law and rule. Internal controls and security procedures that are consistent with the requirements of the department and state auditor, including staff authority to initiate, execute, approve, and receive purchases, shall be in place for all phases of the procurement.

b. Agencies participating in the department's purchasing card program shall comply with the program policies and procedures in accordance with state procurement and accounting policies, and any applicable statutory and regulatory authority.

c. If an agency develops internal policies and procedures specific to its use of purchasing cards, the policies and procedures may be more, but not less, restrictive than the department's. In the event of a conflict between the agency and department policies and procedures, the department's shall take precedence.

ITEM 10. Amend subrule 117.15(3) as follows:

117.15(3) *Preference to targeted small businesses.* Agencies shall search the TSB directory on the ~~Web~~ Iowa economic development authority's website and ~~may purchase a good or service directly from the TSB source if it is reasonable and cost-effective to do so~~ the cost is equal to or less than the spending limit set forth in Iowa Code section 8A.311(10). Agencies shall comply with the TSB notification requirements in subrule 117.8(2).

ITEM 11. Amend rule 11—118.5(8A) as follows:

11—118.5(8A) Use of competitive selection. State agencies ~~may procure non-master agreement services from private entities without competition when the estimated value does not exceed \$5,000.~~ Agencies shall use competitive selection to acquire services from private entities when the estimated annual value of the service contract is equal to or greater than \$5,000 or when the estimated value of the multiyear service contract in the aggregate, including any renewals, is equal to or greater than \$15,000 unless there is adequate justification for a sole source or emergency procurement pursuant to rule 11—118.7(8A) or 11—118.8(8A) or another provision of law.

118.5(1) When the estimated annual value of the service contract is ~~equal to or~~ greater than \$50,000 or the estimated value of the multiyear service contract in the aggregate, including any renewals, exceeds \$150,000, a state agency shall use a formal competitive selection process to procure the service.

118.5(2) When the estimated annual value of the service contract is ~~equal to or~~ greater than \$5,000 but less than \$50,000 and the estimated value of the multiyear service contract in the aggregate, including any renewals, does not exceed \$150,000, a state agency, in its sole discretion, shall use either a formal or informal competitive selection process to engage a service provider.

118.5(3) The requirement to use competitive selection to select a service provider when the estimated annual value of the service contract is ~~equal to or~~ greater than \$5,000 or when the estimated value of the multiyear service contract in the aggregate, including renewals, is ~~equal to or~~ greater than \$15,000 applies even when the state agency purchases services from a private entity and designates the contract it enters into with the private entity as a 28E agreement.

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

ITEM 12. Amend subrule 118.7(1) as follows:

118.7(1) *When justified.* A sole source procurement shall be avoided unless clearly necessary and justifiable. A state agency may purchase services using a sole source procurement under the following circumstances:

- a. to e. No change.
- f. Applicable law requires, provides for, or permits use of a sole source procurement; or
- g. The procurement is an information service that is systems software or an upgrade, or compatibility is the overriding consideration, or the procurement would prevent avoidance or termination of a warranty, or the procurement would prevent default under a contract or other obligation.

ITEM 13. Amend subrule 118.7(2) as follows:

118.7(2) *Special procedures required for sole source procurements.*

a. When the annual value of the service contract exceeds \$5,000 or when the estimated value of the multiyear service contract in the aggregate, including renewals, is ~~equal to or~~ greater than \$15,000, the director of a state agency or designee shall sign the sole source contract or the amendment. In the absence of the director of a state agency or designee, the sole source contract shall be signed only by the DAS director or designee. Use of sole source procurement does not relieve a state agency from negotiating a fair and reasonable price and thoroughly documenting the procurement action.

b. When the annual value of the service contract exceeds \$5,000 or when the estimated value of the multiyear service contract in the aggregate, including renewals, is ~~equal to or~~ greater than \$15,000, a state agency shall be required to complete a sole source justification form. The director of the state agency or designee shall sign the sole source justification form. In the absence of the director of the state agency or designee, the sole source justification form shall be signed only by the DAS director or designee. The claim for the first payment on a contract requires a copy of the signed original contract, a copy of the precontract questionnaire, a copy of the sole source justification form, and an original invoice or original claimant signature.

c. The contract for the sole source procurement shall comply with 11—119.4(8,8A), uniform terms and conditions for service contracts, or 11—119.5(8,8A), special terms and conditions.

ITEM 14. Amend subrule 118.11(3) as follows:

118.11(3) A service contract should be competitively selected on a regular basis so that a state agency obtains the best value for the funds spent; avoids inefficiencies, waste or duplication; and may take advantage of new innovations, ideas and technology. A service contract, including all optional renewals, shall not exceed a term of six years; however, information technology service contracts entered into by the department or office of chief information officer may have a term length not to exceed ten years. Service contracts shall not exceed the term lengths set forth herein unless the state agency obtains a waiver of this provision pursuant to rule 11—118.16(8A).

ITEM 15. Amend subrule 118.12(1) as follows:

118.12(1) State agencies, ~~whether when~~ utilizing ~~informal or~~ formal competition, shall provide a 48-hour notice of each procurement for services to the targeted small business ~~Web page portal~~ located at the Iowa ~~department of economic development's development authority's~~ development authority's website in conformance with Iowa Code section 73.16(2).

[Filed 11/30/18, effective 1/23/19]

[Published 12/19/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/19/18.

ARC 4183C

COLLEGE STUDENT AID COMMISSION[283]

Adopted and Filed

Rule making related to all Iowa opportunity scholarships

The College Student Aid Commission hereby amends Chapter 8, “All Iowa Opportunity Scholarship Program,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 261.3.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 261 as amended by 2018 Iowa Acts, House File 2502, sections 80 and 81.

Purpose and Summary

These amendments reflect changes to Iowa Code section 261.87 that were enacted by 2018 Iowa Acts, House File 2502, sections 80 and 81. Section 80 defines “eligible surviving-child student,” and section 81 provides students who meet that definition with second priority for awards under the All Iowa Opportunity Scholarship Program.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 15, 2018, as **ARC 3938C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Commission on November 16, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 283—Chapter 7.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

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

Effective Date

This rule making will become effective on January 23, 2019.

The following rule-making actions are adopted:

ITEM 1. Adopt the following new definition of “Eligible surviving-child student” in rule **283—8.2(261)**:

“*Eligible surviving-child student*” means a person who is under age 26, or under age 30 if the student is a veteran who is eligible for or has exhausted benefits under the federal Post-9/11 Veterans Educational Assistance Act of 2008; who is not a convicted felon as defined in Iowa Code section 910.15; and who meets any of the following criteria:

1. Is the child of a peace officer, as defined in Iowa Code section 97A.1, who was killed in the line of duty as determined by the board of trustees of the Iowa department of public safety peace officers’ retirement, accident, and disability system in accordance with Iowa Code section 97A.6(16).

2. Is the child of a police officer or fire fighter, as defined in Iowa Code section 411.1, who was killed in the line of duty as determined by the statewide fire and police retirement system in accordance with Iowa Code section 411.6(15).

3. Is the child of a sheriff or deputy sheriff, as defined in Iowa Code section 97B.49C, who was killed in the line of duty as determined by the Iowa public employees’ retirement system in accordance with Iowa Code section 97B.52(2).

4. Is the child of a fire fighter or police officer included under Iowa Code section 97B.49B, who was killed in the line of duty as determined by the Iowa public employees’ retirement system in accordance with Iowa Code section 97B.52(2).

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

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

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

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

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

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

d. e. If funding remains after all priority applicants have been awarded, ~~fourth~~ fifth priority will be given to students who participated in federal GEAR UP programs. Awards will be made to students in this category based on EFC levels within the parameters defined by the commission, with students in

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

the lowest EFC levels awarded first, followed by awards to students at increasing EFC levels until the maximum EFC level is reached. If all students in a given EFC level cannot be funded, students will be ranked according to the date the state application was filed.

e. f. If funding is available, awards to remaining eligible applicants will be made based on EFC levels within the parameters defined by the commission, with students in the lowest EFC levels awarded first, followed by awards to students at increasing EFC levels until the maximum EFC level is reached. If all students in a given EFC level cannot be funded, students will be ranked according to the date the state application was filed.

[Filed 11/20/18, effective 1/23/19]

[Published 12/19/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/19/18.

ARC 4184C

COLLEGE STUDENT AID COMMISSION[283]

Adopted and Filed

Rule making related to application requirements

The College Student Aid Commission hereby amends Chapter 20, "Iowa National Guard Educational Assistance Program," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 261.3.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 261 and 2018 Iowa Acts, Senate File 2415, section 14.

Purpose and Summary

This amendment reflects changes to Iowa Code section 261.86 that were enacted by 2018 Iowa Acts, Senate File 2415, section 14. Section 14 requires recipients of the Iowa National Guard Educational Assistance Program to complete the Free Application for Federal Student Aid (FAFSA) to apply for state and federal nonrepayable aid.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 15, 2018, as **ARC 3940C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Commission on November 16, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 7.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on January 23, 2019.

The following rule-making action is adopted:

Amend subrule 20.1(2) as follows:

20.1(2) Guard member eligibility. A recipient must:

- a. Be a resident of Iowa, as defined by the adjutant general of Iowa, and a member of an Iowa army or air national guard unit throughout each term for which the member receives benefits.
- b. Have satisfactorily completed required guard training.
- c. Have maintained satisfactory performance of guard duty.
- d. Have applied to the adjutant general of Iowa for program eligibility by the established application deadline date(s) by completing the Free Application for Federal Student Aid (FAFSA) and any other application form required. The adjutant general shall accept an application from an eligible member of the Iowa national guard who was on federal active duty at the time of an application deadline if the application is received within 30 days after the eligible member returns to Iowa from federal active duty. The applicant will be considered for funding for the state-defined payment period in which the application was received and any future state-defined payment periods in that academic year.
- e. Be pursuing a certificate or undergraduate degree program at an eligible Iowa college or university and maintaining satisfactory academic progress.
- f. Provide notice of national guard status to the college or university at the time of registration.

[Filed 11/20/18, effective 1/23/19]

[Published 12/19/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/19/18.

ARC 4185C

COLLEGE STUDENT AID COMMISSION[283]**Adopted and Filed****Rule making related to waivers and postponement provisions**

The College Student Aid Commission hereby amends Chapter 25, "Rural Iowa Advanced Registered Nurse Practitioner and Physician Assistant Loan Repayment Program," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 261.3.

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

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 261 and 2018 Iowa Acts, Senate File 2415, sections 16 and 17.

Purpose and Summary

These amendments reflect changes to Iowa Code section 261.114 that were enacted by 2018 Iowa Acts, Senate File 2415, sections 16 and 17. Section 16 repeals a provision related to a full-time practice waiver, and section 17 repeals provisions related to postponement of the service obligation.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 15, 2018, as **ARC 3941C**. No public comments were received. One change from the Notice has been made. The words “as amended by” have been stricken from the implementation sentence of Chapter 25 and a reference to 2018 Iowa Acts, Senate File 2415, has been removed since the amendments in the Senate File have been codified in the 2019 Iowa Code.

Adoption of Rule Making

This rule making was adopted by the Commission on November 16, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 283—Chapter 7.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on January 23, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend rule 283—25.5(261) as follows:

283—25.5(261) Waivers.

25.5(1) Service commitment area. The commission may waive the requirement that the advanced registered nurse practitioner or physician assistant practice in the same service commitment area for five years. The advanced registered nurse practitioner or physician assistant must request a waiver from the commission in writing.

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

~~25.5(2) Full-time employment. The commission may waive the requirement that the advanced registered nurse practitioner or physician assistant be employed full-time if the advanced registered nurse practitioner or physician assistant demonstrates exceptional circumstances. The advanced registered nurse practitioner or physician assistant must request a waiver from the commission in writing. If a waiver request is granted by the commission, the agreement will be amended to provide an allowance for part-time employment. The five-year employment obligation will be proportionally extended to ensure the advanced registered nurse practitioner or physician assistant is employed in a service commitment area for the equivalent of five full-time years.~~

~~25.5(3) Postponement of advanced registered nurse practitioner or physician assistant employment. The advanced registered nurse practitioner or physician assistant obligation to engage in practice in accordance with 25.3(4) may be postponed for no more than two years from the time full-time practice was to commence. The advanced registered nurse practitioner or physician assistant must request a waiver from the commission in writing for one of the following purposes:~~

- ~~a. Active duty service in the armed forces, the armed forces military reserve, or the national guard.~~
- ~~b. Service in Volunteers in Service to America or the federal Peace Corps.~~
- ~~c. A service commitment to the United States Public Health Service Commissioned Corps.~~
- ~~d. A period of religious missionary work conducted by an organization exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code.~~

~~The advanced registered nurse practitioner or physician assistant obligation to engage in practice in accordance with 25.3(4) may be postponed for a period exceeding two years for any period of temporary medical incapacity, including leave approved under the Family and Medical Leave Act, during which the advanced registered nurse practitioner or physician assistant is unable to engage in full-time practice. The advanced registered nurse practitioner or physician assistant must request a waiver from the commission in writing.~~

~~25.5(4) 25.5(2) Satisfaction of advanced registered nurse practitioner or physician assistant employment. All obligations under the rural Iowa advanced registered nurse practitioner and physician assistant loan repayment program are considered to be satisfied when any of the following conditions are met:~~

- ~~a. to d. No change.~~

ITEM 2. Amend **283—Chapter 25**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section 261.114 as amended by 2014 Iowa Acts, Senate File 2347.

[Filed 11/20/18, effective 1/23/19]

[Published 12/19/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/19/18.

ARC 4186C

COLLEGE STUDENT AID COMMISSION[283]

Adopted and Filed

Rule making related to health care loan repayment program

The College Student Aid Commission hereby adopts new Chapter 26, "Health Care Loan Repayment Program," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 261.3.

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

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 261 and 2018 Iowa Acts, Senate File 2415, section 20.

Purpose and Summary

The new chapter implements a new loan repayment program enacted by 2018 Iowa Acts, Senate File 2415, section 20.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 15, 2018, as **ARC 3939C**. No public comments were received. One change from the Notice has been made. A reference to 2018 Iowa Acts, Senate File 2415, has been removed from the implementation sentence of Chapter 26 since the amendments in the Senate File have been codified in the 2019 Iowa Code.

Adoption of Rule Making

This rule making was adopted by the Commission on November 16, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 283—Chapter 7.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on January 23, 2019.

The following rule-making action is adopted:

Adopt the following **new** 283—Chapter 26:

CHAPTER 26
HEALTH CARE LOAN REPAYMENT PROGRAM

283—26.1(261) Health care loan repayment program. The health care loan repayment program is a state-supported and state-administered program established to repay the qualified student loans of nurse educators teaching at eligible Iowa colleges and universities, as well as applicants who agree to

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

practice as registered nurses, advanced registered nurse practitioners, or physician assistants in service commitment areas for five consecutive years, and who meet the requirements of these rules.

283—26.2(261) Definitions. As used in this chapter:

“Advanced registered nurse practitioner” means an individual who graduated from an accredited graduate or postgraduate advanced practice educational program, is licensed by the board of nursing as a registered nurse, is licensed by the board of nursing as an advanced registered nurse practitioner, and is employed as an advanced registered nurse practitioner in an eligible service commitment area.

“Nurse educator” means a registered nurse who holds a master’s or doctorate degree and is employed by an Iowa community college, an accredited private institution defined in Iowa Code section 261.9, or an institution of higher learning governed by the state board of regents as a faculty member who teaches nursing as provided in 655—Chapter 2 at a nursing program approved by the board of nursing pursuant to Iowa Code section 152.5.

“Physician assistant” means an individual who graduated with a master’s degree, holds a practitioner’s license to practice as a physician assistant pursuant to Iowa Code chapter 148C, and is employed as a physician assistant in an eligible service commitment area.

“Qualified student loan” means a loan that was made, insured, or guaranteed under Title IV of the federal Higher Education Act of 1965, as amended, or under Title VII or VIII of the federal Public Health Service Act, as amended, directly to the borrower for attendance at an approved postsecondary institution. Only the outstanding portion of a federal consolidation loan that was used to repay a qualified student loan qualifies for loan repayment.

“Registered nurse” means a nurse who is licensed by the board of nursing as a registered nurse and is employed as a registered nurse in an eligible service commitment area.

“Service commitment area” means a city in Iowa with a population of less than 26,000 that is located more than 20 miles from a city with a population of 50,000 or more.

283—26.3(261) Eligibility requirements.

26.3(1) An eligible applicant must be an advanced registered nurse practitioner, nurse educator, physician assistant, or registered nurse.

26.3(2) An eligible applicant must annually complete and file an application for the program by the deadline established by the commission. If funds remain available after the application deadline, the commission will continue to accept applications.

26.3(3) An eligible applicant must annually complete and return to the commission an affidavit of practice verifying full-time employment, as defined by the employer, in a service commitment area during the entire year as an advanced registered nurse practitioner, physician assistant, or registered nurse, or full-time employment, as defined by the employer, as a nurse educator.

283—26.4(261) Awarding of funds.

26.4(1) Selection criteria. All completed applications received on or before the published deadline will be considered for funding. To the extent possible, an equal number of new advanced registered nurse practitioners, nurse educators, physician assistants, and registered nurses will be offered awards based on the availability of appropriated funds. In the event that funding is insufficient to award all eligible applicants within an occupation category, criteria for selection of eligible applicants within each occupation category will be prioritized as follows:

a. Renewal status. Recipients of awards through the registered nurse and nurse educator loan forgiveness program during the 2018 state fiscal year will be eligible for funding under the health care loan repayment program if the eligible applicants meet the eligibility criteria of the health care loan repayment program. Under this provision, no recipient will receive more than five consecutive awards between the registered nurse and nurse educator loan forgiveness program and the health care loan repayment program;

b. Iowa residency status;

c. Members of the Iowa national guard, if requested by the adjutant general.

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

(1) Members of the Iowa national guard are exempt from the service commitment area requirement, and

(2) Members of the Iowa national guard must have satisfactorily completed required guard training and must maintain satisfactory performance of guard duty;

d. Date of application.

26.4(2) Annual award. The maximum annual award shall be the lesser of:

a. \$6,000, or

b. Twenty percent of the eligible applicant's total outstanding qualified student loan.

26.4(3) Extent of repayment. Eligible applicants may receive loan repayment for no more than five consecutive years. Eligible applicants who fail to receive loan repayment awards in consecutive years will not be considered for subsequent years of loan repayment.

26.4(4) Disbursement of loan repayment funds.

a. Loan repayment awards will be disbursed upon completion of the year for which the award was approved and upon certification from the employer that the advanced registered nurse practitioner, nurse educator, physician assistant, or registered nurse was employed full-time, as defined by the employer, during the entire year and completed the year in good standing.

b. Loan repayment awards will be distributed to the eligible applicant's student loan holder and applied directly to qualified student loans.

283—26.5(261) Loan repayment cancellation.

26.5(1) An eligible applicant who has been designated for a loan repayment award shall notify the commission within 30 days following termination or cessation of full-time practice in a service commitment area as an advanced registered nurse practitioner, physician assistant, or registered nurse, or termination or cessation of full-time employment as a nurse educator.

26.5(2) A recipient of an award is responsible for notifying the commission immediately of a change in name, place of employment, or home address.

283—26.6(261) Restrictions. An advanced registered nurse practitioner, nurse educator, physician assistant, or registered nurse who is in default on a qualified student loan or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for loan repayment benefits. Eligibility may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in appeal under the procedures set forth in 283—Chapters 4 and 5.

These rules are intended to implement Iowa Code section 261.116.

[Filed 11/20/18, effective 1/23/19]

[Published 12/19/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/19/18.

ARC 4187C

DENTAL BOARD[650]

Adopted and Filed

Rule making related to dental licensure

The Dental Board hereby amends Chapter 11, "Licensure to Practice Dentistry or Dental Hygiene," and Chapter 20, "Dental Assistants," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 147.76.

DENTAL BOARD[650](cont'd)

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 147.2, 153.15A, 153.21, 153.33B and 153.39.

Purpose and Summary

The purpose of these amendments is to clarify when the executive director can administratively issue a license, permit, or registration and to clarify the role of the license and registration committee in reviewing license, permit, and registration applications.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 26, 2018, as **ARC 4005C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on November 16, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

These amendments are not subject to waiver or variance pursuant to 650—Chapter 7.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on January 23, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend rule 650—11.8(147,153) as follows:

650—11.8(147,153) Review of applications. Upon receipt of a completed application, the executive director as authorized by the board has discretion to:

1. Authorize the issuance of the license, permit, or registration.
2. Refer the license, permit, or registration application to the license and registration committee for review and consideration when the executive director determines that matters including, but not limited to, prior criminal history, chemical dependence, competency, physical or psychological illness, malpractice claims or settlements, or professional disciplinary history are relevant in determining the applicants' qualifications for license, permit, or registration.

11.8(1) Following review and consideration of ~~a license, permit, or registration~~ an application referred by the executive director, the license and registration committee may at its discretion:

DENTAL BOARD[650](cont'd)

~~a. Recommend to the board issuance of the license, permit, or registration. Authorize the executive director to issue the license, permit, or registration.~~

~~b. Recommend to the board denial of the license, permit, or registration. Send the license, permit, or registration application to the board for further review and consideration.~~

~~c. Recommend to the board issuance of the license, permit, or registration under certain terms and conditions or with certain restrictions.~~

~~d. Refer the license, permit, or registration application to the board for review and consideration without recommendation.~~

11.8(2) Following review and consideration of a license, permit, or registration application referred by the license and registration committee, the board shall:

a. Authorize the issuance of the license, permit, or registration,

b. Deny the issuance of the license, permit, or registration, or

c. Authorize the issuance of the license, permit, or registration under certain terms and conditions or with certain restrictions.

11.8(3) The license and registration committee or board may require an applicant to appear for an interview before the committee or the full board as part of the application process.

11.8(4) The license and registration committee or board may defer final action on an application if there is an investigation or disciplinary action pending against an applicant, who may otherwise meet the requirements for license, permit, or registration, until such time as the committee or board is satisfied that licensure or registration of the applicant poses no risk to the health and safety of Iowans.

11.8(5) The dental hygiene committee shall be responsible for reviewing any applications submitted by a dental hygienist that require review in accordance with this rule. Following review by the dental hygiene committee, the committee shall make a recommendation to the board regarding issuance of the license or permit. The board's review of the dental hygiene committee's recommendation is subject to 650—Chapter 1.

11.8(6) An application for a license, permit, or reinstatement of a license will be considered complete prior to receipt of the criminal history background check on the applicant by the FBI for purposes of review and consideration by the executive director, the license and registration committee, or the board. However, an applicant is required to submit an additional completed fingerprint packet and fee within 30 days of a request by the board if an earlier fingerprint submission has been determined to be unacceptable by the DCI or FBI.

ITEM 2. Adopt the following **new** subrule 20.7(5):

20.7(5) Review of applications. The board shall follow the procedures specified in 650—11.8(147,153) in reviewing applications for registration and qualification.

[Filed 11/20/18, effective 1/23/19]

[Published 12/19/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/19/18.

ARC 4188C

PHARMACY BOARD[657]

Adopted and Filed

Rule making related to purpose and organization

The Board of Pharmacy hereby amends Chapter 1, "Purpose and Organization," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 147.76 and 155A.13C.

PHARMACY BOARD[657](cont'd)

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 147.14, 147.19, 155A.2A, 155A.3 and 155A.13C.

Purpose and Summary

During the 2017 and 2018 sessions of the 87th General Assembly, changes were made to the Iowa Code to allow the Board to designate a pool of up to seven alternate board members, subject to approval by the Governor, to hear contested case hearings when needed; add a certified pharmacy technician to the composition of the Board; update the definitions of wholesale distributors and limited distributors; and define third-party logistics providers. These amendments incorporate language to implement the changes that were made to the Iowa Code and provide general clerical updates where appropriate.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 29, 2018, as **ARC 3977C**. The Board received one comment from the Iowa Pharmacy Association in support of the amendments.

References to 2018 Iowa Acts, Senate File 2298, have been changed to refer to Iowa Code section 155A.17A since the amendments in the Senate File have been codified in the 2019 Iowa Code. No other changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on November 14, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 657—Chapter 34.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on January 23, 2019.

The following rule-making actions are adopted:

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

657—1.2(17A,147,155A,272C) Description and organization of board. The board is comprised of five pharmacist members, one certified pharmacy technician member, and two representatives of the

PHARMACY BOARD[657](cont'd)

general public, all appointed by the governor. An administrative staff headed by a board-appointed executive director assists board members.

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

ITEM 2. Amend rule 657—1.3(17A,272C) as follows:

657—1.3(17A,272C) Responsibilities. The responsibilities of the board include but are not limited to:

1. and 2. No change.
3. Regulating the legal distribution of prescription drugs through the licensing of pharmacies and wholesalers, wholesale distributors, limited distributors, outsourcing facilities, and third-party logistics providers under the authority of Iowa Code chapter 155A.
4. to 8. No change.
9. Instituting disciplinary actions, hearing contested cases, issuing decisions and orders, and enforcing the terms of disciplinary orders filed against licensees, registrants, or permit holders for grounds provided in Iowa Code sections 124.303, 124.304, 124B.12, 147.55, 155A.6, 155A.6A, 155A.6B, 155A.12, 155A.13, 155A.13A, 155A.15, and 155A.17, 155A.17A, and 155A.42 as appropriate.
10. No change.
11. Registering pharmacists in charge of nonresident pharmacies pursuant to the authority of Iowa Code chapter 155A.

ITEM 3. Amend rule 657—1.4(17A,272C) as follows:

657—1.4(17A,272C) Submission of complaints and requests. Members of the general public may obtain information or submit requests or complaints relative to the practice of pharmacy, continuing education for pharmacists, the legal distribution and dispensing of prescription drugs, or any other matters relating to the function and authority of the board. Correspondence should be submitted to the Executive Director, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688. Communication may also be submitted via the board's website at www.state.ia.us/ibpe-pharmacy.iowa.gov.

ITEM 4. Amend rule 657—1.5(17A,21) as follows:

657—1.5(17A,21) Meetings. All meetings of the board shall be open and public, and all members of the public shall be permitted to attend any meeting unless Iowa Code section 21.5 or another provision of law authorizes a closed session. Closed session shall only be by affirmative public vote of either two-thirds of the members of the board or all of the members present at the meeting.

1.5(1) No change.

1.5(2) Meeting schedule and public notice. The board shall set the dates of its meetings at the first meeting following May 1 of each fiscal year. Notices of meetings shall be routinely posted in the space set aside for that purpose in the office of the board and on the board's website at www.state.ia.us/ibpe-pharmacy.iowa.gov. Members of the general public may obtain the dates, times, and locations of board meetings by submitting a request to the Executive Director, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688, or by accessing the board's website.

1.5(3) No change.

1.5(4) Minutes of meetings. The executive ~~secretary~~ director shall keep a record of all minutes of the board, and these minutes, except as otherwise provided by statute, shall be open to the public for inspection.

1.5(5) No change.

~~Rules 657—1.1(17A) through 657—1.5(17A,21) are intended to implement Iowa Code sections 17A.3, 21.3 through 21.5, 124.301, 147.14, 147.76, 155A.2, 272C.3, and 272C.4.~~

PHARMACY BOARD[657](cont'd)

ITEM 5. Amend rule 657—1.6(124,147,155A) as follows:

657—1.6(124,147,155A) Fee for returned check. A nonrefundable fee of \$20 may be charged for a check returned for any reason. If a license, registration, or permit has been issued by the board office based on a check for the payment of fees and the check is later returned by the bank, the board shall request payment by certified check, cashier's check, or money order. If the fees, including the fee for a returned check, are not paid within 15 calendar days of notification of the returned check, the license, registration, or permit is no longer in effect and the status reverts to what it would have been had the license, registration, or permit not been issued. Late payment penalties will be assessed, as provided in board rules, for subsequent requests to renew or reissue the license, registration, or permit.

ITEM 6. Adopt the following new rule 657—1.8(155A):

657—1.8(155A) Alternate board members. The board may have a pool of up to seven alternate members, to include individuals who may or may not be licensed to practice under Iowa Code chapter 155A, to substitute for board members unable to participate in a contested case hearing. Utilization of such alternate board members shall be in compliance with Iowa Code section 155A.2A. Whenever there are fewer than seven individuals serving in the pool of alternate board members, the executive director may present to the board for approval a list of individuals eligible to serve in the pool. The board may select individuals to serve as alternate board members, subject to approval by the governor. The term of each alternate board member shall begin on the first day of the month following approval by the governor and shall last for three years or until the alternate board member resigns, whichever occurs first. An alternate board member may serve no more than nine years as an alternate board member. Upon approval by the governor of an alternate board member, the executive director may select that alternate board member to hear a contested case when a sufficient number of board members are unavailable to hear a contested case for any reason.

ITEM 7. Amend **657—Chapter 1**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 17A.3, 21.3 through 21.5, 124.301, 124B.11, 147.14, 147.76, 147.96, 155A.2, 155A.2A, 155A.6, 155A.6A, 155A.6B, 155A.11, 155A.13, 155A.13A, 155A.13C, 155A.14, and 155A.15, 155A.17, 155A.17A, 155A.42, 272C.3, and 272C.4.

[Filed 11/20/18, effective 1/23/19]

[Published 12/19/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/19/18.

ARC 4189C

PHARMACY BOARD[657]

Adopted and Filed

Rule making related to pharmacy technicians and electronic transfer of prescriptions

The Board of Pharmacy hereby amends Chapter 3, "Pharmacy Technicians," and Chapter 6, "General Pharmacy Practice," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 147.76, 155A.6A, 155A.33 and 155A.34.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 155A.6A, 155A.33 and 155A.34.

PHARMACY BOARD[657](cont'd)

Purpose and Summary

These amendments allow a certified pharmacy technician to transfer a prescription for a noncontrolled substance to another pharmacy or to receive a prescription transfer for a noncontrolled substance from another pharmacy, allow a technician to dispense a verified prescription which has been deemed to not require counseling to a patient while the pharmacist is on a break, and simplify rule language relating to the electronic transfer of prescriptions in anticipation of enhanced technologies in pharmacy software system capabilities.

2018 Iowa Acts, Senate File 2322, section 6, amended the Iowa Code during the 2018 Legislative Session to provide for the transfer of prescriptions between licensed pharmacies in accordance with Board rules. Electronic systems, technician training, and pharmacist oversight provide sufficient safeguards to ensure certified technicians are capable of transmitting such prescription information.

Pharmacists often find it difficult to take a rest or lunch break due, in part, to technicians being prohibited from dispensing a prescription when the pharmacist is away from the immediate dispensing area. These amendments allow a technician, at the discretion of the on-duty supervising pharmacist and pursuant to policies and procedures, to dispense a verified prescription which has been deemed to not require counseling to a patient when the pharmacist is absent from the pharmacy department on a break of limited duration.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 26, 2018, as **ARC 4030C**. The Board received one comment from the Iowa Pharmacy Association in support of these amendments. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on November 14, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 657—Chapter 34.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on January 23, 2019.

The following rule-making actions are adopted:

PHARMACY BOARD[657](cont'd)

ITEM 1. Amend rule 657—3.21(155A) as follows:

657—3.21(155A) Delegation of functions.

3.21(1) Technical dispensing functions. A pharmacist may delegate technical dispensing functions to an appropriately trained and registered pharmacy technician, but only if the pharmacist is on site and available to supervise the pharmacy technician when delegated functions are performed, except as provided in ~~657—subrule 6.7(2)~~ rule 657—6.7(124,155A) or ~~657—subrule 7.6(2)~~ 657—7.6(155A), as appropriate, or as provided for telepharmacy in ~~657—Chapter 9~~ 657—Chapter 13. Except as provided for an approved tech-check-tech program pursuant to 657—Chapter 40, the pharmacist shall provide and document the final verification for the accuracy, validity, completeness, and appropriateness of the patient's prescription or medication order prior to the delivery of the medication to the patient or the patient's representative. A pharmacy technician shall not delegate technical functions to a pharmacy support person.

3.21(2) Nontechnical functions. A pharmacist may delegate nontechnical functions to a pharmacy technician or a pharmacy support person only if the pharmacist is present to supervise the pharmacy technician or pharmacy support person when delegated nontechnical functions are performed, except as provided in ~~657—subrule 6.7(2)~~ rule 657—6.7(124,155A) or ~~657—subrule 7.6(2)~~ 657—7.6(155A), as appropriate, or as provided for telepharmacy in ~~657—Chapter 9~~ 657—Chapter 13.

ITEM 2. Adopt the following **new** paragraphs **3.22(1)“k”** and **“l”**:

k. Transfer via oral, facsimile, or electronic means the original prescription drug order information and prescription refill information of a prescription for a noncontrolled substance to a pharmacy as requested by a patient or patient's caregiver pursuant to rule 657—6.9(124,155A). A technician shall not transfer by any means the original prescription drug order information or prescription refill information for a controlled substance.

l. Receive via oral, facsimile, or electronic means the transfer of original prescription drug order information and prescription refill information of a prescription for a noncontrolled substance from a pharmacy as requested by a patient or patient's caregiver pursuant to rule 657—6.9(124,155A). A technician shall not receive via transfer by any means the original prescription drug order information or prescription refill information of a prescription for a controlled substance.

ITEM 3. Amend rule 657—3.23(155A) as follows:

657—3.23(155A) Tasks a pharmacy technician shall not perform. A pharmacy technician shall not be authorized to perform any of the following judgmental tasks:

1. to 4. No change.

5. Transfer a prescription drug order for a controlled substance to another pharmacy or receive the transfer of a prescription drug order for a controlled substance from another pharmacy;

6. No change.

ITEM 4. Amend subrule 6.7(1) as follows:

6.7(1) Department locked. The prescription department shall be locked by key or combination so as to prevent access when a pharmacist is not on site except as provided in ~~subrule~~ subrules 6.7(2) and 6.7(4).

ITEM 5. Adopt the following **new** subrule 6.7(4):

6.7(4) Refill sales during pharmacist break. At the discretion of the on-duty supervising pharmacist and pursuant to established policies and procedures, the pharmacist may delegate to a technician the dispensing of previously verified prescriptions which have been identified to not require pharmacist counseling pursuant to rule 657—6.14(155A) when the pharmacist is on a break of limited duration and is absent from the pharmacy department.

ITEM 6. Amend rule 657—6.9(124,155A) as follows:

657—6.9(124,155A) Transfer of prescription. The transmission of a prescription drug order from a pharmacy to a pharmacy engaged in centralized prescription filling or processing on behalf of the

PHARMACY BOARD[657](cont'd)

originating pharmacy pursuant to the requirements of 657—Chapter 18 shall not constitute the transfer of a prescription. Upon the request of a patient or the patient's caregiver, a pharmacy shall transfer original prescription drug order information and prescription refill information to a pharmacy designated by the patient or the patient's caregiver, central fill or processing pharmacies excepted, subject to the following requirements:

6.9(1) and **6.9(2)** No change.

6.9(3) *Communication Authorized individuals and means of transmission.* ~~The transfer is communicated directly between pharmacists, directly between pharmacist interns under the direct supervision of pharmacists at the respective pharmacies, directly between a pharmacist and a pharmacist intern under the direct supervision of a pharmacist, or as authorized in subrule 6.9(8). Following direct communication between authorized individuals as provided herein, the~~ Individuals authorized to engage in the transfer of prescriptions include a pharmacist, a pharmacist-intern under the direct supervision of a pharmacist, and a certified pharmacy technician only as authorized in rule 657—3.22(155A). The transferring pharmacist or pharmacist-intern individual may transmit the prescription and transfer information required under subrule 6.9(5) from the transferring pharmacy via electronic means pursuant to subrule 6.9(8) or, following direct communication between authorized individuals, via oral or facsimile transmission. ~~The receiving pharmacist or pharmacist-intern individual shall ensure the prescription transfer record maintained in the receiving pharmacy contains all of the information required under subrule 6.9(7).~~

6.9(4) No change.

6.9(5) *Record of transfer out.* ~~The pharmacist or pharmacist-intern individual~~ transferring the prescription drug order information shall:

- a. Invalidate the prescription drug order;
- b. Record on or with the invalidated prescription drug order the following information:
 - (1) The name, address, and, for a controlled substance, the DEA registration number of the pharmacy to which such prescription is transferred;
 - (2) The name of the ~~pharmacist or pharmacist-intern~~ individual receiving the prescription drug order information;
 - (3) The name of the ~~pharmacist or pharmacist-intern~~ individual transferring the prescription drug order information; and
 - (4) The date of the transfer.

6.9(6) No change.

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

- a. Indicate that the prescription drug order has been transferred;
- b. Record on or with the transferred prescription drug order the following information:
 - (1) to (5) No change.
 - (6) Name of the ~~pharmacist or pharmacist-intern~~ individual receiving the prescription drug order information;
 - (7) Name of the ~~pharmacist or pharmacist-intern~~ individual transferring the prescription drug order information; and
 - (8) No change.

6.9(8) *Electronic transfer between pharmacies.* ~~Pharmacies electronically accessing the same prescription drug order records via a real-time, online database may electronically transfer prescription information, including controlled substance prescription information, up to the maximum refills permitted by law and the prescriber's authorization, if the following requirements are met in compliance with federal regulations for controlled substances. For transfers of prescriptions for noncontrolled substances and controlled substances, pharmacies that share a real-time, online database may transfer up to the maximum refills permitted by law and the prescriber's authorization. A prescription for a controlled substance transferred between two pharmacies which do not share a real-time, online database may only be transferred one time.~~

PHARMACY BOARD[657](cont'd)

~~a. The data processing system shall have a mechanism to send the transferring pharmacy a message containing the following information:~~

- ~~(1) The fact that the prescription drug order was transferred;~~
- ~~(2) The unique identification number of the prescription drug order transferred;~~
- ~~(3) The name, address, and DEA registration number of the pharmacy to which the prescription drug order was transferred and the name of the pharmacist or pharmacist intern receiving the prescription information; and~~
- ~~(4) The date and time of transfer.~~

~~b. A pharmacist or pharmacist intern under the direct supervision of a pharmacist in the transferring pharmacy shall review the message and document the review by signing and dating a hard copy of the message or logbook containing the information required on the message, or by a notation in the electronic message that includes the unique identification of the pharmacist or pharmacist intern and the date of review, as soon as practical, but in no event more than 72 hours from the time of such transfer.~~

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

[Filed 11/26/18, effective 1/23/19]

[Published 12/19/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/19/18.

ARC 4190C

PHARMACY BOARD[657]

Adopted and Filed

Rule making related to wholesale distributor licenses

The Board Pharmacy hereby rescinds Chapter 17, "Wholesale Drug Licenses," and adopts new Chapter 17, "Wholesale Distributor Licenses," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 147.76 and 155A.17.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 124.301 to 124.308, 126.3, 126.9 to 126.12, 155A.3, 155A.4, 155A.17, 155A.19, 155A.21, 155A.23 and 155A.40 and the Drug Supply Chain Security Act (DSCSA).

Purpose and Summary

In November 2013, Congress enacted the Drug Quality and Security Act, which included the Drug Supply Chain Security Act. DSCSA sets national minimum standards for entities engaged in the wholesale distribution of drugs in the United States. DSCSA also prohibits any state from enacting any law or rule more or less strict than DSCSA. The revised chapter establishes the minimum standards for wholesale distributor licenses and addresses the following topics: licensure and renewal processes; grounds for denial of licensure; required policies and procedures; requirements of facilities, security, and storage; reporting of discipline and convictions; and grounds for discipline.

PHARMACY BOARD[657](cont'd)

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 29, 2018, as **ARC 3974C**. A public hearing was held on September 25, 2018, at 9 a.m. in the Shared Conference Room, Suite E, 400 SW 8th Street, Des Moines, Iowa. Representatives from the National Association of Boards of Pharmacy (NABP) attended the hearing and provided a verbal review of NABP's written comments.

The Board received a number of comments on this rule making. Five comments were received in opposition to the requirement that a wholesale distributor be verified-accredited wholesale distributors (VAWD)-accredited. The reasons for the opposition included concern about the expense of attaining VAWD accreditation and the belief that the requirement was inconsistent with federal law. The Board considered these comments and declined the requests to remove the requirement. Of the wholesale distributors which are currently licensed in Iowa, over 360 currently hold VAWD accreditation, with an additional 35 in the process of obtaining accreditation. Fewer than 60 current Iowa-licensed wholesale distributors are not VAWD-accredited. Iowa would join three other states which also require this accreditation as a condition for licensure. Further, the Board agrees with the comments which state that the federal law is intended to establish national minimum standards for wholesale distributors, but disagrees with the assertion that the federal law on its own has established those standards. DSCSA directs the FDA to publish regulations to implement the federal law and establish licensing standards. Those regulations were to have been published by November 1, 2015. To date, regulations have not been published. Further, the process of publication and public comment, not unlike Iowa's rule making process, will take many months. The regulations then will not be effective until two years after the date of final publication in the Federal Register. Therefore, the minimum standards could be at least another three years away. Until those regulations are known, Iowa must ensure the legitimacy of the drug supply chain for products entering this state, and the Board believes such accreditation will provide that assurance. The Board fully recognizes that, if the final FDA regulations do not allow or require such accreditation, the Board's rule would be superseded as of the enforcement date of the federal regulations. Indeed, upon final publication, the Board will have two years to amend its rules to conform to the regulations.

Comments received also suggested revisions to the proposed rules relating to storage, records, purpose and scope, license application, license renewal, license denial, policies and procedures, and disciplinary action. The suggested addition of a new rule identifying all record-keeping requirements was declined by the Board due to rule 657—17.7(124,155A), which requires compliance with all federal laws and regulations, including all record-keeping requirements. The proposed revision to the purpose and scope relating to the federal preemption was declined by the Board, as the language proposed is sufficient. Requested changes to the background check, surety bond, and grace period subrules in licensure application and renewal; license denial subrules; and disciplinary action subrules were declined by the Board.

The suggested revision of the storage rule to provide more clarity was accepted by the Board. The request for additional clarification on what "adequate experience" means was accepted by the Board, and the subrule was revised to identify adequate experience to mean at least three years working in the business of prescription drug distribution. The request for the removal of the policy and procedures relating to drug stock distribution was accepted; the requirement was removed. The request for the removal of the provision stating that an FDA warning letter would be considered conclusive evidence of a violation was accepted by the Board, and the provision was removed.

As described above, some rules were revised based on comments received. In addition, references to 2018 Iowa Acts, Senate File 2298, have been removed since the amendments in the Senate File have been codified in the 2019 Iowa Code.

Adoption of Rule Making

This rule making was adopted by the Board on November 14, 2018.

PHARMACY BOARD[657](cont'd)

Fiscal Impact

With the changes to the licensure of wholesale distributors and creation of the new licensure categories of limited distributors and third-party logistics providers (each in separate rule makings), several hundred licensees will no longer hold a wholesale distributor license but rather an LD or 3PL license. As such, the Board's expected revenue from licensure of wholesale distributors will be reduced by approximately \$220,500 and expected expenditures for office staff will be increased by approximately \$9,150, resulting in an overall decrease in Board funds by approximately \$229,650 annually. Simultaneously, the Board will expect an increase in expected revenue from licensure in LD and 3PL categories with a similar increase in expected expenditures for office staff.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 657—Chapter 34.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on January 23, 2019.

The following rule-making action is adopted:

Rescind 657—Chapter 17 and adopt the following **new** chapter in lieu thereof:

CHAPTER 17
WHOLESALE DISTRIBUTOR LICENSES

657—17.1(155A) Purpose and scope. This chapter establishes the licensing requirements and standards applicable to a wholesale distributor of human prescription drugs as defined by Iowa Code section 155A.3(49) and the Drug Supply Chain Security Act. In the event the requirements in this chapter directly conflict with any federal law or regulation, the federal law or regulation shall supersede the requirements in this chapter.

657—17.2(155A) Definitions. In addition to the definitions found in Iowa Code section 155A.3, which are adopted for the purposes of this chapter, the following definitions shall apply:

“*Drug Supply Chain Security Act*” or “*DSCSA*” means the law enacted by Congress in November 2013 which establishes the minimum standards for ensuring a legitimate drug supply chain.

“*Facility manager*” means the individual responsible for managing the daily operations of the wholesale distribution facility.

“*FDA*” means the United States Food and Drug Administration.

“*Returns processor*” means a person who owns or operates an establishment that disposes or otherwise processes saleable or nonsaleable product received from a purchaser, manufacturer, or seller

PHARMACY BOARD[657](cont'd)

who purchased or received such product at wholesale, such that the product may be processed for credit to the purchaser, manufacturer, or seller, or disposed of for no further distribution.

“Wholesale distribution” means the distribution of a drug to a person other than a consumer or patient, or the receipt of a drug by a person other than a consumer or patient, but does not include transactions identified in Iowa Code section 155A.3(48) and DSCSA.

“Wholesale distributor” means a person, other than a manufacturer, a manufacturer’s co-licensed partner, a third-party logistics provider, or a repackager, engaged in the wholesale distribution of a prescription drug.

657—17.3(155A) Wholesale distributor license. Every wholesale distributor that engages in wholesale distribution into, out of, or within this state must be licensed by the board before engaging in wholesale distribution. Where operations are conducted at more than one location by a single wholesale distributor, each such location shall be separately licensed. The applicant shall submit a completed application with a nonrefundable application fee of \$750. A wholesale distributor that engages in wholesale distribution of controlled substances into, out of, or within this state shall also obtain a controlled substances Act registration pursuant to 657—Chapter 10.

17.3(1) Application. The applicant shall complete an application which requires demographic information about the wholesale distributor, ownership information, information about the wholesale distributor’s registered agent located in Iowa, information about the wholesale distributor’s licensure with other state and federal regulatory authorities, criminal and disciplinary history information, information regarding the facility manager, a detailed description of the services to be provided in this state, and other necessary information as determined by the board. An application for a wholesale distributor license, including an application for registration pursuant to 657—Chapter 10, if applicable, will become null and void if the applicant fails to complete the licensure process, including opening for business, within six months of receipt by the board of the required application(s). The following shall also be submitted by the applicant for the application to be considered complete:

a. Criminal history record check. Upon receipt of a licensure application, the board shall provide a fingerprint packet to the applicant’s facility manager, who shall submit the completed fingerprint packet and a signed waiver form to facilitate a national criminal history background check of the facility manager. The cost of the evaluation of the fingerprint packet and the Iowa division of criminal investigation and the United States Federal Bureau of Investigation criminal history background checks will be assessed to the applicant.

b. Surety bond or equivalent security. The applicant shall file with the board a \$100,000 surety bond or evidence that the wholesale distributor possesses the required bond in another state where the wholesale distribution facility does business. If a wholesale distributor’s annual gross receipts from the previous tax year were \$10 million or less, the wholesale distributor need only file a \$25,000 surety bond. In lieu of a surety bond, the applicant may submit an irrevocable standby letter of credit in the amount of \$100,000 or \$25,000 as applicable. A government-owned wholesale distributor is exempt from the surety bond requirement.

c. Evidence of current verified-accredited wholesale distributors (VAWD) accreditation by the National Association of Boards of Pharmacy. This requirement does not apply to new applicants located in Iowa which must undergo an opening inspection by a board compliance officer or agent of the board prior to issuance of an initial license. Wholesale distributors located in Iowa shall provide evidence of VAWD accreditation on or before license renewal.

d. Attestation by facility manager. The applicant shall submit attestation that the facility manager has been employed full-time for at least three years in a position related to prescription drug distribution; is actively involved in the daily operation of the wholesale distribution facility; maintains a functional understanding of federal and state laws, rules, and regulations pertaining to wholesale drug distribution; and has no felony convictions or convictions related to prescription drug distribution, including distribution of controlled substances.

PHARMACY BOARD[657](cont'd)

17.3(2) License renewal. A wholesale drug license shall be renewed before January 1 of each year and may be renewed as early as November 1 prior to expiration. The wholesale distributor shall submit a completed application and nonrefundable application fee as required in this rule.

a. Delinquent license grace period. If a wholesale drug license has not been renewed or canceled prior to expiration, the license becomes delinquent on January 1. A wholesale distributor that submits a completed license renewal application, nonrefundable application fee, and nonrefundable late penalty fee of \$750 postmarked or delivered to the board by January 31 shall not be subject to disciplinary action for continuing to provide services in this state in the month of January.

b. Delinquent license reactivation beyond grace period. If a wholesale drug license has not been renewed prior to the expiration of the one-month grace period identified in paragraph 17.3(2) "a," the wholesale distributor may not operate or do business in Iowa. A wholesale distributor that continues to do business in Iowa without a current license may be subject to disciplinary sanctions pursuant to the provisions of 657—subrule 36.6(22). A wholesale distributor without a current license may apply for reactivation by submitting a license application for reactivation and a nonrefundable \$2,000 reactivation fee. As part of the reactivation application, the wholesale distributor shall disclose the services, if any, that were provided in this state while the license was delinquent.

17.3(3) License changes. When a licensed wholesale distributor changes its name, ownership, facility manager, or location, a wholesale drug license application with a nonrefundable application fee as provided in subrule 17.3(1) shall be submitted to the board. A change of ownership occurs when the owner listed on the wholesale distributor's most recent application changes or when there is a change affecting the majority ownership interest of the owner listed on the wholesale distributor's most recent application. A change of wholesale distributor location within Iowa, if the new location was not a licensed wholesale distributor immediately prior to the relocation, shall require an on-site inspection of the new location as provided in paragraph 17.3(1) "c."

a. Locations in Iowa. Applications for license changes shall be submitted to the board as far in advance as possible prior to the anticipated change.

b. Locations outside of Iowa. Applications for license changes shall be submitted to the board within ten days of the wholesale distributor's receipt of an updated license from the home state regulatory authority.

c. License change application submission. Applications for license changes shall be timely submitted pursuant to this subrule. A licensed wholesale distributor that has timely submitted a license change application and fee may continue to service Iowa customers while the license change is pending final approval. An applicant that has submitted an application for license changes after the required date of submission pursuant to this subrule but within 30 days of the required date of submission shall be assessed a nonrefundable late penalty fee of \$750 in addition to the license fee. An applicant that has submitted an application for license changes 31 days or later following the required date of submission pursuant to this subrule shall be assessed a nonrefundable reactivation fee of \$2,000.

17.3(4) License cancellation. A licensee intending to discontinue wholesale distribution into, out of, or within this state shall notify the board in writing of its intent as far in advance as possible of the discontinuation of services and shall request that the license be administratively canceled. Such notification shall include the name and license number of the wholesale distributor, the anticipated date of discontinuation of service, and the identification of the wholesale distributor to which drugs and records will be transferred. To the extent possible to avoid unnecessary delays in obtaining product for patients, a wholesale distributor that intends to discontinue services in this state should provide advance notice to its customers of the date that the wholesale distributor intends to cease distribution in this state.

657—17.4(155A) Grounds for denial. The board may deny a wholesale distributor license application, or refuse to renew a wholesale distributor license, for any of the following:

1. Any criminal convictions of the applicant or facility manager related to wholesale distribution;
2. Any felony convictions of the applicant;
3. Insufficient experience in the wholesale distribution business, including a lack of knowledge regarding the requirements of applicable federal and state laws or regulations;

PHARMACY BOARD[657](cont'd)

4. The furnishing of false or fraudulent material;
5. Suspension, revocation, or other disciplinary action taken by the licensing authority of another state or federal agency against any license or registration currently or previously held by the applicant;
6. Noncompliance with licensing requirements under previously granted licenses, if any;
7. Noncompliance with the requirements to maintain or make available to the board, its agents, or to federal, state, or local law enforcement officials those records required to be maintained by wholesale distributors;
8. Conducting transactions with a person that is not properly licensed or registered; and
9. Any other factors or qualifications the board considers relevant to and consistent with public health and safety.

657—17.5 and **17.6** Reserved.

657—17.7(124,155A) Compliance with federal and state laws. A wholesale distributor is responsible for complying with all applicable federal and state laws, including those not specifically identified in this chapter.

17.7(1) A licensed wholesale distributor shall meet the requirements set forth in the Drug Supply Chain Security Act, including but not limited to:

- a.* 21 U.S.C. §360eee-1, relating to product tracing, product identifiers, authorized trading partners, suspect products, and illegitimate products;
- b.* 21 U.S.C. §360eee-2, relating to national standards for drug wholesale distributors; and
- c.* Any regulations promulgated thereunder.

17.7(2) A licensed wholesale distributor shall permit agents of the board to enter and inspect the facility for compliance with federal and state laws. A licensed wholesale distributor shall cooperate with other regulatory or law enforcement officials with jurisdiction over the facility.

657—17.8(124,155A) Written policies and procedures. Wholesale distributors shall establish, maintain, and adhere to written policies and procedures that are in compliance with federal law for the receipt, security, storage, inventory, and distribution of prescription drugs, including policies and procedures for identifying, recording, and reporting losses or thefts and for correcting all errors and inaccuracies in inventories. Wholesale distributors shall also include in their written policies and procedures the following:

17.8(1) *Recalls and market withdrawals.* A procedure to be followed for handling recalls and withdrawals of prescription drugs.

- a.* The procedure shall be adequate to deal with recalls and withdrawals due to:
 - (1) Any action initiated at the request of the Food and Drug Administration or other federal, state, or local law enforcement agency or other government agency, including the board;
 - (2) Any voluntary action by the manufacturer to remove defective or potentially defective drugs from the market; or
 - (3) Any action undertaken to promote public health and safety by replacing existing merchandise with an improved product or new package design.
- b.* The requirement of this subrule shall not apply to a returns processor.

17.8(2) *Emergency and disaster plan.* A procedure to ensure that wholesale distributors prepare for, protect against, and handle any crisis that affects security or operation of any facility in the event of strike, fire, flood, or other natural disaster, or other situations of local, state, or national emergency.

17.8(3) *Outdated drugs.* A procedure to ensure that any outdated prescription drugs shall be segregated from other drugs and either returned to the manufacturer or destroyed. This procedure shall provide for written documentation of the disposition of outdated prescription drugs. The requirement of this subrule shall not apply to a returns processor.

17.8(4) *Security and storage.* A procedure to ensure adequate security in accordance with rule 657—17.10(124,155A) and proper storage conditions in accordance with rule 657—17.11(155A). The requirement for proper storage conditions shall not apply to a returns processor.

PHARMACY BOARD[657](cont'd)

17.8(5) *Drugs supplied to salesperson/representative.* If supplying drugs to wholesale distributor salespersons, a procedure directing that the security, storage, and record-keeping requirements contained in these rules shall be maintained by those salespersons.

17.8(6) *Personnel.* A procedure to ensure the wholesale distributor employs personnel with the education and experience appropriate to the responsibilities of the position held by the individual. Licensed wholesale distributors shall establish and maintain lists of officers, directors, managers, and other persons in charge of wholesale drug distribution, storage, and handling, including a description of their duties and a summary of their qualifications.

657—17.9(155A) *Facilities.* All wholesale distribution facilities shall:

1. Be of suitable size and construction to facilitate cleaning, maintenance, and proper operations;
2. Have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment, and security conditions;
3. Except for returns processors, have a quarantine area for storage of outdated, damaged, unsafe, deteriorated, misbranded, or adulterated prescription drugs; for drugs that are in immediate or sealed outer or sealed secondary containers that have been opened; for drugs that have been identified as being defective or are believed to be defective; and for drugs that do not meet the FDA-approved criteria for the product;
4. Be maintained in a clean and orderly condition;
5. Be free from infestation by insects, rodents, birds, or vermin of any kind.

657—17.10(124,155A) *Security.*

17.10(1) *Secure from unauthorized entry.* All wholesale distribution facilities shall be secure from unauthorized entry.

- a. Access from outside the premises shall be kept to a minimum and be well controlled.
- b. The outside perimeter of the premises shall be well lighted.
- c. Entry into areas where prescription drugs are held shall be limited to authorized personnel.

17.10(2) *Alarm.* All wholesale distribution facilities shall be equipped with an alarm system to deter entry after hours.

17.10(3) *Security system.* All wholesale distribution facilities shall be equipped with a security system that will provide suitable protection against theft and diversion. When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.

657—17.11(155A) *Storage and handling.* All prescription drugs shall be stored and shipped at appropriate temperatures and under appropriate conditions in accordance with requirements, if any, in the labeling of such drugs or with requirements in the current edition of the United States Pharmacopeia. Manual, electromechanical, or electronic temperature and humidity monitoring and recording equipment, devices, or logs shall be utilized to document proper storage of prescription drugs to prevent and detect excursions. Shipment of prescription drugs requiring refrigeration shall maintain temperature requirements in accordance with the manufacturer requirements or as described in the current edition of the United States Pharmacopeia. All excursions shall be evaluated to determine any adverse impact on the integrity of the drug. The requirements of this rule do not apply to nonsaleable returns handled by returns processors.

657—17.12 to 17.16 Reserved.

657—17.17(155A) *Reporting discipline and criminal convictions.* No later than 30 days after the final action, a wholesale distributor shall provide to the board written notice, including an unredacted copy of the action or order, of any disciplinary or enforcement action imposed by any licensing or regulatory authority on any license or registration held by the wholesale distributor. Discipline may include, but is not limited to, fine or civil penalty, citation or reprimand, probationary period, suspension, revocation, and voluntary surrender. No later than 30 days after conviction, a wholesale distributor shall provide

PHARMACY BOARD[657](cont'd)

to the board written notice, including an unredacted copy of the judgment of conviction or sentence, of any criminal conviction of the wholesale distributor, any owner of the wholesale distributor, or facility manager, if the conviction is related to prescription drug distribution. The term “criminal conviction” includes instances when the judgment of conviction or sentence is deferred.

657—17.18(155A) Discipline. Pursuant to 657—Chapter 36, the board may fine, suspend, revoke, or impose other disciplinary sanctions on a wholesale distributor license for any of the following:

1. Any violation of the federal Food, Drug, and Cosmetic Act or federal regulation promulgated under the Act.
2. Any conviction of a crime related to the distribution of prescription drugs committed by the wholesale distributor, its owners, or the facility manager.
3. Refusing access to the wholesale distribution facility or records to an agent of the board for the purpose of conducting an inspection or investigation.
4. Failure to maintain registration pursuant to 657—Chapter 10 when distributing controlled substances into, out of, or within this state.
5. Any act of unethical or unprofessional conduct by an employee of the wholesale distributor.
6. Any violation of Iowa Code chapter 124, 126, 155A, or 205, or rule of the board, including the disciplinary grounds set forth in 657—Chapter 36.

These rules are intended to implement Iowa Code sections 124.301 through 124.308, 126.3, 126.9 through 126.12, 155A.3, 155A.4, 155A.17, 155A.19, 155A.21, 155A.23, and 155A.40 and the federal Drug Supply Chain Security Act.

[Filed 11/26/18, effective 1/23/19]

[Published 12/19/18]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 12/19/18.

ARC 4191C

PHARMACY BOARD[657]

Adopted and Filed

Rule making related to limited distributor licenses

The Board of Pharmacy hereby adopts new Chapter 42, “Limited Distributor Licenses,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 147.76 and 155A.42.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 124.301 to 124.308, 126.3, 126.9 to 126.12, 126.22, 155A.3, 155A.4, 155A.13, 155A.17, 155A.21, 155A.23 and 155A.42.

Purpose and Summary

Pursuant to Iowa Code section 155A.42, the Board is adopting this new chapter to establish the minimum standards for entities that are engaged in the distribution of prescription drugs and devices but that do not meet the definition of a wholesale distributor. The rules address licensure and renewal processes, grounds for licensure denial, required policies and procedures, facility and operation requirements, records requirements, reporting of discipline or convictions, and grounds for discipline.

PHARMACY BOARD[657](cont'd)

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 29, 2018, as **ARC 3975C**. A public hearing was held on September 25, 2018, at 9 a.m. in the Shared Conference Room, Suite E, 400 SW 8th Street, Des Moines, Iowa. Representatives of the National Association of Boards of Pharmacy (NABP) attended the hearing and provided a verbal summary of NABP's written submitted comments.

The Board received three comments. Comments from NABP were neutral on the rule making and concluded that the rules would not be inconsistent with federal law. One comment was in opposition to the licensure requirement for intracompany distributions and requested that such distribution sites be exempt from licensure. Another commenter suggested changes or clarification to the proposed rules relating to licensure, the license renewal process, and disciplinary action. The Board declined the requested changes and suggestions.

References to 2018 Iowa Acts, Senate File 2298, have been removed since the amendments in the Senate File have been codified in the 2019 Iowa Code. No other changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on November 14, 2018.

Fiscal Impact

With the changes to the licensure of wholesale distributors and creation of the new licensure categories of limited distributors (LD) and third-party logistics (3PL) providers (each in separate rule makings), several hundred licensees will no longer hold a wholesale distributor license but rather an LD or 3PL license. As such, the Board anticipates additional revenue of approximately \$236,250 from licensure of limited distributors but also anticipates increased expenditures of approximately \$41,175 for office staff, resulting in a net increase to Board funds of approximately \$195,075 annually. Simultaneously, the Board anticipates an overall net reduction of Board funds of approximately \$229,650 from the licensure of wholesale distributors (separate rule making).

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 657—Chapter 34.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on January 23, 2019.

The following rule-making action is adopted:

PHARMACY BOARD[657](cont'd)

Adopt the following new 657—Chapter 42:

CHAPTER 42
LIMITED DISTRIBUTOR LICENSES

657—42.1(155A) Purpose and scope. The purpose of this chapter is to establish the minimum standard of practice for limited drug and device distribution in the state of Iowa. This chapter applies to a person who is involved in the distribution of drugs and devices but who does not meet the definition of a wholesale distributor under federal or state law. In addition to the rules of the board, any distribution of prescription drugs and devices shall be in compliance with all applicable federal and state laws and regulations.

657—42.2(155A) Definitions. In addition to the definitions found in Iowa Code section 155A.3, which are adopted for the purposes of this chapter, the following definitions shall apply:

“*Board*” means the Iowa board of pharmacy.

“*Distribute*” means the delivery or transfer of a prescription drug or device from one person to another.

“*Facility manager*” means the individual responsible for managing the daily operations of the limited distributor facility.

“*Limited distributor*” means a person operating or maintaining a location, regardless of the location, where prescription drugs or devices are manufactured, repackaged, distributed at wholesale, or distributed to a patient pursuant to a prescription drug order, who is not eligible for a wholesale distributor license or a pharmacy license. Included in the definition of “limited distributor” are the activities identified in subrule 42.3(1).

657—42.3(155A) Limited distributor license. Beginning January 1, 2019, no person other than a licensed wholesale distributor, licensed pharmacy, or practitioner shall engage in any of the activities found herein in this state without a limited distributor license. Where operations are conducted at more than one location by a single distributor, each location shall be separately licensed. The applicant shall submit a completed application along with a nonrefundable fee of \$175. A limited distributor that engages in distribution of controlled substances into, out of, or within this state shall also obtain a controlled substances Act registration pursuant to 657—Chapter 10.

42.3(1) License required. A person engaged in the following activities shall obtain a limited distributor license prior to distribution in or into Iowa:

a. Distribution of a medical gas or device at wholesale or to a patient pursuant to a prescription drug order.

b. Wholesale distribution of a prescription animal drug.

c. Wholesale distribution of a prescription drug, or brokering the distribution of a prescription drug at wholesale, by a manufacturer, a manufacturer’s co-licensed partner, or a repackager.

d. Intracompany distribution of a prescription drug, including pharmacy chain distribution centers.

e. Distribution at wholesale of a combination product as defined by the United States Food and Drug Administration, medical convenience kit, intravenous fluid or electrolyte, dialysis solution, radioactive drug, or irrigation or sterile water solution to be dispensed by prescription only.

f. Distribution of a dialysis solution by the manufacturer or the manufacturer’s agent to a patient pursuant to a prescription drug order, provided that a licensed pharmacy processes the prescription drug order.

42.3(2) License optional. A person engaged in the following activities may, but is not required to, obtain a limited distributor license for distribution in or into Iowa:

a. Distribution of nonprescription drugs or devices with or without a patient-specific prescription.

b. Distribution of medical devices exclusively to a health care practitioner for use in the normal course of professional practice (“professional use”).

PHARMACY BOARD[657](cont'd)

c. Distribution of blood and blood products that are not subject to the federal Drug Supply Chain Security Act (DSCSA).

42.3(3) Application. The applicant shall complete an application which requires demographic information about the limited distributor, ownership information, information about the limited distributor's registered agent located in Iowa, information about the limited distributor's licensure with other state and federal regulatory authorities, criminal and disciplinary history information, information regarding the facility manager, and a detailed description of the services to be provided in this state. An application for a limited distributor license, including an application for registration pursuant to 657—Chapter 10, if applicable, will become null and void if the applicant fails to complete the licensure process, including opening for business, within six months of receipt by the board of the required application(s). The following shall also be submitted by the applicant for the application to be considered complete:

a. Evidence of the mandatory physical inspection of the distribution facility pursuant to subrule 42.3(7).

b. Attestation by facility manager. The applicant shall submit attestation that the facility manager has adequate experience in prescription drug and device distribution; is actively involved in the daily operation of the distribution facility; maintains a functional understanding of federal and state laws, rules, and regulations pertaining to drug and device distribution, as applicable; and has no felony convictions or convictions related to prescription drug and device distribution, including distribution of controlled substances.

42.3(4) License renewal. A limited distributor license shall be renewed before January 1 of each year and may be renewed as early as November 1 prior to expiration. The limited distributor shall submit a completed application and nonrefundable application fee as required in this rule.

a. *Delinquent license grace period.* If a limited distributor license has not been renewed or canceled prior to expiration, the license becomes delinquent on January 1. A limited distributor that submits a completed license renewal application, nonrefundable application fee, and nonrefundable late penalty fee of \$175 postmarked or delivered to the board by January 31 shall not be subject to disciplinary action for continuing to provide services in this state in the month of January.

b. *Delinquent license reactivation beyond grace period.* If a limited distributor license has not been renewed prior to the expiration date of the one-month grace period identified in paragraph 42.3(4)“a,” the limited distributor may not operate or do business in Iowa, unless the activities conducted are those identified in subrule 42.3(2). A limited distributor that continues to do business in Iowa without a current license as required in subrule 42.3(1) may be subject to disciplinary sanctions pursuant to the provisions of 657—subrule 36.6(2). A limited distributor without a current license may apply for reactivation by submitting a license application for reactivation and a nonrefundable reactivation fee of \$500. As part of the reactivation application, the limited distributor shall disclose the services, if any, that were provided in this state while the license was delinquent.

42.3(5) License changes. If a distributor has a change of name, ownership, or location, a limited distributor license application with a nonrefundable application fee as provided in subrule 42.3(3) shall be submitted to the board. A change of ownership occurs when the owner listed on the limited distributor's most recent application changes or when there is a change affecting the majority ownership interest of the owner listed on the limited distributor's most recent application. A change of limited distributor location within Iowa, if the new location was not a licensed limited distributor immediately prior to the relocation, shall require a self-inspection as provided in subrule 42.3(7). A limited distributor that has submitted a license change application may continue to service Iowa customers while its license change is pending final approval.

a. For a distributor located in Iowa, a completed application shall be submitted to the board as far in advance as possible prior to the change of name, ownership, or location.

b. For a distributor located outside of Iowa:

(1) If the home state licenses or registers the facility, a completed application shall be submitted within ten days of receipt of an updated license or registration from the home state.

PHARMACY BOARD[657](cont'd)

(2) If the home state does not license or register the facility, a completed application shall be submitted as far in advance as possible prior to the change of name, ownership, or location.

c. When a distributor changes its name or location, the distributor shall provide advance written notice of the change to each Iowa customer and patient.

d. Applications for license changes shall be timely submitted pursuant to this subrule. A licensed limited distributor that has timely submitted a license change application and fee may continue to service Iowa customers while the license change is pending final approval. An applicant that has submitted an application for license changes after the required date of submission pursuant to this subrule but within 30 days of the required date of submission shall be assessed a nonrefundable late penalty fee of \$175 in addition to the license fee. An applicant that has submitted an application for license changes 31 days or later following the required date of submission pursuant to this subrule shall be assessed a nonrefundable reactivation fee of \$500.

42.3(6) License cancellation. If a limited distributor intends to discontinue service into, out of, or within this state, it shall:

a. Notify the board as far in advance as possible of the limited distributor's intent to discontinue services and shall request that the license be administratively canceled. The notification shall include the name, address, and Iowa license number of the pharmacy or distributor at which prescription, patient, and distribution records will be maintained.

b. Ensure that prescription and patient records are transferred to another Iowa-licensed distributor or pharmacy.

c. To the extent possible to avoid unnecessary delays in the availability of services to Iowa customers and patients, provide advance written notice to customers and patients of the date that the distributor intends to cease provision of services.

42.3(7) Inspection of limited distributor facility. Each limited distributor location seeking initial or renewal licensure shall, prior to issuance of a license certificate, complete and submit for evaluation a self-inspection packet provided by the board.

657—42.4 and 42.5 Reserved.

657—42.6(155A) Grounds for denial. The board may deny a limited distributor license application, or refuse to renew a license, for any of the following:

1. Any criminal convictions of the applicant related to the distribution of drugs or devices;
 2. Any felony convictions of the applicant;
 3. Insufficient experience in the distribution of prescription drugs or devices, including a lack of knowledge regarding the requirements of applicable federal and state laws or regulations;
 4. The furnishing of false or fraudulent material;
 5. Suspension, revocation, or other disciplinary action taken by the licensing authority of another state or federal agency against any license or registration currently or previously held by the applicant;
 6. Noncompliance with licensing requirements under previously granted licenses, if any;
 7. Noncompliance with the requirements to maintain or make available to the board, its agents, or to federal, state, or local law enforcement officials those records required to be maintained;
 8. Conducting transactions with a person that is not properly licensed, registered, or authorized;
- and
9. Any other factors or qualifications the board considers relevant to and consistent with public health and safety.

657—42.7(155A) Policies and procedures.

42.7(1) Distributors shall have for all aspects of the distributor's operation policies and procedures that, at a minimum, address the rules in this chapter and any other applicable federal, state, and local laws, rules, and regulations.

42.7(2) The policies shall address, at a minimum:

- a. Security of the facility and of patient information;

PHARMACY BOARD[657](cont'd)

- b. Storage of products, including proper storage conditions and handling of outdated, recalled, and returned products;
- c. Records, including the retention period for all required records;
- d. Security, storage and records for products in the possession of a distributor's authorized representative; and
- e. Employment of personnel with education and experience appropriate to the responsibilities of the position held.

657—42.8 and 42.9 Reserved.

657—42.10(155A) Requirements.

42.10(1) Physical requirements. A distributor's location shall:

- a. Be of suitable size and construction to facilitate cleaning, maintenance, and proper operations;
- b. Have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment, and security conditions;
- c. Have a quarantine area for storage of outdated, damaged, unsafe, deteriorated, misbranded, or adulterated products and for any suspect products;
- d. Be maintained in a clean and orderly condition;
- e. Be free from infestation by insects, rodents, birds, or vermin of any kind.

42.10(2) Operation requirements. Distributors shall operate in compliance with all applicable federal, state, and local laws, rules, and regulations.

a. *Purchasing.* Distributors shall purchase products from a legitimate source that is properly licensed in the state in which it is located and that is properly licensed in the distributor's home state, if such licensure is required. Distributors shall exercise due diligence in determining the legitimacy of a product's source and maintain documentation of the distributor's verification of the legitimate source.

b. *Examination of materials.* Distributors shall ensure, upon receipt and prior to distribution, that a product is suitable for distribution.

c. *Verification.* Qualified personnel shall verify, prior to distribution, that the product matches the order for which the product is being distributed.

d. *Instructions for use.* Qualified personnel shall provide to the patient or the patient's caregiver adequate instructions for use when a product is distributed pursuant to a prescription order.

657—42.11 Reserved.

657—42.12(155A) Records. Distributors shall establish and maintain records of all transactions regarding the receipt and distribution or other disposition of products, including outdated, damaged, deteriorated, misbranded, or adulterated products.

42.12(1) Transaction records. Records for receipt and distribution transactions for all products shall include the following information:

- a. The source of the products, including the name and principal address of the seller or transferor and the address of the location from which the products were shipped;
- b. The identity and quantity of the products received or distributed;
- c. The date of receipt or distribution of the products; and
- d. The identity of the purchaser of the products, including the name and principal address of the purchaser or transferee and the address to which the products were shipped or distributed.

42.12(2) Prescription order records. Each prescription order that results in the distribution of a product shall be retained, in the original format received, and be available for inspection and copying by the board, its representative, or other authorized individual for at least two years from the date of last activity of the prescription order.

a. Prescription orders shall contain all the required elements identified in Iowa Code section 155A.27.

PHARMACY BOARD[657](cont'd)

b. Prescription orders for noncontrolled prescription drugs shall be valid for no longer than 18 months following the date issued or 13 fills, whichever is less.

c. A one-month supply of a medical gas, such as oxygen, shall be considered to be a single refill. Such prescription must be reissued at least every 13 months.

d. Prescription orders for controlled substances shall be valid for no longer than six months following the date issued or six fills, whichever is less.

42.12(3) Records maintained. All records generated pursuant to the distributor's policies and procedures, this chapter, and all federal, state, and local rules, laws and regulations shall be maintained, readily retrievable, and available for inspection and copying by the board, its representative, or other authorized individual for at least two years from the date of the record.

42.12(4) Confidentiality of patient information. Any patient information in the possession of a distributor shall be maintained in compliance with the patient confidentiality and security requirements of 657—Chapter 8, 657—Chapter 21, and federal law.

657—42.13 Reserved.

657—42.14(155A) Reporting discipline and criminal convictions. No later than 30 days after the final action, a limited distributor shall provide to the board written notice, including an unredacted copy of the action or order, of any disciplinary or enforcement action imposed by any licensing or regulatory authority on any license or registration held by the distributor. Discipline may include, but is not limited to, fine or civil penalty, citation or reprimand, probationary period, suspension, revocation, and voluntary surrender. No later than 30 days after the conviction, a limited distributor shall provide to the board written notice, including an unredacted copy of the judgment of conviction or sentence, of any criminal conviction of the distributor, any owner of the distributor, or any individual responsible for managing the daily operations of the distribution facility, if the conviction is related to prescription drug or device distribution. The term "criminal conviction" includes instances when the judgment of conviction or the sentence is deferred.

657—42.15(155A) Discipline. Pursuant to 657—Chapter 36, the board may fine, suspend, revoke, or impose other disciplinary sanctions on a limited distributor license for any of the following:

1. Any violation of the federal Food, Drug, and Cosmetic Act or federal regulation promulgated under the Act. A warning letter issued by the United States Food and Drug Administration shall be conclusive evidence of a violation.

2. Any conviction of a crime related to the distribution of prescription drugs or devices committed by the distributor, its owners, or the facility manager.

3. Refusing access to the distribution facility or records to an agent of the board for the purpose of conducting an inspection or investigation.

4. Failure to maintain registration pursuant to 657—Chapter 10 when distributing controlled substances into, out of, or within this state.

5. Any act of unethical or unprofessional conduct by an employee of the distributor.

6. Any violation of Iowa Code chapter 124, 126, 155A, or 205, or rule of the board, including the disciplinary grounds set forth in 657—Chapter 36.

These rules are intended to implement Iowa Code sections 124.301 through 124.308, 126.3, 126.9 through 126.12, 126.22, 155A.3, 155A.4, 155A.13, 155A.17, 155A.21, 155A.23, and 155A.42.

[Filed 11/26/18, effective 1/23/19]

[Published 12/19/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/19/18.

ARC 4192C**PHARMACY BOARD[657]****Adopted and Filed****Rule making related to third-party logistics provider licenses**

The Board of Pharmacy hereby adopts new Chapter 43, “Third-Party Logistics Provider Licenses,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 147.76 and 2018 Iowa Acts, Senate File 2298.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 124B and sections 124.301 to 124.308, 126.3, 126.9 to 126.12, 155A.3, 155A.4 and 155A.40; 2018 Iowa Acts, Senate File 2298; and the Drug Supply Chain Security Act (DSCSA).

Purpose and Summary

Pursuant to 2018 Iowa Acts, Senate File 2298, section 14 [Iowa Code section 155A.17A], the Board is adopting this new chapter to establish the minimum standards for entities engaged in third-party logistics of prescription drugs and devices as established in the Drug Supply Chain Security Act, enacted by Congress in November 2013. The rules address licensure and renewal processes, required policies and procedures, required reporting of discipline and convictions, and grounds for disciplinary action.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 29, 2018, as **ARC 3976C**. A public hearing was held on September 25, 2018, at 9 a.m. in the Shared Conference Room, Suite E, 400 SW 8th Street, Des Moines, Iowa. Representatives of the National Association of Boards of Pharmacy (NABP) attended the hearing and provided a verbal summary of NABP’s written submitted comments.

The Board received comments from four entities relating to this rule making. One comment proposed a revision to the purpose and scope language relating to federal preemption. One comment recommended a new rule to identify the federal record-keeping requirements. The Board declined these recommended changes.

One comment requested a change to the language relating to an applicant’s providing evidence of FDA licensure. Another comment identified an incorrect reference to a DSCSA section number. These requested changes were accepted by the Board, and the rules were revised accordingly.

As noted above, revisions were made in response to comments received. In addition, references to 2018 Iowa Acts, Senate File 2298, were replaced with references to the Iowa Code since the amendments in the Senate File have been codified in the 2019 Iowa Code.

Adoption of Rule Making

This rule making was adopted by the Board on November 14, 2018.

Fiscal Impact

With the creation of the new licensure category of third-party logistics providers (3PLs), the Board anticipates approximately 50 entities seeking such licensure in Iowa. As such, the Board’s expected revenue from licensure of 3PLs will be approximately \$37,500, and expected expenditures for office staff

PHARMACY BOARD[657](cont'd)

will increase by approximately \$1,525, resulting in an overall increase in Board funds of approximately \$35,975 annually.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 657—Chapter 34.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on January 23, 2019.

The following rule-making action is adopted:

Adopt the following new 657—Chapter 43:

CHAPTER 43
THIRD-PARTY LOGISTICS PROVIDER LICENSES

657—43.1(155A) Purpose and scope. The purpose of this chapter is to establish the minimum standards required of third-party logistics providers as defined in Iowa Code section 155A.3 in this state pursuant to national standards as established by federal law. This chapter applies to logistics providers operating in or into this state. A 3PL does not include an entity that solely engages in shipping activities. Applicable activities of a 3PL include, but are not limited to, picking, packing, and shipping; inventory management; and warehousing or distribution management. In the event the requirements of this chapter directly conflict with any federal law or regulation, the federal law or regulation shall supersede the requirements in this chapter.

657—43.2(155A) Definitions. For the purposes of this chapter, the definitions found in Iowa Code section 155A.3 and the following definitions apply.

“*Board*” means the Iowa board of pharmacy.

“*Facility manager*” means the individual who is responsible for the daily operation of a third-party logistics licensed location.

“*FDA*” means the United States Food and Drug Administration.

“*Home state*” means the state in which a third-party logistics provider is located.

“*Third-party logistics provider*” or “*3PL*” means an entity that provides or coordinates warehousing or other logistics services of a product in interstate commerce on behalf of a manufacturer, wholesale distributor, or dispenser of a product, but does not take ownership of the product nor have responsibility to direct the sale or other disposition of the product.

657—43.3(155A) 3PL license. Beginning April 1, 2019, every 3PL as defined in rule 657—43.2(155A), wherever located, that provides or coordinates warehousing or other logistics services of products into, out of, or within this state must be licensed by the board in accordance with the laws and rules of Iowa

PHARMACY BOARD[657](cont'd)

before engaging in such logistics operations. Where activities are conducted at more than one location by a single 3PL, each location shall be separately licensed. The applicant shall submit a completed application with a nonrefundable application fee of \$750. A 3PL that handles controlled substances shall also obtain a controlled substances Act registration pursuant to 657—Chapter 10.

43.3(1) Application. The applicant shall complete an application which requires demographic information about the 3PL, ownership information, information about the 3PL's registered agent located in Iowa, information about the 3PL's licensure or registration with other state and federal regulatory authorities, criminal and disciplinary history information, and a description of the scope of services to be provided in Iowa. If the applicant is not located in Iowa, the applicant shall submit evidence that the applicant has a valid license or registration in the home state or provide evidence that the home state does not require licensure. The applicant shall provide evidence of current verified-accredited wholesale distributors (VAWD) accreditation by the National Association of Boards of Pharmacy. This requirement does not apply to new applicants located in Iowa which must undergo an opening inspection by a board compliance officer or agent of the board prior to issuance of an initial license pursuant to subrule 43.3(3). 3PL distributors located in Iowa shall provide evidence of VAWD accreditation on or before license renewal. An application for a 3PL license, including an application for registration pursuant to 657—Chapter 10, if applicable, will become null and void if the applicant fails to complete the licensure process, including opening for business, within six months of receipt by the board of the required application(s).

43.3(2) Facility manager. The applicant shall attest that the facility manager has adequate experience in providing or coordinating warehousing or other logistics services of products; is actively involved in the daily operation of the facility; maintains a functional understanding of federal and state laws, rules, and regulations pertaining to drug and device distribution; and has no felony conviction or convictions related to prescription drug or device distribution, including distribution of controlled substances. Upon receipt of a licensure application, the board shall provide a fingerprint packet to the applicant's facility manager, who shall submit the completed fingerprint packet and a signed waiver form to facilitate a national criminal history background check of the facility manager. The cost of the evaluation of the fingerprint packet and the Iowa division of criminal investigation and the United States Federal Bureau of Investigation criminal history background checks will be assessed to the applicant.

43.3(3) Inspection of new 3PL facility. Each new 3PL location seeking licensure shall be inspected prior to issuance of a license.

a. Iowa location. If the applicant is located within Iowa, an inspection shall be conducted by the board or its authorized agent prior to issuance of the license and periodically thereafter.

b. Nonresident location. If the applicant is located outside of Iowa, an inspection shall be conducted by the applicant's home state regulatory authority or another board-approved inspecting authority and a report of such inspection shall be submitted with the application. The application shall also include evidence of corrective action taken to satisfy any deficiencies identified in the inspection report and compliance with all legal directives of the inspecting authority, if applicable. With each license renewal and license reactivation for a 3PL outside of Iowa, the application shall include a copy of the most recent inspection report issued as a result of an inspection conducted by the home state regulatory authority or other board-approved inspecting authority.

43.3(4) License renewal. The 3PL license shall be renewed by April 1 each year. The 3PL shall submit the completed license application and nonrefundable application fee of \$750. A 3PL may renew its license beginning February 1 prior to license renewal. An initial 3PL license issued between February 1 and March 31 shall not require renewal until the following calendar year.

a. Delinquent license grace period. If a 3PL license has not been renewed or canceled prior to expiration, but the 3PL is in the process of renewing the license, the license becomes delinquent on April 1. A 3PL that submits a completed license renewal application, nonrefundable application fee, and nonrefundable late penalty fee of \$750 postmarked or delivered to the board by April 30 shall not be subject to disciplinary action for continuing to provide services to Iowa customers in the month of April.

b. Delinquent license reactivation beyond grace period. If a 3PL license has not been renewed prior to the expiration of the one-month grace period identified in paragraph 43.3(4) "a," the 3PL

PHARMACY BOARD[657](cont'd)

may not continue to provide services to Iowa customers. A 3PL that continues to provide services to Iowa customers without a current license may be subject to disciplinary sanctions. A 3PL without a current license may apply for reactivation by submitting a license application for reactivation and a nonrefundable reactivation fee of \$2,000. As part of the reactivation application, the 3PL shall disclose the services, if any, that were provided to Iowa customers while the license was delinquent.

43.3(5) License changes. When a licensed 3PL changes its name, ownership, location, or facility manager, a completed 3PL license application with nonrefundable fee of \$750 shall be submitted to the board. A change of ownership occurs when the owner listed on the 3PL's most recent application changes or when there is a change affecting the majority ownership interest of the owner listed on the 3PL's most recent application. A change of 3PL location within Iowa, if the new location was not a licensed 3PL immediately prior to the relocation, shall require an on-site inspection of the new location as provided in subrule 43.3(3). A 3PL that has submitted a license change application may continue to service Iowa customers while its license change is pending final approval.

a. Locations in Iowa. An application for license change shall be submitted to the board as far in advance as possible prior to the anticipated change.

b. Locations outside of Iowa. An application for license change shall be submitted to the board within ten days of the 3PL's receipt of an updated license or registration from the home state regulatory authority or the FDA, as applicable.

c. License change application submission. Applications for license changes shall be timely submitted pursuant to this subrule. A licensed 3PL that has timely submitted a license change application and fee may continue to service Iowa customers while the license change is pending final approval. An applicant that has submitted an application for license changes after the required date of submission pursuant to this subrule but within 30 days of the required date of submission shall be assessed a nonrefundable late penalty fee of \$750 in addition to the license fee. An applicant that has submitted an application for license changes 31 days or later following the required date of submission pursuant to this subrule shall be assessed a nonrefundable reactivation fee of \$2,000.

43.3(6) License cancellation. If a 3PL intends to discontinue service into, out of, or within this state, the licensee shall notify the board and shall request that the license be administratively canceled.

657—43.4 Reserved.

657—43.5(155A) Compliance with federal and state laws. A 3PL is responsible for complying with all applicable federal and state laws, including those not specifically identified in this chapter.

1. A licensed 3PL shall meet the requirements set forth in the Drug Supply Chain Security Act, 21 U.S.C. §360eee-3, relating to third-party logistics and regulations promulgated thereunder.

2. A licensed 3PL shall permit agents of the board to enter and inspect the facility for compliance with federal and state laws. A licensed 3PL shall cooperate with other regulatory or law enforcement officials with jurisdiction over the facility.

657—43.6(155A) Policies and procedures. A licensed 3PL shall establish, maintain, and adhere to written policies and procedures that are in compliance with standards established pursuant to federal and Iowa law and which address, at a minimum, the following:

1. Storage practices;
2. Maintaining adequate security;
3. Receipt, inventory, shipment, and distribution of product;
4. Theft or loss;
5. Inventory errors and inaccuracies;
6. Manufacturer recalls and withdrawals;
7. Emergency and disaster plan;
8. Records, including the retention period for all required records;
9. Drug diversion detection and prevention; and
10. Outdated, adulterated, or suspect products.

PHARMACY BOARD[657](cont'd)

657—43.7 and 43.8 Reserved.

657—43.9(155A) Reporting discipline and criminal conviction. No later than 30 days after the final action, a 3PL shall provide to the board written notice, including an unredacted copy of the action or order, of any disciplinary sanction imposed on any license or registration held by the 3PL or its owner or owners. Discipline may include, but is not limited to, fine or civil penalty, citation or reprimand, probationary period, suspension, revocation, and voluntary surrender. No later than 30 days after the conviction, a 3PL shall provide to the board written notice, including an unredacted copy of the judgment of conviction or sentence, of any criminal convictions related to product distribution, including convictions of any of its owners, or its facility manager. The term “criminal conviction” includes instances when the judgment of conviction or the sentence is deferred.

657—43.10(155A) Discipline. Pursuant to 657—Chapter 36, the board may fine, suspend, revoke, or impose other disciplinary sanctions on a 3PL license for any of the following:

1. Any violation of the federal Food, Drug, and Cosmetic Act or federal regulation promulgated under the Act related to third-party logistics and drug or device distribution.
2. Any conviction of a crime related to the distribution of prescription drugs or devices committed by the 3PL, its owners, or the facility manager.
3. Refusing access to the 3PL facility or records to an agent of the board or other authorized regulatory authority for the purpose of conducting an inspection or investigation.
4. Failure to maintain registration pursuant to 657—Chapter 10 when distributing controlled substances into, out of, or within this state.
5. Any act of unethical or unprofessional conduct by an employee of the 3PL.
6. Any violation of Iowa Code chapter 124, 126, 155A, or 205, or rule of the board, including the disciplinary grounds set forth in 657—Chapter 36.

These rules are intended to implement Iowa Code chapter 124B and sections 124.301 through 124.308, 126.3, 126.9 through 126.12, 155A.3, 155A.4, 155A.17A, and 155A.40 and the federal Drug Supply Chain Security Act.

[Filed 11/26/18, effective 1/23/19]

[Published 12/19/18]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 12/19/18.

ARC 4193C

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Rule making related to concussions and other brain injuries

The Public Health Department hereby adopts new Chapter 54, “Concussion or Other Brain Injury Return-to-Play Protocol,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 280.13C.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 280.13C.

Purpose and Summary

These rules describe the return-to-play protocol for returning a student to participation in any extracurricular interscholastic activity after the student shows signs, symptoms, or behaviors consistent

PUBLIC HEALTH DEPARTMENT[641](cont'd)

with a concussion or other brain injury. The return-to-play protocol is based on peer-reviewed scientific evidence consistent with the guidelines of the Centers for Disease Control and Prevention of the United States Department of Health and Human Services. The Department worked in cooperation with the Iowa High School Athletic Association and the Iowa Girls High School Athletic Union in the drafting of the rules.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 26, 2018, as **ARC 4034C**. A public hearing was held on October 16, 2018, at 10:30 a.m. in Room 518, Lucas State Office Building, Des Moines, Iowa. Representatives from the Iowa High School Athletic Association, the Iowa Girls High School Athletic Union and the Iowa Athletic Trainers' Society were in attendance. Discussion on how to clarify some of the proposed language in the Notice was undertaken. This discussion encompassed several comments received that sought clarity in the proposed rules. Consensus was reached to add a description of concussions in the purpose statement in rule 641—54.1(280), to add a definition of “rest” in rule 641—54.2(280) for clarity, and to add the word “other” into the phrase “concussion or brain injury” throughout the chapter so that the phrase reads “concussion or other brain injury.” The addition of the word “other” makes it clear that a concussion is one type of brain injury.

In paragraph 54.3(1)“a,” the words “the student’s licensed health care provider or parent/guardian, or both, shall be contacted” were changed to “the student’s licensed health care provider and parent or guardian shall be contacted” at the direction of the State Board of Health. Also, references to 2018 Iowa Acts, House File 2442, have been replaced with references to Iowa Code section 280.13C since the amendments in the House File have been codified in that section of the 2019 Iowa Code.

Adoption of Rule Making

This rule making was adopted by the State Board of Health on November 14, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the Department’s variance and waiver provisions contained in 641—Chapter 178.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on January 23, 2019.

The following rule-making action is adopted:

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Adopt the following new 641—Chapter 54:

CHAPTER 54
CONCUSSION OR OTHER BRAIN INJURY RETURN-TO-PLAY PROTOCOL

641—54.1(280) Purpose. This chapter describes the return-to-play protocol for concussion or other brain injury to be adopted by July 1, 2019, by the board of directors of each school district and the authorities in charge of each accredited nonpublic school with enrolled students who participate in an extracurricular interscholastic activity in grades seven through twelve. Concussions are a type of brain injury that can range from mild to severe and can disrupt the way the brain normally works. Concussions can occur in an organized or unorganized sport or recreational activity and can result from a fall or from players colliding with each other, with the ground, or with obstacles. Concussions can occur with or without loss of consciousness, but the vast majority of concussions occur without loss of consciousness.

641—54.2(280) Definitions. For the purpose of these rules, the following definitions shall apply.

“*Asymptomatic*” means the student is no longer showing signs, symptoms, or behaviors consistent with a concussion or other brain injury.

“*Contest*” means an interscholastic athletic game or competition.

“*Extracurricular interscholastic activity*” means any dance or cheerleading activity or extracurricular interscholastic activity, contest, or practice governed by the Iowa High School Athletic Association or the Iowa Girls High School Athletic Union that is a contact or limited contact activity as identified by the American Academy of Pediatrics.

“*Licensed health care provider*” means a physician, physician assistant, chiropractor, advanced registered nurse practitioner, nurse, physical therapist, or athletic trainer licensed by a board designated under Iowa Code section 147.13.

“*Medical clearance*” means written clearance from a licensed health care provider releasing the student following a concussion or other brain injury to return to or commence participation in any extracurricular interscholastic activity.

“*Rest*” means a recovery state at which physical and cognitive activities are reduced or removed with the intent to eliminate the signs, symptoms, or behaviors of brain injury.

“*Return-to-learn plan*” means the plan developed by personnel of a school district or accredited nonpublic school based on guidance developed as required under Iowa Code section 280.13C(6) “b” to provide adjustments or accommodations as the student returns to the classroom.

“*Return-to-play*” means the gradual, step-wise approach to returning a student to participation in any extracurricular interscholastic activity following a concussion or other brain injury.

641—54.3(280) Return-to-play protocol. The following return-to-play step-wise process shall begin when the student who has been removed from participation in any extracurricular interscholastic activity governed by the Iowa High School Athletic Association or the Iowa Girls High School Athletic Union is no longer showing signs, symptoms, or behaviors consistent with a concussion or other brain injury for a minimum of 24 hours and has received written medical clearance from a licensed health care provider to return to or commence such participation.

54.3(1) Return-to-play process. Each step shall take a minimum of 24 hours.

a. If the student shows signs, symptoms, or behaviors consistent with a concussion or other brain injury at any step of the return-to-play protocol, the student must stop the activity and the student’s licensed health care provider and parent or guardian shall be contacted.

b. If the student shows signs, symptoms, or behaviors consistent with a concussion or other brain injury during this process, an additional 24-hour period of rest shall take place. After the 24-hour period of rest, the student shall drop back to the previous level when the student showed no signs, symptoms, or behaviors consistent with a concussion or other brain injury and begin the progression again.

54.3(2) Return-to-play steps.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

| | |
|--------|--|
| Step 1 | Athlete has received written medical clearance from a licensed health care provider to begin the return-to-play process, AND the athlete is back to regular activities, including school, without experiencing any concussion signs, symptoms, or behaviors for a minimum of 24 hours. |
| Step 2 | Low impact, light aerobic exercise. Walking or stationary cycling at slow to medium pace. No resistance/weight training. |
| Step 3 | Basic exercise, such as running in the gym or on the field. No helmet or other equipment. |
| Step 4 | Noncontact, sport-specific training drills (dribbling, ball handling, batting, fielding, running drills) in full equipment. Resistance/weight training may begin. |
| Step 5 | Full contact practice and participation in normal training activities. |
| Step 6 | Contest participation. |

These rules are intended to implement Iowa Code section 280.13C.

[Filed 11/15/18, effective 1/23/19]

[Published 12/19/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/19/18.

ARC 4194C

RACING AND GAMING COMMISSION[491]

Adopted and Filed

Rule making related to problem gambling, test samples, and Iowa-foaled horse allowance

The Racing and Gaming Commission hereby amends Chapter 5, "Track, Gambling Structure, and Excursion Gambling Boat Licensees' Responsibilities," and Chapter 10, "Thoroughbred and Quarter Horse Racing," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 99D.7 and 99F.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 99D and 99F.

Purpose and Summary

The amendments implement legislation passed in 2018.

Item 1 implements 2018 Iowa Acts, House File 2349, which amends Iowa Code sections 99D.7(23) and 99F.4(22) with regard to persons voluntarily excluded from gambling facilities.

Items 2 and 3 and 5 through 7 implement 2018 Iowa Acts, House File 2439, which amends Iowa Code sections 99D.23(1) and 99D.23(2) to add "hair" as an allowable sample for testing purposes.

Item 4 implements 2018 Iowa Acts, House File 2439, which amends Iowa Code section 99D.22(1)"a" with regard to Iowa-foaled horses.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 1, 2018, as **ARC 3926C**. A public hearing was held on August 21, 2018, at 9 a.m. at the Commission Office, Suite 100, 1300 Des Moines Street, Des Moines, Iowa. No one attended the public hearing. No public comments were received. One change from the Notice has been made. In Item 4, the name of a department was corrected.

RACING AND GAMING COMMISSION[491](cont'd)

Adoption of Rule Making

This rule making was adopted by the Commission on October 4, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on January 23, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 5.4(12) as follows:

5.4(12) Problem gambling.

a. The holder of a license to operate gambling games and the holder of a license to accept simulcast wagering shall adopt and implement policies and procedures designed to:

(1) Identify problem gamblers; ~~and~~

(2) Comply with the process established by the commission to allow a person to be voluntarily excluded from the gaming floor of an excursion gambling boat, from the wagering area as defined in Iowa Code section 99D.2, and from the gaming floor of all other licensed facilities or gambling activities regulated under Iowa Code chapters 99D and 99F; and

~~(2)~~ (3) Allow persons to be voluntarily excluded for five years or life from all facilities on a form prescribed by the commission. Each facility will disseminate information regarding the exclusion to all other facilities licensees and the commission.

b. and c. No change.

d. Money forfeited by a voluntarily excluded person pursuant to Iowa Code sections 99D.7(23) and 99F.4(22) shall be withheld by the licensee and remitted to the general fund of the state by the licensee.

ITEM 2. Amend rule **491—10.1(99D)**, definition of "Test sample," as follows:

"*Test sample*" means any bodily substance including, but not limited to, blood, ~~or~~ urine, or hair taken from a horse under the supervision of the commission veterinarian and as prescribed by the commission for the purpose of analysis.

ITEM 3. Amend subrule 10.2(7) as follows:

10.2(7) Detention enclosure. Each facility shall maintain a detention enclosure for use by the commission for securing samples of urine, saliva, blood, hair, or other bodily substances or tissues for chemical analysis from horses ~~who~~ that have run in a race. The enclosure shall include a wash rack,

RACING AND GAMING COMMISSION[491](cont'd)

commission veterinarian office, a walking ring, at least four stalls, workroom for the sample collectors with hot and cold running water, and glass observation windows for viewing of the horses from the office and workroom. An owner, trainer, or designated representative licensed by the commission shall be with a horse in the detention barn at all times.

ITEM 4. Adopt the following new subparagraph **10.4(5)“g”(5)**:

(5) Iowa-foaled horse allowance. Iowa-foaled horses that are properly registered and whose papers are stamped by the Iowa department of agriculture and land stewardship shall be allowed an additional three pounds beyond the stated conditions of the race if the race is not limited to Iowa-foaled horses. This allowance does not apply to stakes races.

ITEM 5. Amend subparagraph **10.5(1)“a”(27)** as follows:

(27) Witnessing the collection of a urine, ~~or~~ blood, or hair sample from the horse in the trainer's charge or delegating a licensed employee or the owner of the horse to do so.

ITEM 6. Amend paragraph **10.7(1)“c”** as follows:

c. Proof of detection by the commission chemist of the presence of a medication, drug, foreign substance, or metabolic derivative thereof, prohibited by paragraph “a” 10.7(1)“a” or “b,” in a saliva, urine, ~~or~~ blood, or hair sample duly taken under the supervision of the commission veterinarian from a horse immediately prior to or promptly after running in a race shall be prima facie evidence that the horse was administered, with the intent that it would carry or that it did carry in its body while running in a race, a prohibited medication, drug, or foreign substance in violation of this rule.

ITEM 7. Amend paragraph **10.7(2)“a”** as follows:

a. Under the supervision of the commission veterinarian, urine, blood, hair, and other specimens shall be taken and tested from any horse that the stewards, commission veterinarian, or the commission's representatives may designate. The samples shall be collected by the commission veterinarian or other person or persons the commission may designate. Each sample shall be marked or numbered and bear information essential to its proper analysis; but the identity of the horse from which the sample was taken or the identity of its owners or trainer shall not be revealed to the official chemist or the staff of the chemist. The container of each sample shall be sealed as soon as the sample is placed therein.

[Filed 11/30/18, effective 1/23/19]

[Published 12/19/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/19/18.

ARC 4195C

REVENUE DEPARTMENT[701]

Adopted and Filed

Rule making related to state-imposed and locally imposed hotel and motel taxes

The Revenue Department hereby amends Chapter 103, “State-Imposed and Locally Imposed Hotel and Motel Taxes—Administration,” rescinds Chapter 104, “Hotel and Motel—Filing Returns, Payment of Tax, Penalty, and Interest,” and Chapter 105, “Locally Imposed Hotel And Motel Tax,” and amends Chapter 241, “Excise Taxes Not Governed by the Streamline Sales and Use Tax Agreement,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 421.14.

REVENUE DEPARTMENT[701](cont'd)

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 423A as amended by 2018 Iowa Acts, Senate File 2417.

Purpose and Summary

Item 1 consolidates the hotel and motel tax rules into a single chapter and implements changes to the tax made by division XIII of 2018 Iowa Acts, Senate File 2417.

Items 2 and 3 eliminate Chapters 104 and 105, respectively, the content of which has been incorporated into Chapter 103.

Item 4 rescinds duplicative rules on the hotel and motel tax found in Chapter 241 (rules 701—241.3(423A) to 701—241.5(423A)).

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 26, 2018, as **ARC 4024C**. A public hearing was held on October 17, 2018, at 11 a.m. in the Auditorium of the Wallace State Office Building, Des Moines, Iowa. No one attended the public hearing.

The Department received comments from several online travel companies, submitted through attorney K. Dwayne Vande Krol. In light of the public comment received, the Department added new subrule 103.6(1), which clarifies that retailers are not required to itemize the component parts of the total sales price but must still state the sales price separately from the taxes imposed.

The subsequent subrules were renumbered. Other nonsubstantive edits were also made.

Adoption of Rule Making

This rule making was adopted by the Department on October 31, 2018.

Fiscal Impact

This rule making has no fiscal impact beyond the impact estimated by the Legislative Services Agency for 2018 Iowa Acts, Senate File 2417.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on January 23, 2019.

The following rule-making actions are adopted:

REVENUE DEPARTMENT[701](cont'd)

ITEM 1. Amend 701—Chapter 103 as follows:

CHAPTER 103
STATE-IMPOSED AND LOCALLY IMPOSED HOTEL AND
MOTEL TAXES—ADMINISTRATION

701—103.1(423A) Definitions, administration, and imposition.

103.1(1) *Incorporation of definitions.* ~~Definitions.~~ For the purposes of this chapter and 701—Chapters 104 and 105, unless the context otherwise requires: To the extent it is consistent with Iowa Code chapter 423A and this chapter, all other words and phrases used in this chapter shall mean the same as defined in Iowa Code section 423.1 and rule 701—211.1(423).

103.1(2) *Chapter-specific definitions.* For purposes of this chapter, unless the context otherwise requires:

“*Department*” means the department of revenue.

“*Director*” means the director of the department of revenue.

“*Land use district*” means a district created under Iowa Code chapter 303, subchapter IV.

“*Lessor*” means any person engaged in the business of renting lodging to users. “*Lessor*” is synonymous with the word “*retailer*.”

“*Locally imposed tax*” means the hotel and motel tax levied by Iowa Code section 423A.4.

“*Lodging*” means rooms, apartments, or sleeping quarters in a hotel, motel, inn, public lodging house, rooming house, or manufactured or mobile home which is tangible personal property, or in a tourist court, or in any place where sleeping accommodations are furnished to transient guests for rent, whether with or without meals.

“*Person*” means the same as the term is defined in rule 701—211.1(423).

“*Renting*” or “*rent*” means a transfer of possession or control of lodging for a fixed or indeterminate term for consideration and includes any kind of direct or indirect charge for such lodging or its use.

“*Retailer*” means a person required to collect hotel and motel tax, including but not limited to lodging providers, lodging facilitators, and lodging platforms.

“*Sales price*” means the amount of consideration for renting of lodging and means the same as the term is defined in rule 701—211.1(423).

“*State-imposed tax*” means the hotel and motel tax levied by Iowa Code section 423A.3.

“*Tax*” or “*hotel and motel tax*” means either the state-imposed or locally imposed hotel and motel tax levied by Iowa Code sections section 423A.3 and any locally imposed hotel and motel tax levied by Iowa Code section 423A.4, respectively.

“*User*” means a person to whom lodging is rented.

All other words and phrases used in this chapter and 701—Chapters 104 and 105 and defined in rule 701—211.1(423) have the meaning set forth in that rule for the purposes of these chapters.

103.1(2) Administration. The department is charged with the administration of the tax, subject to the rules, regulations, and direction of the director. The department is required to administer the tax as nearly as possible in conjunction with the administration of the state sales tax except that portion of the law which implements the streamlined sales and use tax agreement. Therefore, the term “*retailer*” will be used interchangeably between the two taxes.

103.1(3) Imposition. A state-imposed tax of 5 percent is imposed upon the sales price for the rental of any lodging if the rental occurs in this state. The state-imposed tax shall be collected by any lessor of lodging from the user of that lodging. The lessor shall add the tax to the sales price of the lodging, and the state-imposed tax, when collected, shall be stated as a distinct item, separate and apart from the sales price of the lodging and the local tax imposed, if any, under Iowa Code section 423A.4.

103.1(4) A city, county, or land use district may impose a tax on lodging, at a rate not to exceed 7 percent, which shall be imposed in increments of one or more full percentage points upon the sales price

REVENUE DEPARTMENT[701](cont'd)

from the renting of lodging. See 701—Chapter 105 for more information on locally imposed hotel and motel tax.

This rule is intended to implement Iowa Code sections 423A.2, 423A.3, and 423A.4.

~~701—103.2(423A) Statute of limitations, supplemental assessments and refund adjustments.~~ Within three years after a return is filed, the department shall examine it, determine the tax due, and give notice of assessment to the taxpayer. If no return has been filed, the department may determine the tax due and give notice thereof. If such determination is based upon an examination of books, papers, records, or memoranda, such an examination will not include any transactions completed three years or more prior to such examination.

~~Whenever books and records are examined by an employee designated by the director, whether to verify a return or claim for refund or in making an audit, an assessment must be issued within one year from the date of the completion of the examination. If not, the period for which the books and records were examined becomes closed and no assessment can be made. In no case is the one-year period of limitation an extension of or in addition to the three-year period of limitation.~~

~~The department may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.~~

~~If an assessment or refund adjustment is appealed (protested under rule 701—7.8(17A)) and is resolved whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue involved in such appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation.~~

~~This rule is intended to implement Iowa Code sections 423.37 and 422.70 and 2005 Iowa Code Supplement sections 423A.3 and 423A.4.~~

~~701—103.3 701—103.2(423A) Credentials and receipts Administration.~~ Employees of the department have official credentials, and the retailer should require proof of the identity of persons claiming to represent the department. No charges shall be made or gratuities of any kind accepted by an employee of the department for assistance given in or out of the office of the department.

~~All employees authorized to collect money are supplied with official receipt forms. When cash is paid to an employee, the retailer should require the employee to issue an official receipt. Such receipt shall show the retailer's name, address and permit number; the purpose for the payment; and the amount of the payment. The retailer should retain all receipts, and only official receipts for payment will be recognized by the department.~~

~~103.2(1) Generally.~~ The department is charged with the administration of the tax, subject to the rules, regulations, and direction of the director. The department is required to administer the tax as nearly as possible in conjunction with the administration of the state sales tax except that portion of the law which implements the streamlined sales and use tax agreement.

~~103.2(2) Incorporation of 701—Chapter 11.~~ Except as otherwise stated in this chapter, the requirements of 701—Chapter 11 shall apply to retailers required to collect hotel and motel tax in the same manner that those requirements apply to all sellers and retailers making sales subject to state sales tax.

~~This rule is intended to implement Iowa Code sections 422.68(1) and 422.70 and 2005 Iowa Code Supplement sections 423A.3 and 423A.4 section 423A.6.~~

~~701—103.4 701—103.3(423A) Retailers required to keep records Tax imposition and exemptions.~~

~~103.4(1) 103.3(1) Tax imposed.~~ Every retailer shall keep and preserve the following records: A state-imposed tax of 5 percent is imposed upon the sales price for the rental of any lodging if the lodging is located in this state. A locally imposed tax of up to 7 percent is imposed to the extent permitted by Iowa Code section 423A.4.

REVENUE DEPARTMENT[701](cont'd)

a.— A daily record of the amount of all cash and time payments and credit sales from the renting of rooms subject to tax under Iowa Code chapter 423A.

b.— A record of all deductions and exemptions taken in filing a tax return.

~~103.4(2) 103.3(2) Exemptions.~~ The records required in this rule must be preserved for a period of three years and open for examination by the department during this period of time. The only exemptions from the hotel and motel tax are those in Iowa Code section 423A.5. The exemptions apply to both the state-imposed tax and the locally imposed tax under Iowa Code chapter 423A.

~~103.4(3)~~ Retailers performing all or part of their record keeping and retention of books, records, and other sources of information under electronic data interchange process or technology, see 701—subrule 11.4(4).

~~103.4(4)~~ If a tax liability has been assessed and an appeal is pending to the department, district court or an appellate court, books, papers, records, memoranda or documents specified in this rule that relate to the period covered by the assessment shall be preserved until the final disposition of the appeal. This provision applies equally to parties to the appeal and other retailers who could claim a refund as a result of the resolution of the appeal.

~~103.4(5)~~ Failure to keep and preserve adequate records shall be grounds for revocation of the state-imposed tax permit.

This rule is intended to implement Iowa Code section 423.41 and 2005 Iowa Code Supplement sections 423A.3, and 423A.4, and 423A.5.

~~701—103.5 701—103.4(423A) Audit of records Filing returns; payment of tax; penalty and interest.~~ The department shall have the right and duty to examine or cause to be examined the books, papers, records, memoranda or documents of a taxpayer for the purposes of verifying the correctness of a return filed or estimating the tax liability of any retailer. The right to examine records includes the right to examine copies of the retailer's state and federal income tax returns. When a retailer fails or refuses to produce the records for examination when requested by the department, the director shall have authority to require, by a subpoena, the attendance of the retailer and any other witness whom the department deems necessary or expedient to examine and compel the retailer and witness to produce books, papers, records, memoranda or documents relating in any manner to the tax.

The department shall have the obligation to inform the retailer when an examination of the retailer's books, papers, records, memoranda or documents has been completed and the amount of tax liability, if any, due upon completion of the audit. Tax liability includes the amount of tax, interest, penalty and fees which may be due.

~~103.4(1) Incorporation of 701—Chapter 12.~~ Except as otherwise stated in this chapter, the requirements of 701—Chapter 12 shall apply to retailers required to collect hotel and motel tax in the same manner that those requirements apply to all sellers and retailers making sales subject to state sales tax.

~~103.4(2) Quarterly returns only.~~ Retailers required to collect hotel and motel tax must file returns on a quarterly basis; retailers may not file annual returns.

~~103.4(3) Combined sales/hotel and motel tax return.~~

a. On the quarterly sales tax return, a retailer shall report the gross sales subject to the hotel and motel tax for the entire quarter, listing allowable deductions and calculating tax for the entire quarter. The information required for the computation of the hotel and motel tax liability shall be separate from that required for the computation of the retail sales tax liability and must be stated and computed separately even though total tax liability may be paid with a single remittance.

b. The quarterly returns are due on the last day of the month following the end of the calendar quarter during which the tax is collected. If a person is required to collect the hotel and motel tax and file a monthly deposit for retail sales tax purposes, the monthly deposit should not include the hotel and motel tax collected during the period covered by the deposit.

~~103.4(4) Application of partial payments.~~

a. All payments received with the return will be applied to satisfy state sales tax and hotel and motel tax liabilities, which include penalty and interest.

REVENUE DEPARTMENT[701](cont'd)

b. Application of partial payments received with the tax return and any subsequent partial payment received for that tax period will be applied based on a ratio formula, unless properly designated by the taxpayer as provided in Iowa Code section 421.60(2) "d." The denominator in the ratio shall be the total of the hotel and motel tax due and the state sales tax due less any monthly sales tax deposits. The numerators in the ratio formula shall be the amounts of hotel and motel tax due and the net state sales tax due.

EXAMPLE: Hotel owes a total of \$1,000 in net state sales tax and hotel and motel tax for the quarter. Of the \$1,000 owed, \$600 is for hotel and motel tax and \$400 is for state sales tax. Hotel files its quarterly sales tax return accompanied by a \$500 partial payment. The \$500 partial payment would be applied based on the following computation:

$$\begin{array}{r}
 \underline{600} \\
 1,000
 \end{array}
 \times
 \begin{array}{r}
 500 \\
 500
 \end{array}
 =
 \begin{array}{r}
 \$300 \\
 \$300
 \end{array}
 \text{ Hotel and motel tax}$$

$$\begin{array}{r}
 \underline{400} \\
 1,000
 \end{array}
 \times
 \begin{array}{r}
 500 \\
 500
 \end{array}
 =
 \begin{array}{r}
 \$200 \\
 \$200
 \end{array}
 \text{ State sales tax}$$

103.4(5) Application of payments upon termination by a land use district. If a land use district terminates its local hotel and motel tax, lodging within the district becomes subject to any local hotel and motel tax imposed by a city or county within the corporate boundaries of that district on the date of termination. If a city or county imposes a local hotel and motel tax within the district, all revenues received from or moneys refunded to lodging within the district after the date on which the land use district terminates its local hotel and motel tax shall be treated as collected from or refunded to lodging in such city or county. If no city or county imposes a local hotel and motel tax within the district, all revenues received from or moneys refunded to lodging within the district at least 180 days after the date on which the land use district terminates its local hotel and motel tax shall be deposited in or withdrawn from the state general fund as described in Iowa Code section 423A.6(1).

This rule is intended to implement Iowa Code sections 422.70 and 423.41 and 2005 Iowa Code Supplement sections 423A.3, and 423A.4, and 423A.6.

701—103.6 701—103.5(423A) Billings Permits.

103.6(1) 103.5(1) Notice of adjustments Incorporation of 701—Chapter 13. Except as otherwise stated in this chapter, the requirements of 701—Chapter 13 shall apply to retailers required to collect hotel and motel tax in the same manner that those requirements apply to all sellers and retailers making sales subject to state sales tax.

a. An employee of the department, designated by the director to examine returns or make audits, who discovers discrepancies in returns or learns that a sales price subject to the tax may not have been listed, in whole or in part, or that no return was filed when one was due, is authorized to notify the person of the discovery by ordinary mail. The notice shall not be termed an assessment. It merely informs the person what amount would be due if the information discovered is correct.

b. Right of person upon receipt of notice of adjustment. A person who has received notice of an adjustment in connection with a return may pay the additional amount stated to be due. If payment is made, and the person wishes to contest the matter, the person should then file a claim for refund. However, payment will not be required until a certified assessment has been made (although interest will continue to accrue on any amount of tax which is determined to be due if payment is not made). If no payment is made, the person may discuss with the employee who notified the person of the discrepancy, either in person or through correspondence, all matters of fact and law which the person considers relevant to the situation. This person may also ask for a conference with the department. Documents and records supporting the person's position may be requested.

REVENUE DEPARTMENT[701](cont'd)

e.—Power of employee to compromise tax claim. Only the director has the power to compromise any tax claims. The power of the employee who notified the person of the discrepancy is limited to the determination of the correct amount of tax.

103.6(2) 103.5(2) Notice of assessment Sales tax permit required. If, after following the procedure outlined in paragraph 103.6(1)“b,” no agreement is reached and the person does not pay the amount determined to be correct within 20 days, a notice of the amount of tax due shall be sent to the person responsible for paying the tax. This notice of assessment shall bear the signature of the director and will be sent by mail.

If the notice of assessment is timely protested according to the provisions of rule 701—7.8(17A) and Iowa Code section 423.37, proceedings to collect the tax will not be commenced until the protest is ultimately determined, unless the department has reason to believe that a delay caused by such appeal proceedings will result in an irrevocable loss of tax ultimately found to be due and owing the state of Iowa. The department will consider a protest to be timely if filed no later than 60 days following the date of the assessment notice. See rule 701—7.8(17A).

a. There is no separate hotel and motel tax permit; retailers required to collect and remit hotel and motel tax shall obtain an Iowa sales tax permit.

b. Any person not in the business of renting rooms to transient guests but that facilitates rentals of lodging at varying locations in Iowa to transient guests may register once under this chapter. A lodging facilitator shall not be required to register under this chapter if the lodging facilitator and its affiliates do not exceed the transaction and sales thresholds in Iowa Code section 423A.5A.

This rule is intended to implement Iowa Code sections 422.70, 423.37, and 423.39, and 2005 Iowa Code Supplement sections 423A.3, and 423A.4.

701—103.7 701—103.6(423A) Collections Special collection and remittance obligations. If determined expedient or advisable to do so, the director may enforce the collection of the tax liability which has been determined to be due. In such action, the attorney general shall appear for the department and have the assistance of the county attorney in the county in which the action is pending.

The remedies for the enforcement and collection of the tax are cumulative, and action taken by the department or attorney general shall not be construed to be an election on the part of the state or any of its officers to pursue any remedy to the exclusion of any other remedy.

103.6(1) Exclusion from facilitation fee; itemization.

a. Exclusion from the definition of facilitation fee. The commission that a lodging provider pays to a lodging facilitator or lodging platform is not a facilitation fee. See Iowa Code section 423A.2(1)“d.”

b. Itemization of taxes required. Retailers shall add the state-imposed tax and the locally imposed tax, if any, to the sales price of the lodging, and each tax, when collected, shall be stated as a distinct item, separate and apart from the other tax and from the sales price of the lodging.

c. Itemization of components of sales price not required. A retailer is not required to separately itemize any component part of the sales price as separate and distinct from the rest of the sales price, including discount room charges, facilitation fees, or other similar charges. Regardless of how such fees are presented to a user, they are included in the definition of “sales price” as defined by Iowa Code section 423A.2(1)“k” and are subject to the hotel and motel taxes.

103.6(2) Obligations of lodging providers.

a. Rentals without lodging facilitators or lodging platforms. A lodging provider must collect and remit the hotel and motel tax on the entire sales price of the rental if the transaction does not involve a lodging facilitator or lodging platform. In transactions without lodging facilitators or lodging platforms, only the lodging provider has a hotel and motel tax collection and remittance obligation on the transaction. See example 1C below.

b. Rentals involving lodging facilitators. See subrule 103.6(3) for obligations of a lodging provider in rental transactions involving a lodging facilitator.

EXAMPLE 1A: Lodging provider. H owns a hotel located in Iowa. H offers rooms for rent to transient guests. Users can book rooms directly with H—in person, by phone, or through H’s website—or through lodging facilitators. H is a lodging provider. See Iowa Code section 423A.2(1).

REVENUE DEPARTMENT[701](cont'd)

EXAMPLE 1B: Lodging provider—property management company. M offers property management and listing services on behalf of lake homeowners. O owns a lake home. O enters into an agreement with M, under which M will manage the property, list the property for rent, enter into rental agreements with users, and receive money from users for the rental of the property.

The lake home is lodging. See Iowa Code section 423A.2(1)“e.” M is a lodging provider as a consequence of operating and managing the lodging and making the lodging available for rent. See Iowa Code section 423A.2(1)“h.” M must collect and remit the hotel and motel tax to the department.

EXAMPLE 1C: Collection and remittance by a lodging provider. H operates a hotel and is a lodging provider. A user books a room by calling H’s telephone number and paying a sales price of \$100 to rent the room for one night. H’s hotel is located in a jurisdiction with a 7 percent locally imposed hotel and motel tax. H shall charge the user \$112. H shall add the \$5 state-imposed tax as separate and apart from the sales price and separate and apart from the locally imposed tax. H shall add the \$7 locally imposed tax as separate and apart from the sales price and separate and apart from the state-imposed tax. H shall remit \$12, the total hotel and motel tax, to the department. See Iowa Code section 423A.5A.

103.6(3) Obligations of retailers in transactions involving lodging facilitators. Where a user rents lodging through a lodging facilitator, the lodging facilitator shall collect from the user the hotel and motel tax on the entire sales price paid by the user to the lodging facilitator and the lodging provider shall collect from the user the hotel and motel tax on the entire sales price paid by the user to the lodging provider. The remittance obligations of the retailers depend on whether the lodging facilitator charges the user for facilitating the user’s rental of the lodging.

a. *Remittance of tax when lodging facilitators do not charge the user a facilitation fee.* If the lodging facilitator does not charge the user a facilitation fee, the lodging facilitator shall transmit to the lodging provider the entire hotel and motel tax collected from the user. The lodging provider shall receive the hotel and motel tax transmitted from the lodging facilitator. The lodging provider shall remit that tax, together with any hotel and motel tax collected by the lodging provider directly from the user, to the department. See examples 2D and 2F below.

b. *Remittance of tax when lodging facilitators charge the user a facilitation fee.* If the lodging facilitator charges the user a facilitation fee, the lodging facilitator shall transmit to the lodging provider the portion of the hotel and motel tax attributable to the discount room charge that is charged by the lodging provider and shall remit to the department the remaining hotel and motel tax, which represents tax on the facilitation fee charged to the user. The lodging provider shall receive the hotel and motel tax transmitted from the lodging facilitator and shall remit that tax, together with any hotel and motel tax collected by the lodging provider directly from the user, to the department. See examples 2C and 2D below.

c. *Examples.*

EXAMPLE 2A: Lodging facilitator—online travel company. F operates an online travel company. On its website, F allows users to search for, book, and pay for hotel rooms. F’s website includes listings from various hotels. Users are allowed to pay for the hotel room through a checkout page on F’s website. F retains a portion of each sale as compensation for arranging the rental.

A user finds and selects a hotel room in Iowa on F’s website. The user pays for the room through F’s website. The lodging provider that owns the hotel is not an affiliate of F. The total price charged to the user includes an amount retained by F for arranging the rental of the hotel room. In this transaction, F is a lodging facilitator. See Iowa Code section 423A.2(1)“c,”“d,” and “f.” The amount F retains from the user as compensation for arranging the rental is a facilitation fee. See Iowa Code section 423A.2(1)“d.”

EXAMPLE 2B: Lodging facilitator—travel agency. T operates a travel agency. T allows customers to book hotel rooms in Iowa by coming to T’s office or by calling one of T’s agents. A user books a hotel room in Iowa through T. The user pays T a sales price of \$120. Of this amount, \$100 is consideration for renting the room. The remaining \$20 is a fee paid to T for coordinating the rental. In this transaction, T is a lodging facilitator. The \$20 fee T charges the user is a facilitation fee, which is included in the sales price. See Iowa Code section 423.2(1)“k.”

EXAMPLE 2C: Lodging rented through a lodging facilitator. H operates a hotel and is a lodging provider. F operates an online travel company and is therefore a lodging facilitator. A user books a room

REVENUE DEPARTMENT[701](cont'd)

at H's hotel through F's website. The total sales price charged to the user is \$100. The \$100 sales price includes a \$20 facilitation fee that is retained by F. H charges F a discount room charge of \$80.

The lodging is located in a jurisdiction with a locally imposed hotel and motel tax of 7 percent. The total price F must charge to the user is \$112, which is the sum of the sales price, the 5 percent state-imposed hotel and motel tax, and the 7 percent locally imposed hotel and motel tax.

F shall add the \$5 state-imposed tax as separate and apart from the sales price and separate and apart from the locally imposed tax. F shall add the \$7 locally imposed tax as separate and apart from the sales price and separate and apart from the state-imposed tax. On any document F provides to the user confirming the transaction, F must separately state the sales price (\$100), the state-imposed tax (\$5), and the locally imposed tax (\$7). See paragraph 103.6(1)“b.” F is not required to identify to the user the portion of the sales price attributable to either the discount room charge or the facilitation fee. See paragraph 103.6(1)“c.”

F shall remit to H that portion of hotel and motel taxes collected on \$80, the sales price that represents the discount room charge. See Iowa Code section 423A.5A. F remits \$9.60 hotel and motel tax (i.e., 12 percent hotel and motel tax rate \times \$80 discount room charge) to H. F remits \$2.40 hotel and motel tax (i.e., 12 percent hotel and motel tax rate \times \$20 facilitation fee) to the department. H remits the \$9.60 hotel and motel tax to the department.

EXAMPLE 2D: Additional sales price paid to a lodging provider. Assume the same facts as in example 2C. However, at check-in time, the user upgrades with H to a larger room for an additional sales price of \$50. The user pays this additional \$50 directly to H. H must charge the user \$56, which is the sum of the additional sales price, the 5 percent state-imposed hotel and motel tax, and the 7 percent locally imposed hotel and motel tax. H remits the \$6 hotel and motel tax, as well as the \$9.60 hotel and motel tax received from F as described in example 2C, to the department.

EXAMPLE 2E: Lodging rented through a travel agent who retains a fee. Assume the same facts as in example 2C. However, instead of booking the hotel room through F's online travel company, the user books the hotel room through travel agency T, and T handles the transaction the same as the online travel company in example 2C.

The result is the same as example 2C. T has the same collection and remittance obligations as F in example 2C.

EXAMPLE 2F: Lodging rented through a travel agent who only receives a commission from the hotel. H owns a hotel and is a lodging provider. A user books a room for one night at H's hotel using T, a travel agency. The total sales price is \$100. T coordinates the user's payment by collecting and transmitting the \$100 sales price plus tax from the user to H. T is a lodging facilitator. T does not retain any part of the user's \$100 payment nor impose an additional fee to the user for facilitating the transaction with H. After the user has stayed at H's hotel, T receives a \$20 commission from H. T and H are not affiliates.

The lodging is located in a jurisdiction with a locally imposed hotel and motel tax of 7 percent. The commission H pays to T is not a facilitation fee. See Iowa Code section 423A.2(1)“d” and paragraph 103.6(1)“a.” Therefore, there is no hotel and motel tax applied to the commission paid to T. T is required to collect \$12 of hotel and motel tax (12 percent combined hotel and motel tax rate \times \$100 sales price) and remit the \$12 to H when T facilitates payment of the sales price to H. H must receive the \$12 tax on the sales price from T and must then remit the entire \$12 tax to the department. T does not have an obligation to remit any hotel and motel tax to the department on this transaction.

103.6(4) *Obligations of lodging platforms.* Where a retailer is a lodging platform, the retailer must collect and remit to the department the hotel and motel tax on the entire sales price of the transaction.

EXAMPLE 3A: Lodging platform—home-sharing marketplace. Z operates a home-sharing platform. Z allows individual property owners to list rooms or entire properties with sleeping accommodations for rent to transient guests on the home-sharing platform. Users search, book, and pay for lodging through Z's platform.

O lists O's house on Z's home-sharing platform. O is not an affiliate of Z. A user books and pays for O's listing using Z's home-sharing platform. In this transaction, Z is a lodging platform. See Iowa Code section 423A.2(1)“g.”

REVENUE DEPARTMENT[701](cont'd)

EXAMPLE 3B: Lodging platform—home-sharing marketplace collection and remittance. Z operates the home-sharing platform described in example 3A. O owns a cabin in Iowa. The cabin is located in a local jurisdiction that imposes a 7 percent locally imposed hotel and motel tax. O lists O's property for short-term rentals on Z's marketplace. O offers O's property for rent for a three-day weekend for \$900. When listing O's property, O also requires the guests pay a \$20 towel fee and a \$50 cleaning fee. On this transaction, Z imposes a \$30 service charge on the user for processing the transaction on Z's website. A user reserves and pays for the cabin on Z's website.

The total sales price is \$1,000 (i.e., \$900 lake home rental + \$20 towel fee + \$50 cleaning fee + \$30 service charge) before taxes. Z must charge the user \$1,120. Z shall add the \$50 state-imposed tax as separate and apart from the sales price and separate and apart from the locally imposed tax. Z shall add the \$70 locally imposed tax as separate and apart from the sales price and separate and apart from the state-imposed tax. As a lodging platform, Z does not remit any part of the \$120 in tax to O. Z shall remit the \$120 in tax to the department. See Iowa Code section 423A.5A.

This rule is intended to implement Iowa Code sections 422.70, 423.37, and 423.39, and 2005 Iowa Code Supplement sections 423A.3, and 423A.4, and 423A.5A.

~~**701—103.8 701—103.7(423A) No property exempt from distress and sale Certification of funds.** The provisions of Iowa Code section 422.26 apply with respect to a tax liability determined to be due by the department. The department shall proceed to collect the tax liability after it has become delinquent; and no property of the taxpayer is exempt from the process whereby the tax is collected.~~

103.7(1) Certification of funds. Within 45 days after the date that the quarterly returns and payments are due, the director will certify to the treasurer of state the amount of locally imposed tax to be transferred from the general fund to the local transient guest tax fund that is to be distributed to each city, county, and land use district that has adopted the tax. Payments received after the date of certification will remain in the general fund until the next quarterly certification.

103.7(2) Revenues credited to local fund. All locally imposed hotel and motel tax revenues received under Iowa Code chapter 423A are to be credited to the local transient guest tax fund. Revenues include all interest and penalties applicable to any locally imposed hotel and motel tax report or remittance, whether resulting from delinquencies or audits.

This rule is intended to implement Iowa Code sections 422.26 and 423.42 and 2005 Iowa Code Supplement sections 423A.3 and 423A.4 section 423A.7.

~~**701—103.9(423A) Information confidential.** When requested to do so by any person having a legitimate interest in such information, the department shall, after being presented with sufficient proof of the entire situation, disclose to such person the amount of unpaid taxes due by a taxpayer. Such person shall provide the department with sufficient proof consisting of all relevant facts and the reason or reasons for seeking information as to the amount of unpaid taxes due by the taxpayer. The information sought shall not be disclosed if the department determines that the person requesting information does not have a legitimate interest. The director may also authorize the examination of returns filed by a retailer by (1) other officers of the state of Iowa, (2) tax officers of another state if a reciprocal arrangement exists, or (3) tax officers of the federal government if a reciprocal arrangement exists. The director is also empowered to publish annual statistical reports relating to the operation of the tax. See rule 701—6.3(17A).~~

~~All other information obtained by employees of the department in the performance of their official duties is confidential as provided by law and cannot be disclosed.~~

~~This rule is intended to implement Iowa Code section 422.72 and 2005 Iowa Code Supplement sections 423A.3 and 423A.4.~~

~~**701—103.10(423A) Bonding procedure.** The director may, when necessary and advisable in order to secure the collection of the tax, require any person subject to the tax to file with the department a bond in an amount which the director may fix, or in lieu of such bond, securities approved by the director in an amount which the director may prescribe.~~

REVENUE DEPARTMENT[701](cont'd)

~~The determination of when and in what amount a bond is required will be determined pursuant to rule 701—11.10(422). The bond required under this rule and rule 701—11.10(422) shall be a single requirement with the amount to be determined with reference to both the potential state imposed tax (see 701—Chapter 241) and the locally imposed tax liabilities, plus any applicable local option taxes. Whether or not the person required to post the bond files a monthly deposit for state imposed tax purposes, the basis for determining the locally imposed tax portion of the bond shall be an amount sufficient to cover nine months or three quarters of tax liability.~~

~~This rule is intended to implement Iowa Code section 423.35 and 2005 Iowa Code Supplement sections 423A.3 and 423A.4.~~

~~**701—103.11(423A) Sales tax.** The hotel and motel tax is levied in addition to the state sales tax imposed in Iowa Code chapter 423. Additionally, the director of revenue is required to administer the hotel and motel tax as nearly as possible in conjunction with the administration of the state sales tax law except that portion of the law which implements the streamlined sales and use tax agreement. See 701—Chapters 12 to 14 for details. The computation of the tax shall be based on the sales price of the room excluding the sales tax.~~

~~This rule is intended to implement 2005 Iowa Code Supplement sections 423A.3, 423A.4, and 423A.6.~~

~~**701—103.12(423A) Judicial review.** Judicial review of actions of the director may be sought in accordance with the terms of the Iowa administrative procedure Act in a manner similar to that provided for review of sales tax matter. See 701—Chapter 7 for details.~~

~~This rule is intended to implement Iowa Code section 423.38 and 2005 Iowa Code Supplement sections 423A.3 and 423A.4.~~

~~**701—103.13(423A) Registration.** All persons who are required to collect and remit the locally imposed tax are required to register with the department as a hotel and motel tax collector.~~

~~This rule is intended to implement 2005 Iowa Code Supplement section 423A.6.~~

~~**701—103.14(423A) Notification.** Before the local option hotel and motel tax of a city, county, or land use district can become effective, be revised, or be repealed, 45 days' notice of such action must be given to the director in writing by mail.~~

~~This rule is intended to implement Iowa Code section 423A.4.~~

~~**701—103.15(423A) Certification of funds.** Within 45 days after the date that the quarterly returns and payments are due, the director will certify to the treasurer of state the amount of locally imposed tax to be transferred from the general fund to the local transient guest tax fund, which is to be distributed to each city, county, and land use district that has adopted the tax. Payments received after the date of certification will remain in the general fund until the next quarterly certification.~~

~~This rule is intended to implement Iowa Code section 423A.7.~~

ITEM 2. Rescind and reserve **701—Chapter 104.**

ITEM 3. Rescind and reserve **701—Chapter 105.**

ITEM 4. Rescind and reserve rules **701—241.3(423A) to 701—241.5(423A).**

[Filed 11/21/18, effective 1/23/19]

[Published 12/19/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/19/18.