



Administrative Rules Review Committee

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THE RULES DIGEST

July 2010

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Senate Committee Room #116

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XXXII IAB No. 26(06/16/10)
XXXII IAB No. 27(06/30/10)

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IOWA FINANCE AUTHORITY

9:35

Iowa jobs II program, IAB Vol. XXXII, No. 27, ARC 8890B, NOTICE.

This rulemaking implements 2010 Iowa Acts, Senate File 2389, by adopting rules related to the governance of the Iowa Jobs II Program. The Iowa Jobs Board is charged with establishing, overseeing, and providing approval of the administration of the Iowa Jobs II Program. The rules specify that the Board will encourage and support public construction projects relating to disaster prevention. The total amount of allocations for disaster prevention projects shall not exceed \$30 million for the fiscal year beginning July 1, 2010.

The proposed rules outline the application process and criteria for the Iowa Jobs II Program, including requirements relating to the coordination with state, local, and private funds. Under the proposed rules, eligible applicants for Iowa Jobs II local infrastructure competitive grant program funds shall be Iowa cities and counties that apply smart planning principles and guidelines. For a project to be eligible to receive a competitive grant under the program, the project must be a public construction project relating to disaster prevention which will have a demonstrated substantial local, regional, or statewide economic impact. Competitive grants are limited as follows:

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- Up to 90 percent of the first \$500,000 in total cost of the development and completion of a public construction project relating to disaster prevention;
- Up to 50 percent of all additional costs of such project;
- An applicant or a combination of applicants for a project within the same county shall not be awarded more than 40 percent of the funds available under the program.

Applications for the program will be reviewed and scored in rounds. The deadline for submission for the first round of applications is August 2, 2010. Subsequent rounds, if any, shall be at the discretion of the Board as funding is available. Review of applications is done by a review committee and then recommendations are provided to the Board. The review committee evaluates and ranks applications based on:

- The total number and quality of jobs to be created and the benefits likely to accrue to areas distressed by high unemployment.
- Financial feasibility, including the ability of projects to fund depreciation costs or replacement reserves, and the availability of other federal, state, local, and private sources of funds.
- Sustainability and energy efficiency.
- Benefits for disaster prevention.
- The project's readiness to proceed.
- General scoring criteria if the other criteria is not applicable to a proposed project.

The rules also specify the conditions of receiving an of Iowa Jobs II grant and the methodology for calculating jobs created.

ECONOMIC DEVELOPMENT DEPARTMENT

10:00

Iowa innovation council, IAB Vol. XXXII, No. 26 ARC 8850B, FILED EMERGENCY.

This new entity was established in 2010 Iowa Acts, House File 2076, §4, to advise the Department on the development and implementation of public policies that enhance innovation and entrepreneurship in the targeted industries. The Council consists of 29 members, representing a cross-section of business, academia and government.

The rules create an Executive Committee to handle the day-to-day business of the Council. The Executive Committee consists of the chief technology officer, vice-chairperson of the council, director of the department, and four members of the council selected by the Board.

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Iowa jobs main street program (Iowa Jobs II), IAB Vol. XXXII, No. 27, ARC 8921B, Notice, ARC 8922B, FILED EMERGENCY.

This rulemaking implements a new grant program through the existing Iowa Main Street Program within the Community Development Division of the Department. The rules describe criteria for the Director's determination of high-priority projects eligible for funding through the Iowa Jobs II Program implemented by 2010 Iowa Acts, Senate File 2389. The highest-priority list includes those projects that have

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previously applied for funding consideration or have received partial funding for façade master plans to rehabilitate storefronts in Iowa main street districts; that complete streetscape projects where planning and the majority of funding are already secure; that are unfunded main street challenge grant projects; and other building rehabilitation projects.

Under the rules, additional priority criteria include projects currently under construction or projects that could be under construction within 60 days of award, projects that could be completed within the grant period of 18 months from the date of award, projects with a broad base of funding outside the public investment, projects utilizing state or federal historic tax credits, projects that conform to the state of Iowa's Green Streets Criteria, projects that are a key structure or group of structures in a historic commercial district, and projects likely to result in job creation or revenue increases for the community. Consideration will also be given to those projects that are identified in an Iowa great places agreement.

The rules also detail the timing of grants under the program, ineligible costs, and audit, reporting, and compliance requirements.

* * *

Iowa small business loan program, IAB Vol. XXXII, No. 27, ARC 8919B, Notice, ARC 8920B, FILED EMERGENCY.

This rulemaking implements a new small business loan program to promote the creation and retention of jobs in Iowa's economy and to assist businesses to be more competitive. The rules establish the process by which a business shall apply for, receive and manage loan funds under this program. The General Assembly appropriated to the Department \$5 million for the program. According to the rules, the "purpose of the program is to promote the creation and retention of jobs in the state's economy and to assist businesses to be more competitive by aiding entrepreneurs and small businesses in their efforts to upgrade or modernize equipment; realize additional efficiencies in their supply chains; improve their distribution and transportation margins; reduce facility costs through increased energy efficiency; and leverage other sources of business financing."

The rules specify that the Department may enter into an agreement with and thereby designate certain nonprofit organizations to administer portions of the program. The rules identify specific terms and limitations for general loans made under the program, including loan amounts, interest rates, security requirements, and the length of the loan. The rules also identify unallowable uses for the proceeds from such loans.

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An Iowa small business is eligible to apply for a loan under the program provided it meets the following requirements:

- Has a business plan and has received assistance from an Iowa small business development center or qualified public or nonprofit business consultant.
- Is not in violation of environmental or worker safety laws or rules, if the business has been incorporated for at least two years.
- Employs only workers legally authorized to work in the state.
- Does not engage in the production, depiction or distribution of obscene material.
- Is not in bankruptcy or imminently contemplating filing for bankruptcy.
- Has a demonstrated need for the funds and will use them for an authorized purpose.

The rules also outline the application process, including all required application documentation. Startup businesses are required to submit additional information when applying for the program. Applications will be reviewed based on the quality of the business plan and whether it projects a positive cash flow after the loan repayment, cash flow of the business, credit score of the owners of the business, value and quality of collateral, education and experience of the owner, quality and results of a marketing plan, and the legal history of the owners.

The rules specify that the loans are not forgivable and also include provisions related to defaulting on a loan under the program.

ENVIRONMENTAL PROTECTION COMMISSION

10:20

Air quality standards, IAB Vol. XXXII, No. 26 ARC 8845B, NOTICE.

This rulemaking proposes various changes to the EPC's chapters relating to emission standards for contaminants, excess emissions, and ambient air quality standards. According to the EPC, the primary purpose of the proposed amendments is to update state air quality rules by adopting new federal requirements, including adoption of new national ambient air quality standards (NAAQS) and adoption of new federal air toxics standards. The proposed amendments also provide the option to submit initial excess emission reports by E-mail.

The proposed rules adopt by reference the federal new source performance standards (NSPS). The NSPS program requires new and existing facilities in a particular industry sector that construct and operate specific equipment to meet uniform standards for air pollutant emissions. NSPS requirements vary depending on the processes, activities or equipment being regulated, and whether the processes, activities or equipment is considered to be new or existing. This adopts by reference federal amendments to two existing new source performance standards relating to nonmetallic mineral processing plants and coal preparation and processing plants. EPA promulgated amendments to an additional NSPS for new hospital and medical waste incinerators that the EPC is not

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proposing to adopt because Iowa no longer has any operating incinerators that would be affected and does not anticipate any new ones being established.

The rulemaking also proposes various changes to ensure that the Iowa regulations are consistent with recent federal amendments and includes estimates of the impact of this rulemaking on existing facilities in Iowa. The Department's outreach strategy will be specific to each rule and will depend on a number of factors, including: the estimated number of facilities and small businesses affected, the compliance date of the rule, the requirements of the rule, and current level of air quality knowledge.

The federal EPA amended the regulations for certain reciprocating internal combustion engines to include requirements to control hazardous air pollutant emissions from certain engines that were not previously covered. The federal amendments apply to stationary existing diesel engines located at both area sources and major sources that meet specific siting, age, and size criteria. The Department estimates that thousands of existing stationary diesel engines may be affected by these changes. However, many of these engines will be subject only to work practice or management standards, such as regular oil changes. Compliance for this portion of the rules is not until May 2013.

The EPC is proposing to adopt by reference three newly promulgated standards for area sources for chemical manufacturing, paint and allied products manufacturing, and prepared feeds manufacturing. The EPC is also proposing to adopt by reference new national ambient air quality standards, including those related to nitrogen dioxide.

The rules also propose amendments to the requirements for oral reporting of excess emissions by allowing the owner or operator to submit the required initial excess emissions information to the Department by e-mail. In all cases, however, owners and operators will still be allowed to make an initial report of excess emissions in person or by telephone.

NATURAL RESOURCE COMMISSION

10:40

Furbearer hunting and trapping, IAB Vol. XXXII, No. 27, ARC 8889B, ADOPTED.

This rulemaking revises season dates, bag limits, possession limits and areas open to hunting or trapping furbearers. The amendments add Adair, Cass, Guthrie, Keokuk, Louisa, Madison, Mahaska, Marion, Warren, and Washington Counties to the open area for taking bobcats and increase the quota from 200 to 250.

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MEDICINE BOARD
11:15

Interventional chronic pain management, IAB XXXII No. 27 ARC 8918B, ADOPTED.

This adopted rule is the culmination of a two-year effort, first in a policy statement and now by rule, to detail the practice of chronic pain management. At issue in this and two other rulemaking efforts, by the Board of Nursing and the Department of Public Health, is the role of a physician and an advanced registered nurse practitioner (ARNP) in chronic pain management. An ARNP has completed a formal advanced practice education program of nursing in a specialty area in one of the following specialities: certified clinical nurse specialist; certified nurse-midwife; certified nurse practitioner; and certified registered nurse anesthetist.

The Nursing Board has adopted rules allowing an ARNP to provide direct supervision in the use of fluoroscopic x-ray equipment. These rules state that an advanced registered nurse practitioner can provide direct supervision in the use of fluoroscopic x-ray equipment; the rules then set out some training and documentation requirements. Fluoroscopy is a procedure used in chronic pain management.

The Department of Public Health has also adopted a rule amendment that allows all ARNPs to supervise radiology technicians and students for the use of fluoroscopy. The public health rule complements the Board of Nursing's new rule. Both of these rulemaking efforts were opposed by physician stakeholders who contended that the supervision of fluoroscopy was the *exclusive* practice of medicine.

The Board of Medicine now completes action on standards of practice for the practice of interventional chronic pain management. The rule sets out a detailed definition of the term “*interventional chronic pain management.*” In part, the definition states that:

“Interventional chronic pain management” means the diagnosis and treatment of pain-related disorders with the application of interventional techniques in managing subacute, chronic, persistent, and intractable pain.”

The definition sets out the techniques used in pain management and provides examples of those techniques in use. The rule also describes the process of pain management: comprehensive patient assessment, pain diagnosis, evaluation and selection of treatment options, termination of treatment when appropriate, follow-up care, and collaboration with other health care providers. The extensive definition specifically includes fluoroscopy:

“Interventional chronic pain management includes the use of fluoroscopy when it is used to assess the cause of a patient’s chronic pain or when it is used to identify anatomic landmarks during interventional techniques.”

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These rules are within the authority of the Board; traditionally the practice of medicine embraces the whole of the healing arts, and for that reason the board is free to detail the practice in rule when such detail may be reasonable and appropriate. The fact that the General Assembly did not enact specific legislation relating to pain management does not preclude Board action.

The only issue in these rules is the phrase “[i]nterventional chronic pain management is the practice of medicine.” The phrase does not use the modifiers such as "sole" or "exclusive" in the assertion that interventional chronic pain management is the practice of medicine. Stakeholders contend the phrase is ambiguous because it does not indicate how the board will interpret this language as it might relate to the practice of nursing or other health-care professions.

* * *

Standards of practice—medical directors at medical spas, IAB Vol. XXXII, No. 27 ARC 8925B, NOTICE

The Board proposes practice standards specific to a physician serving as the medical director at a facility offering medical aesthetic services. Such a facility is referred to as a spa and offers a variety of medical-type skin treatments, including such procedures as laser treatments, chemical peels, microdermabrasion, botox injects and tattoo removal.

The rules clearly state that a medical aesthetic service is the practice of medicine and can be only be performed by a “qualified licensed or certified” individual if the service has been delegated by the medical director responsible for supervision of the services performed. That individual must hold an appropriate license or certificate from another Iowa licensing board (e.g.: licensed cosmetologist or esthetician).

The supervising physician may delegate the provision of a medical aesthetic service only if that service is:

- Within the delegating physicians' scope of practice and medical competence;
- a service that a reasonable and prudent physician would conclude is within the scope of sound medical judgment to delegate; and
- a routine and technical service which does not require the skill of a physician.

The proposed rules establish numerous and detailed standards for supervision. Direct in-person supervision is required for at least four hours each week, and the supervising physician must be available, in person or electronically, at all times. The supervising physician must be located within sixty miles of the spa and must review at least 10 percent of all patient charts. The supervising physician must ensure that the individual providing the esthetic service is properly trained, licensed and competent to perform the service.

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PUBLIC HEALTH DEPARTMENT

1:15

State plumbing code, IAB Vol. XXXII, No. 26, ARC 8860B, ADOPTED.

The Plumbing and Mechanical Systems Board implements changes to chapter 25, “State Plumbing Code.” Chapter 25 describes the minimum standards for plumbing materials and plumbing methods in buildings and on premises in Iowa. Unlike the building code, the state plumbing code is applicable to the plumbing in buildings or on premises within cities and to plumbing in a building or on premises located outside the corporate limits of any city if the building or premises is served by an individual connection to a municipally owned water distribution system or wastewater collection system.

A committee of the Plumbing and Mechanical Systems Board was formed to revise the rules. The committee solicited input from stakeholders starting in August 2009, including representatives of the national model codes, architects, building and plumbing officials, developers and building contractors, plumbing contractors, the organized plumbing trade, and individual tradespersons.

This rulemaking proposes the following major changes to the existing rules:

- Certain current rules reference the Uniform Plumbing Code, 2000 Edition. The references are updated to the Uniform Plumbing Code, 2009 Edition.
- The code will include storm drainage provisions and standards for nonpotable water reuse systems.
- The fuel piping provisions of the Uniform Plumbing Code will be included subject to the requirements of the State Fire Marshal.
- New rule 641—25.2 applies the provisions of the code to all buildings and premises in Iowa.
- The new rules reference Uniform Plumbing Code, 2009 Edition, Chapter 12, as the standard for fuel gas piping but establishes the primacy of rules promulgated by the State Fire Marshal Division, Iowa Department of Public Safety.
- Certain previously adopted amendments to the Uniform Plumbing Code are eliminated because of changes in the 2009 Edition and to limit the number of amendments to the extent practical.
- The new rules replace the section and table in the Uniform Plumbing Code specifying required plumbing fixtures with the equivalent section and table from the International Plumbing Code, 2009 Edition.

Following public comment these rules were adopted by the Plumbing and Mechanical Systems Board without change.

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Contested cases, IAB Vol. XXXII, No. 26, ARC 8861B, NOTICE.

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The Plumbing and Mechanical Systems Board proposes a contested case process for handling licensing discipline matters. This is “boilerplate” language, but it provides an excellent overview of the trial-type process used in licensing discipline. Disciplinary action against a licensee begins when the Board, reviewing the allegations and the investigative file, finds there is “probable cause” for taking action; the contested case process is then commenced by the filing and service of a statement of charges.

The respondent (licensee) must demand an evidentiary contested case hearing. The respondent may be represented by legal counsel at the respondent’s own expense; the Attorney General represents the state. There are no public defenders in administrative law hearings, which are civil, not criminal proceedings.

The presiding officer (judge) can be either the board itself, a panel of not less than three licensed board members who are or a panel of non-board member specialists. An administrative law judge may be appointed to assist the board or panel. The final decision rests with the board. When a majority of the members of the board presides over the hearing, its decision is a final decision. When a panel presides, it will issue a proposed decision which shall include proposed findings of fact, conclusions of law, and the order. A panel made up of experts will issue only findings of facts but shall not include conclusions of law or any recommendation for or against the licensee discipline. A proposed panel decision may be appealed to the full board by either party.

The presiding officer must be free from bias against the respondent; cannot have investigated, prosecuted, or advocated, in connection with that case, cannot have any personal interest in the case; or be related within the third degree of relationship to anyone involved in the case.

In non-disciplinary hearings, such as initial license denial, the respondent may request that the presiding officer be an administrative law judge. Rulings by an administrative law judge are subject to appeal to the board.

Discovery and subpoenas are available to all parties in a contested case. Subpoenas are issued by the agency administrator upon written request. At the discretion of the Board, challenges to a subpoena may be decided by an administrative law judge.

The hearing is recorded and is open to the public unless the respondent requests in writing that a licensee disciplinary hearing be closed to the public.

PUBLIC SAFETY DEPARTMENT

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Fire protection system installer and maintenance worker licensing program, IAB Vol. XXXII, No. 26

ARC 8855B, NOTICE

2009 Iowa Acts, chapter 1094, as amended by 2009 Iowa Acts, House File 400 provide for the licensing of fire protection system installers and maintenance workers.

The licensing requirements do not apply to:

- A licensed professional engineer providing consultation or develops planning services;
- A person whose work on fire protection systems is limited to routine maintenance;
- licensed plumber performing work within the scope of that license;
- An employee of a certified fire extinguishing system contractor who is working as an apprentice sprinkler fitter under the direct supervision of a licensed fire sprinkler installer and maintenance worker;
- A person who demolishes fire protection system components when the work involves the demolition of a complete fire protection system or if the work results in a fire protection system's being placed out of service;
- A person who is a responsible managing employee of a fire extinguishing system contractor.

Rules were initially noticed in September, 2009; due to extensive public comment that notice was terminated. The 2009 legislation has been supplemented by the enactment of 2010 Iowa Acts, Senate File 2355. That Act provides that a person is not required to be licensed in order to perform routine maintenance or demolish part of a system or a partial system, provided that the system is taken out of service. Restoration work must be performed by a licensed person or a responsible managing employee. Routine maintenance does not mean any new installation or any expansion or extension of any existing fire protection system, nor does it mean inspection and testing.

The state fire marshal is required to issue a fire protection system installer and maintenance worker license with endorsements restricted to pre-engineered fire protection systems applicants who do not qualify for a general license. The Act sets out alternative requirements for this specialized license.

The fee for a permanent or provisional license is \$250. Licensure is for a two year period and may include a variety of endorsements for additional specialties, which include: automatic sprinkler systems, special hazards fire suppression, or pre-engineered dry chemical or wet agent systems. There is an additional fee of \$25 for each endorsement beyond the first. Licensees must carry liability insurance in the following amounts: \$500,000 per person, \$1,000,000 per occurrence, and \$1,000,000 property damage.

The proposed rules resolve a potential problem relating to apprenticeship. Iowa Code §100D.3(1) requires that an applicant for licensure complete a United States department of labor apprenticeship program. Under the rules, if no such program is readily

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available for a particular endorsement, the fire marshal may allow the substitution of documentation of 8500 hours or more of employment in installation and maintenance of special hazards systems in lieu of meeting the apprenticeship requirement.

HUMAN SERVICES DEPARTMENT

2:00

HCBS costs-2.5% margin, IAB Vol. XXXII, No. 27, ARC 8899B, FILED EMERGENCY.

The Department emergency adopts a series of changes to provider reimbursement rates. At issue is item #13, which strikes a provision which allows HCBS and certain other providers to retain 2.5% of any revenue in excess of adjusted actual cost. Providers contend this float is necessary because costs are settled retrospectively, meaning that reimbursement is based on past, not current cost. They contend that it can be 12-18 months before the cost report is approved and the rate increased. Providers maintain the 2.5% margin is needed to meet *current* cost increases. The Department states that the filing continue the rate reductions instituted in December 2009 pursuant to Executive Order 19 for state fiscal year 2011.

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Facility Assessments, IAB Vol. XXXII, No. 27, ARC 8896B, Notice, ARC 8894B, FILED EMERGENCY.

This rulemaking implements a health care access assessment for hospitals other than state-owned hospitals and critical access hospitals and makes corresponding adjustments to payment rates for those participating hospitals. 2010 Iowa Acts, Senate File 2388, directed the Department to implement and collect this hospital assessment.

The Department conducted a review of several models of hospital assessments and revised parameters in consultation with hospital industry representatives. Based on this review, the Department has chosen the model described in this rulemaking. Implementation of the amendments, however, is conditional upon federal approval by the Centers for Medicare and Medicaid Services.

The health care access assessment rate for a participating hospital will be calculated as 1.26 percent of net patient revenue as specified in the hospital's Medicare cost report for fiscal year 2008. The hospital pays the assessment to the Department on a quarterly basis, no later than 30 days following the end of each calendar quarter. The reimbursement methodology for participating hospitals is modified to provide a health care access assessment inflation factor that is applied to the inpatient diagnosis-related group rates and outpatient ambulatory payment classification base rates.

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These amendments define terms such as “participating hospital” and “net patient revenue,” specify penalties for failing to pay the assessment amount, identify conditions for the termination of the health care access assessment, and include technical changes to update the rules.

ACCOUNTANCY EXAMINING BOARD

No Rep

Continuing education, IAB Vol. XXXII, No. 26 ARC 8835-36B, NOTICE.

The Board re-writes existing rules relating to continuing education requirements for accountants. Both certified public accountants and licensed public accountants must complete required continuing education on a three year cycle. Subjects include accounting, assurance/auditing, consulting services, specialized knowledge and applications, management, taxation, and ethics. Other subjects may be approved by the board on a case-by-case basis. 120 hours (50 minute periods) are required for license renewal over a three year period. Fifty percent of the required hours can come from formal correspondence or self study courses, or from passing certain professional examinations. Twenty-five percent of the required credit may be awarded for published articles and books.

Every licensee must complete a minimum of four hours of continuing education devoted to ethics and rules of professional conduct. Additional requirements are imposed on licensees who are responsible for supervising compilation services or who signs or authorizes someone to sign the accountant’s compilation report on the financial statements.

* * *

Professional ethics, IAB Vol. XXXII, No. 26 ARC 8836B, NOTICE.

In this second proposal the Board, in consultation with stakeholder groups, re-writes existing rules relating to professional ethics. The rules provide ethical guidance in the areas of public interest, integrity, professional objectivity, due care in the performance of all professional activities, competence, confidentiality, and independence. Additional rules relate to record retention, advertising, reporting of unlawful activity, fees, and accounting standards. Specific rules detail standards for audit, review and other attest services, compilation of financial information, tax practice, and consulting, advisory and other accounting services.

PHARMACY BOARD

No Rep

Controlled substances, IAB Vol. XXXII, No. 27, ARC 8892B, ADOPTED.

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These revisions clarify the form of identification to be reviewed by a pharmacist prior to dispensing products containing ephedrine, pseudoephedrine, or phenylpropanolamine without a prescription and provide that purchase records be recorded in the real-time electronic repository established by the Governor's Office of Drug Control Policy (see: ARC 8893B). The amendments also establish the format and content of an alternate record to be maintained if the real-time electronic repository is temporarily unavailable for use and provide for a notice to purchasers warning of criminal penalties if a purchaser is found in violation of laws relating to the purchase of ephedrine, pseudoephedrine, or phenylpropanolamine.

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Iowa real-time electronic pseudoephedrine tracking system, IAB Vol. XXXII, No. 27, ARC 8893B,
ADOPTED.

These rules establish a real-time electronic repository to monitor and control the sale of Schedule V products that are not listed in another controlled substance schedule and that contain any detectible amount of pseudoephedrine, its salts, or optical isomers, or salts of optical isomers; ephedrine; or phenylpropanolamine. In addition, the proposed rules identify the responsibilities of the parties involved. A pharmacy dispensing such products shall electronically report all such sales to a central repository under the control and administration of the Office of Drug Control Policy.

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Uncertified pharmacy technician, IAB Vol. XXXII, No. 27, ARC 8891B, NOTICE.

Iowa law requires that pharmacy technicians attain nation certification; 2010 Iowa Acts, House File 2531 extends the deadline for that certification to December 31, 2013 for a pharmacy technician who was registered prior to January 1, 2010, and who worked as a pharmacy technician for a minimum 2,000 hours during the 18-month period prior to registration and who continues to work a minimum 2,000 hours during any 18-month period.

The duties of an uncertified technician are more limited than those of a certified technician and are specified in the rule.