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The Iowa Administrative Code Supplement is published biweekly pursuant to Iowa Code section 17A.6. The Supplement contains replacement chapters to be inserted in the loose-leaf Iowa Administrative Code (IAC) according to instructions included with each Supplement. The replacement chapters incorporate rule changes which have been adopted by the agencies and filed with the Administrative Rules Coordinator as provided in Iowa Code sections 7.17 and 17A.4 to 17A.6. To determine the specific changes in the rules, refer to the Iowa Administrative Bulletin bearing the same publication date.

In addition to the changes adopted by agencies, the replacement chapters may reflect objection to a rule or a portion of a rule filed by the Administrative Rules Review Committee (ARRC), the Governor, or the Attorney General pursuant to Iowa Code section 17A.4(6); an effective date delay imposed by the ARRC pursuant to section 17A.4(7) or 17A.8(9); rescission of a rule by the Governor pursuant to section 17A.4(8); or nullification of a rule by the General Assembly pursuant to Article III, section 40, of the Constitution of the State of Iowa.

The Supplement may also contain replacement pages for the IAC Index or the Uniform Rules on Agency Procedure.

INSTRUCTIONS

FOR UPDATING THE

IOWA ADMINISTRATIVE CODE

Agency names and numbers in bold below correspond to the divider tabs in the IAC binders. New and replacement chapters included in this Supplement are listed below. Carefully remove and insert chapters accordingly.

Editor's telephone (515)281-3355 or (515)242-6873

Agriculture and Land Stewardship Department[21]

Replace Chapter 62

Engineering and Land Surveying Examining Board[193C]

Replace Chapter 8

Economic Development Authority[261]

Replace Analysis

Replace Chapter 76

Remove Reserved Chapter 112 and Chapter 113

Insert Reserved Chapters 112 and 113

Replace Chapter 187

Remove Reserved Chapters 403 to 409 and Chapter 410

Insert Reserved Chapters 403 to 410

College Student Aid Commission[283]

Replace Analysis

Remove Reserved Chapters 28 to 31

Insert Chapter 28 and Reserved Chapters 29 to 31

Public Employment Relations Board[621]

Replace Analysis

Replace Chapters 1 to 3

Replace Chapters 6 and 7

Replace Chapters 9 to 11

Remove Reserved Chapter 13

Insert Reserved Chapters 13 to 15 and Chapter 16

Pharmacy Board[657]

Replace Chapter 8

Replace Chapter 10

CHAPTER 62
REGISTRATION OF IOWA-FOALED
HORSES AND IOWA-WHELPEL DOGS
[Prior to 7/27/88, see Agriculture Department 30—Ch 14]

21—62.1(99D) Definitions. For purposes of this chapter, unless a different meaning is clearly indicated by the context:

“*Breeder of a foal*” means the owner of the brood mare at the time the foal is dropped.

“*Breeder of a greyhound dog*” means the owner of the pup(s) at the time of whelping.

“*Department*” means the Iowa department of agriculture and land stewardship.

“*Onionskin*” means an original individual greyhound application form of the National Greyhound Association.

“*Owner of a thoroughbred stallion,*” “*owner of a standardbred stallion*” or “*owner of a quarter horse stallion*” means the person who owns at least 51 percent of a thoroughbred, standardbred or quarter horse stallion for one service season or more.

“*Secretary*” means the Iowa secretary of agriculture.

[ARC 1582C, IAB 8/20/14, effective 9/24/14]

21—62.2(99D) Iowa horse and dog breeders’ fund and Iowa thoroughbred horse breeders’ promotion fund. Iowa-foaled horses and Iowa-whelped dog records and breeder payments:

The department will establish and maintain a records system entitled the “Iowa Horse and Dog Breeders’ Fund.” This records system will feature a list of thoroughbred, standardbred and quarter horses who have qualified to be Iowa-foaled horses, as well as a listing of all greyhound dogs that have qualified to be Iowa-whelped dogs.

A sum equal to 12 percent of the purse won by an Iowa-foaled horse or Iowa-whelped dog shall be used to promote the horse and dog breeding industries. This percentage shall be applicable to all races that are limited to Iowa-foaled horses or Iowa-whelped dogs as well as all other races which are won by Iowa-foaled horses or Iowa-whelped dogs.

The 12 percent shall be withheld by the licensee from the breakage and shall be paid at the end of the race meeting to the state department of agriculture and land stewardship which, in turn, shall deposit the 12 percent in a special fund to be known as the “Iowa Horse and Dog Breeders’ Fund” and pay the 12 percent by December 31 of each calendar year to the breeder of the winning Iowa-foaled horse or the breeder of the Iowa-whelped dog.

A sum equal to 6 percent of the purse won by an Iowa-foaled thoroughbred horse shall be used as a supplement to promote the thoroughbred horse breeding industries for horses placing second through fourth place. This percentage shall be applicable to all thoroughbred races that are held at Prairie Meadows racetrack.

The 6 percent supplement shall be withheld by the licensee from the horse breeders’ fund for thoroughbreds and shall be paid at the end of the race meeting to the state department of agriculture and land stewardship which, in turn, shall deposit it in a special fund to be known as the “Iowa Thoroughbred Horse Breeders’ Promotion Fund.” This fund will pay 6 percent of the money earned to each horse placing second, third and fourth place by December 31 of each calendar year to the breeder of the Iowa-foaled thoroughbred horse.

62.2(1) All foals/horses qualified through the department to be Iowa-foaled horses and dogs qualified to be Iowa-whelped will be listed by a department registration number. The Iowa-foaled horse mare breeder(s) at the time of foaling, or the owner of the standardbred and quarter horse brood mare at the time of breeding, or the owner of the dog, as a pup, at the time of whelping, shall be properly recorded with a registration number.

62.2(2) A race track licensee shall hold at least one race on each racing day limited to Iowa-foaled horses or Iowa-whelped dogs. However, if sufficient competition cannot be had among that class of horses or dogs on any day, another race for the day may be substituted.

62.2(3) As the department receives this money from the licensee, the department shall credit each horse or dog, by registration number, with the amount. At the end of each calendar year, the department

shall pay the amount credited to winning Iowa-foaled horses or Iowa-whelped dogs to the Iowa-foaled horse breeder or to the Iowa-whelped dog breeder.

62.2(4) The department will implement and maintain a system of keeping the Iowa state racing commission informed and updated relative to all horses and dogs which are eligible to race as Iowa foaled or Iowa whelped.

62.2(5) The department shall have the authority to inspect the premises to verify that the animals are maintained under conditions appropriate to each species to ensure that the animals are properly cared for and that the standards of proper animal welfare are met.

[ARC 9978B, IAB 1/25/12, effective 1/5/12]

21—62.3(99D) Forms. The following forms to qualify thoroughbred, standardbred and quarter horses as registered and certified Iowa-foaled horses and to qualify dogs as registered and certified Iowa-whelped dogs are available and can be obtained from the department. The forms shall provide for the applicant to certify the truthfulness and accuracy of the information.

62.3(1) *Thoroughbred, standardbred, quarter horse.*

- a. Application for Iowa Stallion Eligibility Certificate, Form S-1.
- b. Iowa Stallion Eligibility Certificate, Form S-2.
- c. Record of Mares Bred, Form S-3.
- d. Brood Mare Registration Application, Form M-4.
- e. Mare Status Report, Form M-5.
- f. Mare Transfer of Ownership, Form M-6.
- g. Application for Iowa-foaled Registration, Form I-6.
- h. Certificate for Iowa-foaled Status, Form I-7.

62.3(2) *Greyhound.*

- a. Application for Iowa-whelped Litter Registration, Form GH-1.
- b. Application for Iowa-whelped Individual Registration, Form GH-2.
- c. Bitch Information Report, Form GH-3.

21—62.4(99D) Disciplinary actions.

62.4(1) A person shall not knowingly provide false information to the department. If the department finds that a person knowingly furnished false information to the department relating to the registration of a horse or dog under these rules, then the department may deny, temporarily suspend, or permanently suspend all registrations and eligibility certificates by or on behalf of the person. The department may withhold payment of breeder's awards to a breeder if the breeder is not in compliance with Iowa Code chapter 162, 717, or 717B or rules adopted pursuant to those chapters. If a breeder does not come into compliance, the department may deny the registration of a breeder's litters, dogs or foals. In addition, the department may temporarily or permanently suspend previously approved registrations.

62.4(2) Upon receipt of information from the Iowa racing and gaming commission that a person has been disqualified from licensure (suspended for 365 days or denied), the department shall deny, temporarily suspend, or permanently suspend all registrations and eligibility certificates by or on behalf of the person. The department may determine horses certified as Iowa-foaled horses or dogs certified as Iowa-whelped dogs prior to commission action are eligible to race as Iowa-foaled or Iowa-whelped; however, the disqualified person is denied receipt of moneys from the Iowa horse and dog breeders' fund. If the Iowa racing and gaming commission subsequently grants licensing privileges to a previously disqualified person, the department shall make an independent determination as to the person's eligibility to have registrations and eligibility certificates by or on behalf of the person reinstated or granted.

62.4(3) Whenever action is taken under this rule, the department shall remit the withheld breakage to the breakage pool at the track where the money was generated. In such cases, the money shall instead be retained by the racetrack and distributed in the manner as provided in Iowa Code section 99D.12.

62.4(4) The registration of an Iowa-foaled horse or an Iowa-whelped dog shall not be denied or suspended under this rule if either of the following applies:

a. The horse or dog had previously been owned by the person subject to discipline, but the horse or dog had been, in good faith, transferred to another person prior to the imposition of discipline by the department. The department, however, may still impose the discipline if the department determines that the purpose of the transfer was to circumvent the discipline.

b. The horse or dog is in the possession of or under the control of a person subject to discipline but the person has never had an ownership interest in the horse or dog.

21—62.5(99D) Access to premises and records. The department inspectors shall have access to records and to the premises on which qualified Iowa-whelped dogs and Iowa-foaled horses are kept.

21—62.6(99D) Registration fees.

62.6(1) Iowa-foaled horses. For an Iowa-foaled horse to be eligible to race in Iowa, a \$30 registration fee shall be imposed at the time of registration of each stallion, mare or foal registered.

62.6(2) Iowa-whelped dogs. The following fees shall be imposed at the time of registration:

- a.* Registration of a dam, \$25.
- b.* Registration of a litter, \$10.
- c.* Registration of a dog, \$5.

This rule is intended to implement Iowa Code section 99D.22.

[ARC 9978B, IAB 1/25/12, effective 1/5/12]

21—62.7 to 62.9 Reserved.

THOROUGHBRED DIVISION

21—62.10(99D) Iowa thoroughbred stallion requirements. To qualify as an Iowa thoroughbred stallion, a stallion must be certified by and registered with the department.

62.10(1) Rescinded IAB 8/20/14, effective 9/24/14.

62.10(2) All Iowa registered stallions must meet one of the following qualifications:

a. Stallions that have previously bred a mare in any state must have residency in Iowa from January 1 through December 31 of the first year of service as a registered Iowa stallion. Further, all stallions meeting this residency requirement must be registered with the department as a registered Iowa stallion the year prior to standing.

b. Stallions that have not previously bred a mare in any state must have residency in Iowa from its registration with the department as a registered stallion through December 31 of the year of registration.

62.10(3) Any false information submitted by applicant for an Iowa Stallion Eligibility Certificate shall be grounds for denial of registration and certification.

[ARC 1582C, IAB 8/20/14, effective 9/24/14]

21—62.11(99D) Notification requirements. The owner or owner's authorized representative must give immediate notification to the department if the stallion leaves the state. If the stallion leaves the state for breeding purposes, the Iowa Stallion Eligibility Certificate will be invalidated. Subsequently, if the owner(s) wishes to return the stallion to service in Iowa, the original application procedure will be required. If an Iowa registered stallion is moved within Iowa to stand at another location, the department must be notified before the stallion is offered for service at the new Iowa location. If an Iowa registered stallion is moved, temporarily, to another state for medication, its certification will remain valid as long as the department is properly notified.

21—62.12(99D) Stallion qualification and application procedure. To qualify a stallion as an Iowa registered stallion the owner is required to complete the application for an Iowa Stallion Eligibility Certificate and forward it to the Horse Racing Section, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319. The issuance of an Iowa Stallion Eligibility Certificate by the department is contingent on the stallion being registered and certified by the

department. This certificate shall be valid as long as all stallion residency and notification procedures are properly met.

62.12(1) Rescinded, effective 6/13/86.

62.12(2) In the event of a sale or transfer of ownership of a thoroughbred stallion, qualified with the department, the transfer of ownership shall be executed on the back of the Iowa Stallion Eligibility Certificate for that stallion and endorsed certificate forwarded to the department.

62.12(3) If the new owner(s) wishes to qualify the stallion as an Iowa stallion, then the new owner(s) must submit an application for an Iowa Stallion Eligibility Certificate along with a copy of the bill of sale and meet all other department requirements.

62.12(4) The Iowa Stallion Eligibility Certificate shall be available for inspection by a department inspector on the premises where the stallion stands.

This rule is intended to implement Iowa Code section 99D.22.

[ARC 1582C, IAB 8/20/14, effective 9/24/14]

21—62.13(99D) Application information. Every person wanting to offer or stand a stallion as an Iowa registered stallion must file with the department a written application, utilizing Form S-1, and providing the following:

1. Name of stallion;
2. The name(s) of the owner(s) and address(es);
3. The place where the stallion stood for service during the previous year;
4. The place where the stallion will stand for service;
5. Statement that the stallion will not stand for service any place outside the state of Iowa during the calendar year in which the foal is conceived;
6. Details concerning right of ownership, such as a bill of sale, contract or other documents providing proof of ownership, which must show any agreements concerning breeding rights, repurchase agreements and other types of concessions; and any other relevant information requested by the department;
7. An official certificate of registration from the Jockey Club of New York, which will be returned within ten working days to the applicant.

This rule is intended to implement Iowa Code section 99D.22.

[ARC 1582C, IAB 8/20/14, effective 9/24/14]

21—62.14(99D) Breeding record—report of mares bred. Every person offering or standing any stallion for services as an Iowa registered stallion shall maintain a complete breeding record of the stallion and all mares of any breed bred to the stallion.

62.14(1) Such records shall be available to the department for inspection by a department inspector and shall include the following information:

- a. The name of the mare;
- b. The dam and sire of the mare;
- c. The name and address, including zip code, of the owner(s) of the mare;
- d. The first and last dates on which the stallion was bred to the mare;
- e. The place where the stallion was standing for service at the time of the breeding of the mare;
- f. The person(s) in charge of the stallion at the time of service to the mare, and any other relevant information requested by the department.

62.14(2) A report entitled “Record of Mares Bred” must be filed with the department by September 1 of each year. The report must be filed on Form S-3 provided by the department.

21—62.15(99D) Iowa-foaled horses and brood mares. To qualify for the “Iowa Horse and Dog Breeders’ Fund” program, horses must be Iowa foaled.

62.15(1) All thoroughbred horses foaled in Iowa prior to January 1, 1985, which are registered by the Jockey Club as Iowa foaled, shall be considered to be Iowa foaled.

62.15(2) After January 1, 1985, eligibility for brood mare residence shall be achieved by meeting at least one of the following rules:

a. Thirty days' residency until the foal is inspected by a department inspector if in foal to a registered Iowa stallion.

b. Thirty days' residency until the foal is inspected by a department inspector for brood mares which are bred back to registered Iowa stallions.

c. Continuous residency from December 31 until the foal is inspected by a department inspector if the mare was bred by other than an Iowa registered stallion and which is not bred back to an Iowa registered stallion.

d. Rescinded IAB 8/31/94, effective 10/5/94.

62.15(3) Except as provided in this subrule, a foal shall not be eligible for Iowa-foaled status if the mare and foal leave or are removed from the state before the foal is inspected by a department inspector. However, a foal may be registered if it left or was removed from the state prior to inspection by the department inspector if all of the following conditions are met.

a. The owner or agent of the owner of the foal has contacted the department in writing or by fax. The written or faxed notification must be received by the department at least 72 hours prior to the time the mare and foal are to be removed from the state.

b. The department has been unable to get an inspector to the location where the mare and foal are located prior to their being moved from the state.

c. The owner of the foal submits a signed, dated and notarized affidavit executed by a veterinarian licensed to practice in Iowa. The affidavit must attest that the veterinarian saw the foal within seven days of its birth, that the veterinarian has reason to believe that the foal was born in Iowa, and the basis for the veterinarian's belief that the foal was born in Iowa. In addition, the affidavit shall also contain the name of the dam, the state number of the dam, the sex and a physical description of the foal, the date of the birth and the foaling address. It must be postmarked to the department no more than ten days after foaling.

d. The owner has filed a timely mare status report on the mare of the foal.

62.15(4) Additionally, for mares to be eligible for the "Iowa Horse and Dog Breeders' Fund" program and for their foals to be eligible to enter races limited to Iowa-foaled horses, it is required that:

a. A Thoroughbred Brood Mare Registration Application, Form M-4, must be submitted to the department prior to foaling. This registration will cover the mare her entire productive life as long as there is not a change of ownership and the thoroughbred mare meets the eligibility rules set forth in 62.15(2).

b. The owner(s) of the mare must complete and return the Mare Status Report (Form M-5) to the department by December 31 of the year bred.

c. The Mare Status Report must show the place where the mare will foal in this state and the person who will be responsible for the mare at the time of foaling.

d. The Mare Status Report must indicate if the mare is to be bred back to an Iowa registered stallion or to a stallion standing at service outside the state of Iowa. If the breeding plans as stated on the Mare Status Report are changed, the department must be notified.

62.15(5) A thoroughbred mare transfer of ownership, Form M-6, must be submitted to the department when a thoroughbred mare already in the program is purchased by a new owner. The Form M-6 will provide the following information:

a. Name of mare;

b. Date of transfer;

c. Color of mare;

d. State registration number;

e. National breed registration number;

f. Date of sale;

g. Name, address, and phone number of seller;

h. Name, address, and phone number of buyer.

This rule is intended to implement Iowa Code section 99D.22.

21—62.16(99D) Iowa-foaled horse status. Iowa-foaled horse status can be achieved the following two ways:

1. All thoroughbred horses foaled in Iowa prior to January 1, 1985, which are registered by the Jockey Club as Iowa foaled shall be considered to be Iowa foaled.
2. After January 1, 1985, a foal from a mare meeting the eligibility requirements will be eligible to become an Iowa-foaled horse.

62.16(1) Both Iowa-foaled categories will require that an application to be an Iowa-foaled thoroughbred horse be filed with the department. The application must be filed on a Form I-6 provided by the department.

62.16(2) The form shall be completed by the owner(s) of the thoroughbred foal or horse or by the owner's authorized representative. This registration will cover the thoroughbred foal or horse its entire productive life.

62.16(3) The owner(s) shall complete an application for an Iowa-foaled Registration, showing the name of the brood mare, the name of the sire, date of foaling, color, as well as the sex and markings of the foal or horse.

62.16(4) To complete the official registration of an Iowa-foaled horse, the owner(s) must forward the Jockey Club Certificate by registered mail to the department. If the horse has met all requirements for registration, the department shall affix its official seal on the face of the Jockey Club Certificate, which shall include the department's registration number for the horse, and return the certificate within ten working days from the date of receipt. In the event the horse has met all requirements for registration but the department fails to affix its official seal on the face of the Jockey Club Certificate after proper presentation, the list of Iowa-foaled horses prepared by the department shall serve as official notification of Iowa-foaled status until the department's official seal is affixed. If the Jockey Club Certificate is lost or destroyed, a duplicate Jockey Club Certificate for that horse must be forwarded to the department and must be recertified by the department.

62.16(5) and **62.16(6)** Rescinded IAB 11/14/90, effective 12/19/90.

62.16(7) An investigator, appointed by the secretary, shall have access to the premises on which qualified mares, Iowa registered stallions and Iowa-bred foals or horses are kept.

This rule is intended to implement Iowa Code section 99D.22.

21—62.17 to 62.19 Reserved.

STANDARDBRED DIVISION

21—62.20(99D) Iowa standardbred stallion requirements. To qualify as an Iowa standardbred stallion, a stallion must be certified by and registered with the department.

62.20(1) Rescinded IAB 8/20/14, effective 9/24/14.

62.20(2) All Iowa registered standardbred stallions must meet one of the following qualifications:

a. Stallions that have previously bred a mare in any state must have residency in Iowa from January 1 through December 31 of the first year of service as a registered Iowa stallion. Further, all stallions meeting this residency requirement must register with the department as a registered Iowa stallion the year prior to standing.

b. Stallions that have not previously bred a mare in any state must have residency in Iowa from its registration with the department as a registered Iowa stallion through December 31 of the year of registration.

62.20(3) Any false information submitted by applicant for an Iowa Stallion Eligibility Certificate shall be grounds for denial of registration and certification.

[ARC 1582C, IAB 8/20/14, effective 9/24/14]

21—62.21(99D) Notification requirements. The owner or owner's authorized representative must give immediate notification to the department if the stallion leaves the state. If the stallion leaves the state before August 1 for breeding purposes, the Iowa Stallion Eligibility Certificate will be invalidated. Subsequently, if the owner(s) wishes to return the stallion to service in Iowa, the original application

procedure will be required. If an Iowa registered stallion is moved within Iowa to stand at another location, the department must be notified before the stallion is offered for service at the new Iowa location. If an Iowa registered stallion is moved, temporarily, to another state for medication, its certification will remain valid as long as the department is properly notified.

21—62.22(99D) Stallion qualification and application procedure. To qualify a stallion as an Iowa registered stallion, the owner is required to complete the application for an Iowa Stallion Eligibility Certificate and forward it to the Horse Racing Section, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319. The issuance of an Iowa Stallion Eligibility Certificate by the department is contingent on the stallion being registered and certified by the department. This certificate shall be valid as long as all stallion residency and notification procedures are properly met.

62.22(1) Rescinded, effective 6/13/86.

62.22(2) In the event of a sale or transfer of ownership of a standardbred stallion, qualified with the department, the transfer of ownership shall be executed on the back of the Iowa Stallion Eligibility Certificate for that stallion and the endorsed certificate forwarded to the department.

62.22(3) If 51 percent of the new ownership is a bona fide Iowa resident(s) and wishes to qualify the stallion as an Iowa stallion, then the new owner(s) must submit an application for an Iowa Stallion Eligibility Certificate, a copy of the bill of sale and meet all other department requirements.

62.22(4) The Iowa Stallion Eligibility Certificate shall be available for inspection by a department inspector on the premises where the stallion stands.

This rule is intended to implement Iowa Code section 99D.22.

21—62.23(99D) Application information. Every person wanting to offer or stand a stallion as an Iowa registered stallion must file with the department a written application, utilizing Form S-1, and providing the following:

1. Name of stallion;
2. The name(s) of the owner(s) and address(es);
3. The place where the stallion stood for service during the previous year;
4. The place where the stallion will stand for service;
5. Statement that the stallion will not stand for service any place outside the state of Iowa before August 1 of the calendar year in which the foal is conceived;
6. Details concerning right of ownership, such as a bill of sale, contract or other documents providing proof of ownership, which must show any agreements concerning breeding rights, repurchase agreements and other types of concessions; and any other relevant information requested by the department;
7. An official certificate of registration from the U.S. Trotting Association, which will be returned within ten working days to the applicant.

This rule is intended to implement Iowa Code section 99D.22.

[ARC 1582C, IAB 8/20/14, effective 9/24/14]

21—62.24(99D) Breeding record—report of mares bred. Every person offering or standing any stallion for services as an Iowa registered stallion shall maintain a complete breeding record of the stallion and all mares of any breed bred to the stallion.

62.24(1) Such records shall be available to the department for inspection by a department inspector and shall include the following information:

- a. The name of the mare;
- b. The dam and sire of the mare;
- c. The name and address, including zip code, of the owner(s) of the mare;
- d. The first and last dates on which the stallion was bred to the mare;
- e. The place where the stallion was standing for service at the time of the breeding of the mare;

f. The person(s) in charge of the stallion at the time of service to the mare, and any other relevant information requested by the department.

62.24(2) A report entitled “Record of Mares Bred” must be filed with the department by September 1 of each year. The report must be filed on Form S-3 provided by the department.

21—62.25(99D) Iowa-foaled horses and brood mares. To qualify for the “Iowa Horse and Dog Breeders’ Fund” program, horses must be Iowa foaled.

62.25(1) All standardbred horses foaled in Iowa prior to January 1, 1985, which are registered by the U.S. Trotting Association as Iowa foaled, shall be considered to be Iowa foaled.

62.25(2) After January 1, 1985, eligibility for brood mare residence shall be achieved by meeting at least one of the following rules:

a. Thirty days’ residency until the foal is inspected by a department inspector if in foal to a registered Iowa stallion.

b. Thirty days’ residency until the foal is inspected by a department inspector for brood mares which are bred back to registered Iowa stallions.

c. Continuous residency from December 31 until the foal is inspected by a department inspector if the mare was bred by other than an Iowa registered stallion and which is not bred back to an Iowa registered stallion.

d. Rescinded IAB 8/31/94, effective 10/5/94.

62.25(3) Except as provided in this subrule, a foal shall not be eligible for Iowa-foaled status if the mare and foal leave or are removed from the state before the foal is inspected by a department inspector. However, a foal may be registered if it left or was removed from the state prior to inspection by the department inspector if all of the following conditions are met.

a. The owner or agent of the owner of the foal has contacted the department in writing or by fax. The written or faxed notification must be received by the department at least 72 hours prior to the time the mare and foal are to be removed from the state.

b. The department has been unable to get an inspector to the location where the mare and foal are located prior to their being moved from the state.

c. The owner of the foal submits a signed, dated and notarized affidavit executed by a veterinarian licensed to practice in Iowa. The affidavit must attest that the veterinarian saw the foal within seven days of its birth, that the veterinarian has reason to believe that the foal was born in Iowa, and the basis for the veterinarian’s belief that the foal was born in Iowa. In addition, the affidavit shall also contain the name of the dam, the state number of the dam, the sex and a physical description of the foal, the date of the birth and the foaling address. It must be postmarked to the department no more than ten days after foaling.

d. The owner has filed a timely mare status report on the mare of the foal.

62.25(4) Additionally, for mares to be eligible for the “Iowa Horse and Dog Breeders’ Fund” program and for their foals to be eligible to enter races limited to Iowa-foaled horses, it is required that:

a. A Standardbred Brood Mare Registration Application, Form M-4, must be submitted to the department prior to foaling. This registration will cover the mare her entire productive life as long as there is not a change of ownership and the standardbred mare meets the eligibility rules set forth in 62.25(2).

b. The owner(s) of the mare must complete and return the Mare Status Report, Form M-5, to the department by December 31 of the year bred.

c. The Mare Status Report must show the place where the mare will foal in this state and the person who will be responsible for the mare at the time of foaling.

d. The Mare Status Report must indicate if the mare is to be bred back to an Iowa registered stallion or to a stallion standing at service outside the state of Iowa. If the breeding plans as stated on the Mare Status Report are changed, the department must be notified.

62.25(5) A standardbred mare transfer of ownership, Form M-6, must be submitted to the department when a standardbred mare already in the program is purchased by a new owner. The Form M-6 will provide the following information:

- a. Name of mare;
- b. Date of transfer;
- c. Color of mare;
- d. State registration number;
- e. National breed registration number;
- f. Date of sale;
- g. Name, address, and phone number of seller;
- h. Name, address, and phone number of buyer.

This rule is intended to implement Iowa Code section 99D.22.

21—62.26(99D) Iowa-foaled horse status. Iowa-foaled horse status can be achieved the following two ways:

1. All standardbred horses foaled in Iowa prior to January 1, 1985, which are registered by the U.S. Trotting Association as Iowa foaled, shall be considered to be Iowa foaled.

2. After January 1, 1985, a foal from a mare meeting the eligibility requirements will be eligible to become an Iowa-foaled horse.

62.26(1) Both Iowa-foaled categories will require that an application to be an Iowa-foaled standardbred horse be filed with the department. The application must be filed on a Form I-6 provided by the department.

62.26(2) The form shall be completed by the owner(s) of the standardbred foal or horse or by the owner's authorized representative. This registration will cover the standardbred foal or horse its entire productive life.

62.26(3) The owner(s) shall complete an application for an Iowa-foaled Registration, showing the name of the brood mare, the name of the sire, date of foaling, color, as well as the sex and markings of the foal or horse.

62.26(4) To complete the official registration of an Iowa-foaled horse, the owner(s) must forward the U.S. Trotting Association Certificate to the department. If the horse has met all requirements for registration, the department shall place the name and number of the horse on the official department list of Iowa-foaled standardbreds, which list shall constitute the official certification of the horse, and return the certificate within ten working days from the date of receipt. If the U.S. Trotting Association Certificate is lost or destroyed, a duplicate U.S. Trotting Association Certificate for that horse must be forwarded to the department and must be recertified by the department.

62.26(5) and **62.26(6)** Rescinded IAB 11/14/90, effective 12/19/90.

62.26(7) An investigator, appointed by the secretary, shall have access to the premises on which qualified mares, Iowa registered stallions and Iowa-bred foals or horses are kept.

This rule is intended to implement Iowa Code section 99D.22.

21—62.27 to 62.29 Reserved.

QUARTER HORSE DIVISION

21—62.30(99D) Iowa quarter horse stallion requirements. To qualify as an Iowa quarter horse stallion, a stallion must be certified by and registered with the department.

62.30(1) Rescinded IAB 8/20/14, effective 9/24/14.

62.30(2) All Iowa registered quarter horse stallions must meet one of the following qualifications:

a. Stallions that have previously bred a mare in any state must have residency in Iowa from January 1 through December 31 of the first year of service as a registered Iowa stallion. Further, all stallions meeting this residency requirement must be registered with the department as a registered Iowa stallion the year prior to standing.

b. Stallions that have not previously bred a mare in any state must have residency in Iowa from its registration with the department as a registered Iowa stallion through December 31 of the year of registration.

62.30(3) Any false information submitted by applicant for an Iowa Stallion Eligibility Certificate shall be grounds for denial of registration and certification.

[ARC 1582C, IAB 8/20/14, effective 9/24/14]

21—62.31(99D) Notification requirements. The owner or owner's authorized representative must give immediate notification to the department if the stallion leaves the state. If the stallion leaves the state before August 1 for breeding purposes, the Iowa Stallion Eligibility Certificate will be invalidated. Subsequently, if the owner(s) wishes to return the stallion to service in Iowa, the original application procedure will be required. If an Iowa registered stallion is moved within Iowa to stand at another location, the department must be notified before the stallion is offered for service at the new Iowa location. If an Iowa registered stallion is moved, temporarily, to another state for medication, its certification will remain valid as long as the department is properly notified.

21—62.32(99D) Stallion qualification and application procedure. To qualify a stallion as an Iowa registered stallion, the owner is required to complete the application for an Iowa Stallion Eligibility Certificate and forward it to the Horse Racing Section, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319. The issuance of an Iowa Stallion Eligibility Certificate by the department is contingent on the stallion being registered and certified by the department. This certificate shall be valid as long as all stallion residency and notification procedures are properly met.

62.32(1) Rescinded, effective 6/13/86.

62.32(2) In the event of a sale or transfer of ownership of a quarter horse stallion, qualified with the department, the transfer of ownership shall be executed on the back of the Iowa Stallion Eligibility Certificate for that stallion and the endorsed certificate forwarded to the department.

62.32(3) If 51 percent of the new ownership is a bona fide Iowa resident(s) and wishes to qualify the stallion as an Iowa stallion, then the new owner(s) must submit an application for an Iowa Stallion Eligibility Certificate, a copy of the bill of sale and meet all other department requirements.

62.32(4) The Iowa Stallion Eligibility Certificate shall be available for inspection by a department inspector on the premises where the stallion stands.

This rule is intended to implement Iowa Code section 99D.22.

21—62.33(99D) Application information. Every person wanting to offer or stand a stallion as an Iowa registered stallion must file with the department a written application, utilizing Form S-1, and providing the following:

1. Name of stallion;
2. The name(s) of the owner(s) and address(es);
3. The place where the stallion stood for service during the previous year;
4. The place where the stallion will stand for service;
5. Statement that the stallion will not stand for service any place outside the state of Iowa before August 1 of the calendar year in which the foal is conceived;
6. Details concerning right of ownership, such as a bill of sale, contract or other documents providing proof of ownership, which must show any agreements concerning breeding rights, repurchase agreements and other types of concessions; and any other relevant information requested by the department;
7. An official certificate of registration from the American Quarter Horse Association, Amarillo, Texas, which will be returned within ten working days to the applicant.

This rule is intended to implement Iowa Code section 99D.22.

[ARC 1582C, IAB 8/20/14, effective 9/24/14]

21—62.34(99D) Breeding record—report of mares bred. Every person offering or standing any stallion for services as an Iowa registered stallion shall maintain a complete breeding record of the stallion and all mares of any breed bred to the stallion.

62.34(1) Such record shall be available to the department for inspection by a department inspector and shall include the following information:

- a.* The name of the mare;
- b.* The dam and sire of the mare;
- c.* The name and address, including zip code, of the owner(s) of the mare;
- d.* The first and last dates on which the stallion was bred to the mare;
- e.* The place where the stallion was standing for service at the time of the breeding of the mare;
- f.* The person(s) in charge of the stallion at the time of service to the mare, and any other relevant information requested by the department.

62.34(2) A report entitled "Record of Mares Bred" must be filed with the department by September 1 of each year. The report must be filed on Form S-3 provided by the department.

21—62.35(99D) Iowa-foaled horses and brood mares. To qualify for the "Iowa Horse and Dog Breeders' Fund" program, horses must be Iowa foaled.

62.35(1) All quarter horses foaled in Iowa prior to January 1, 1985, which are registered by the American Quarter Horse Association as Iowa foaled, shall be considered to be Iowa foaled.

62.35(2) After January 1, 1985, eligibility for brood mare residence shall be achieved by meeting at least one of the following rules:

a. Thirty days' residency until the foal is inspected by a department inspector, if in foal to a registered Iowa stallion.

b. Thirty days' residency until the foal is inspected by a department inspector for brood mares which are bred back to registered Iowa stallions.

c. Continuous residency from December 31 until the foal is inspected by a department inspector if the mare was bred by other than an Iowa registered stallion and which is not bred back to an Iowa registered stallion.

d. Rescinded IAB 8/31/94, effective 10/5/94.

62.35(3) Except as provided in this subrule, a foal shall not be eligible for Iowa-foaled status if the mare and foal leave or are removed from the state before the foal is inspected by a department inspector. However, a foal may be registered if it left or was removed from the state prior to inspection by the department inspector if all of the following conditions are met.

a. The owner or agent of the owner of the foal has contacted the department in writing or by fax. The written or faxed notification must be received by the department at least 72 hours prior to the time the mare and foal are to be removed from the state.

b. The department has been unable to get an inspector to the location where the mare and foal are located prior to their being moved from the state.

c. The owner of the foal submits a signed, dated and notarized affidavit executed by a veterinarian licensed to practice in Iowa. The affidavit must attest that the veterinarian saw the foal within seven days of its birth, that the veterinarian has reason to believe that the foal was born in Iowa, and the basis for the veterinarian's belief that the foal was born in Iowa. In addition, the affidavit shall also contain the name of the dam, the state number of the dam, the sex and a physical description of the foal, the date of the birth and the foaling address. It must be postmarked to the department no more than ten days after foaling.

d. The owner has filed a timely mare status report on the mare of the foal.

62.35(4) Additionally, for mares to be eligible for the "Iowa Horse and Dog Breeders' Fund" program and for their foals to be eligible to enter races limited to Iowa-foaled horses, it is required that:

a. A Quarter Horse Brood Mare Registration Application, Form M-4, must be submitted to the department prior to foaling. This registration will cover the mare her entire productive life as long as there is not a change of ownership and the quarter horse mare meets the eligibility rules set forth in 62.35(2).

b. The owner(s) of the mare must complete and return the Mare Status Report, Form M-5, to the department by December 31 of the year bred.

c. The Mare Status Report must show the place where the mare will foal in this state and the person who will be responsible for the mare at the time of foaling.

d. The Mare Status Report must indicate if the mare is to be bred back to an Iowa registered stallion or to a stallion standing at service outside the state of Iowa. If the breeding plans as stated on the Mare Status Report are changed, the department must be notified.

62.35(5) A quarter horse mare transfer of ownership, Form M-6, must be submitted to the department when a quarter horse mare already in the program is purchased by a new owner. The Form M-6 will provide the following information:

- a.* Name of mare;
- b.* Date of transfer;
- c.* Color of mare;
- d.* State registration number;
- e.* National breed registration number;
- f.* Date of sale;
- g.* Name, address, and phone number of seller;
- h.* Name, address, and phone number of buyer.

This rule is intended to implement Iowa Code section 99D.22.

21—62.36(99D) Iowa-foaled horse status. Iowa-foaled horse status can be achieved the following two ways:

1. All quarter horses foaled in Iowa prior to January 1, 1985, which are registered by the American Quarter Horse Association as Iowa foaled, shall be considered to be Iowa foaled.

2. After January 1, 1985, a foal from a mare meeting the eligibility requirements will be eligible to become an Iowa-foaled horse.

62.36(1) Both Iowa-foaled categories will require that an application to be an Iowa-foaled quarter horse be filed with the department. The application must be filed on a Form I-6 provided by the department.

62.36(2) The form shall be completed by the owner(s) of the foal or horse or by the owner's authorized representative.

62.36(3) The owner(s) shall complete an application for an Iowa-foaled Registration, showing the name of the brood mare, the name of the sire, date of foaling, color, as well as the sex and markings of the foal or horse.

62.36(4) To complete the official registration of an Iowa-foaled horse, the owner(s) must forward the American Quarter Horse Association Certificate to the department. If the horse has met all requirements for registration, the department shall affix its official seal on the face of the American Quarter Horse Association Certificate, which shall include the department's registration number for the horse, and return the certificate within ten working days from the date of receipt. In the event the horse has met all requirements for registration but the department fails to affix its official seal on the face of the American Quarter Horse Association Certificate after proper presentation, the list of Iowa-foaled horses prepared by the department shall serve as official notification of Iowa-foaled status until the department's official seal is affixed. If the American Quarter Horse Association Certificate is lost or destroyed, a duplicate American Quarter Horse Association Certificate for that horse must be forwarded to the department and must be recertified by the department.

62.36(5) and **62.36(6)** Rescinded IAB 11/14/90, effective 12/19/90.

62.36(7) An investigator, appointed by the secretary, shall have access to the premises on which qualified mares, Iowa registered stallions and Iowa-bred foals or horses are kept.

This rule is intended to implement Iowa Code section 99D.22.

21—62.37(99D) Embryo transfer for Iowa-foaled status. Embryo transfers may be eligible for Iowa-foaled status in accordance with the following provisions:

62.37(1) The recipient mare must be in the state of Iowa before the first day of December the year prior to foaling and must remain in Iowa until the foal or foals are born and are inspected by the department.

62.37(2) There is no limit to the number of foals eligible for Iowa-foaled status, provided the donor mare or a recipient mare:

- a. Carries the foal full term;
- b. Meets all the required Iowa rules; and
- c. Is inspected by the department.

62.37(3) Registration and status reports of recipient mares and donor mares must be submitted to the department with proper identification, including but not limited to registration certificates, brands, and identification numbers prior to the time the donor mare is serviced.

62.37(4) Recipient mares must have a name, brand, or some means of identification and must be photographed for inspection purposes.

21—62.38 and 62.39 Reserved.

GREYHOUND DOG DIVISION

21—62.40(99D) Iowa-whelped dog requirements. A greyhound dog registered with the National Greyhound Association in Abilene, Kansas, may be registered as an Iowa-whelped dog if the following qualifications are met:

A dog must have been whelped in Iowa and raised for the first six months of its life in Iowa by an owner who qualifies as a two-year resident of Iowa prior to whelping.

Effective December 31, 1986, all commercial enterprises that own Iowa-whelped dogs must have been formed under the laws of the state for a period of two years. Effective September 30, 1995, 100 percent of all stockholders or members of such commercial enterprises must qualify as two-year residents of Iowa, prior to the whelping. Any entity registering greyhounds must have proof available at any time during the two-year residency of the members of the entity.

Sale and lease of dams and pups, between two-year bonafide residents of Iowa, is permissible at any time.

The department may take action under rule 21—62.43(99D) if the department determines that the Iowa owner of the dam has entered into an arrangement with another person, who is not eligible to be a breeder of Iowa-whelped dogs, wherein the Iowa owner is acting as an agent or other similar capacity so that Iowa-whelped status can be achieved.

21—62.41(99D) Procedures for registration. In order to qualify pups of a litter as Iowa-whelped pups, the Iowa owner of the dam shall file a copy of her national registration papers (front and back), together with an Iowa Form GH-3 with the department within ten days prior to the expected whelping date of the litter. Late filings of GH-3 forms postmarked after the whelping date of the litter will not be accepted. After the GH-3 form is received by the department, a department inspector must inspect the dam and litter.

Within 30 days after litter registration with the National Greyhound Association, the original litter acknowledgment must be received by the department. A copy of the owner's driver's license, voter registration, or any other valid proof of residency of all first-time litter applicants must accompany the litter acknowledgment. Any late litter registrations will be assessed a penalty of \$25. Litters over six months old will not be accepted for registration. After the litter registration, Form GH-1, is received by the department, a department inspector must inspect the litter. When the application for individual dog registration is made to the National Greyhound Association, the original registration certificate (yellow copy) or the onionskin shall be provided to the department, accompanying the department's Form GH-2.

62.41(1) The department will send the original registration certificate (yellow copy) or the onionskin to the National Greyhound Association, along with a request to stamp the original registration as Iowa whelped. The association will send the yellow registration copy to the department stamped "Certified

Iowa-whelped.” The department will make a copy of the registration for their files and return the original (yellow) copy to the owner.

62.41(2) All greyhound litters meeting the qualifications to be Iowa-whelped, which were whelped in a qualified kennel prior to January 1, 1985, are eligible to be registered and to race as an Iowa-whelped dog. If it is determined that the breeder’s kennel is not qualified, the litter will not be registered and approved until the kennel has complied with animal welfare laws and regulations. The “Certified Iowa-whelped” designation will begin on the date of approval and shall not be retroactive.

Individual dogs whelped prior to January 1, 1985, if sold to an owner currently in compliance with animal welfare laws and regulations, may receive the “Certified Iowa-whelped” designation for owner supplements only.

This rule is intended to implement Iowa Code section 99D.22.

21—62.42 Rescinded, effective 6/13/86.

21—62.43(99D) Disciplinary procedures. Rescinded IAB 2/4/04, effective 3/10/04.

21—62.44(99D) Access to records. Rescinded IAB 2/4/04, effective 3/10/04.

These rules are intended to implement Iowa Code section 99D.22.

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CHAPTER 8
PROFESSIONAL CONDUCT OF LICENSEES

[Prior to 11/14/01, see 193C—Chapter 4]

193C—8.1(542B) General statement. In order to establish and maintain a high standard of integrity, skills and practice in the professions of engineering and land surveying, and to safeguard the life, health, property and welfare of the public, the following code of professional conduct shall be binding upon every person holding a certificate of licensure as a professional engineer or professional land surveyor in this state. The code of professional conduct is an exercise of the police power vested in the board by the Acts of the legislature.

[ARC 0362C, IAB 10/3/12, effective 11/7/12]

193C—8.2(542B) Code of professional conduct. All persons licensed under Iowa Code chapter 542B are charged with having knowledge of the existence of this code of professional conduct and shall be expected to be familiar with its provisions, to understand them, and to abide by them. Such knowledge includes the understanding that the practices of engineering and land surveying are a privilege, as opposed to a right, and the licensee shall be forthright and candid in statements or written response to the board or its representatives on matters pertaining to professional conduct.

8.2(1) Responsibility to the public. Licensees shall conduct their professional practices in a manner that will protect life, health and property and enhance the public welfare. If their professional judgment is overruled under circumstances where safety, health and welfare of the public are endangered, they shall inform their employer or client of the possible consequences, notify such other proper authority as may be appropriate, and withdraw from further services on the project.

Licensees shall neither approve nor certify engineering or land surveying documents that may be harmful to the public health and welfare and that are not in conformity with accepted engineering or land surveying standards.

8.2(2) Competency for assignments. Licensees shall undertake to perform engineering or land surveying assignments only when qualified by education or experience in the specific technical field of professional engineering or professional land surveying involved. Licensees shall engage experts or advise that experts and specialists be engaged whenever the client's or employer's interests are best served by such service.

Licensees may accept an assignment on a project requiring education or experience outside their field of competence, but only to the extent that their services are restricted to those phases of the project in which they are qualified. All other phases of such projects shall be performed by qualified associates, consultants or employees.

8.2(3) Truth in reports and testimony. Licensees, when serving as expert or technical witnesses before any court, commission, or other tribunal, shall express an opinion only when it is founded upon adequate knowledge of the facts in issue, upon a background of technical competence in the subject matter, and upon honest conviction of the accuracy and propriety of their testimony. Under these circumstances, the licensee must disclose inadequate knowledge.

Licensees shall be objective and truthful in all professional reports, statements or testimony. All relevant and pertinent information shall be included in such reports, statements or testimony. Licensees shall avoid the use of statements containing a material misrepresentation of fact or omitting a material fact.

8.2(4) Conflict of interest. The following guidelines regarding conflict of interest shall apply:

a. Licensees shall not issue statements, criticisms or arguments on engineering or land surveying matters connected with public policy which are influenced or paid for by an interested party, or parties, unless they have prefaced their comments by explicitly identifying themselves, by disclosing the identities of the party or parties on whose behalf they are speaking, and by revealing the existence of any pecuniary interest.

b. Licensees shall avoid all known conflicts of interest with their employers or clients and, when unforeseen conflicts arise, shall promptly inform their employers or clients of any business association, interest, or circumstances that could influence judgment or the quality of services.

c. Licensees shall not accept compensation, financial or otherwise, from more than one party for services on the same project, unless the circumstances are fully disclosed and agreed to by all interested parties.

d. Licensees shall act in professional matters for each employer or client as faithful agents or trustees and maintain full confidentiality on all matters in which the welfare of the public is not endangered.

8.2(5) Ethics. Licensees shall conduct their business and professional practices of engineering and land surveying in an ethical manner. In addition to the provisions of this chapter, the board will consider, although not necessarily be bound by, the ethical standards that address public protection issues adopted by a recognized state or national engineering or land surveying organization such as the National Society of Professional Engineers and the National Society of Professional Surveyors.

8.2(6) Unethical or illegal conduct.

a. *Business practices.* The following guidelines regarding unethical or illegal business practices shall apply:

(1) Licensees shall not pay or offer to pay, either directly or indirectly, any commission, percentage, brokerage fee, political contribution, gift, or other consideration to secure work, except to a bona fide employee or bona fide, established commercial or marketing agency retained by them or to secure positions through employment agencies.

(2) Licensees, as employers, shall not engage in any discriminatory practice prohibited by law and shall, in the conduct of their business, employ personnel upon the basis of merit.

(3) Licensees shall not solicit or accept gratuities, directly or indirectly, from contractors, their agents, or other parties dealing with their clients or employers in connection with work for which they are responsible.

(4) Licensees shall not solicit or accept an engineering or land surveying contract from a governmental body when a principal or officer of the licensee's organization serves as an elected, appointed, voting or nonvoting member of the same governmental body which is letting the contract. For purposes of this subparagraph, "governmental body" means a board, council, commission, or similar multimembered body. A licensee would not violate this provision, however, if the principal or officer of the licensee's organization who serves as a member of the governmental body plays no role in the solicitation or acceptance of the contract, and the contract would be legally permissible under applicable Iowa law, including but not limited to Iowa Code sections 68B.3, 279.7A, 331.342, and 362.5.

(5) Licensees shall not associate with, or permit the use of their names or firms in a business venture by, any person or firm that they know, or have reason to believe, is engaging in business or professional practice of a fraudulent or dishonest nature.

(6) Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, firms, joint ventures, or past accomplishments.

b. *Individual professional conduct.* The following guidelines regarding illegal or unethical individual professional conduct shall apply:

(1) Licensees shall not use association with nonengineers, corporations or partnerships as "cloaks" for unethical acts.

(2) Licensees shall not violate any local, state or federal criminal law in the conduct of professional practice.

(3) Licensees shall not violate licensure laws of any state or territory.

(4) Licensees shall not affix their signatures or seals to any plans, plats or documents dealing with subject matter in which those licensees lack competence, nor to any plan, plat or document not prepared under their direct personal direction and control.

(5) Licensees shall not falsify their qualifications or permit misrepresentation of their or their associates' qualifications. They shall not misrepresent or exaggerate their responsibility in or for the subject matter of prior assignments.

c. *Real property inspection reports.*

(1) Licensees shall not represent themselves as licensed professional land surveyors or professional engineers on real property inspection reports (i.e., mortgage surveys).

(2) Licensees shall not place their firm names, logos, or title blocks on real property inspection reports (i.e., mortgage surveys).

[ARC 0362C, IAB 10/3/12, effective 11/7/12; ARC 0470C, IAB 11/28/12, effective 1/2/13; ARC 1084C, IAB 10/2/13, effective 11/6/13; ARC 1577C, IAB 8/20/14, effective 9/24/14]

193C—8.3(542B) Reporting of acts or omissions. Licensees shall report acts or omissions by a licensee that constitute negligence or carelessness. For the purposes of these rules, “negligence or carelessness” means demonstrating unreasonable lack of skill in the performance of engineering or land surveying services by failure of a licensee to maintain a reasonable standard of care in the licensee’s practice of engineering or land surveying. In the evaluation of reported acts or omissions, the board shall determine if the engineer or land surveyor has applied learning, skill and ability in a manner consistent with the standards of the professions ordinarily possessed and practiced in the same profession at the same time. Standards referred to in the immediately preceding sentence shall include any minimum standards adopted by this board and any standards adopted by recognized national or state engineering or land surveying organizations.

193C—8.4(542B) Standards of integrity.

1. Licensees shall answer all questions of a duly constituted investigative body of the state of Iowa concerning alleged violations by another person or firm.

2. When proven wrong, licensees shall admit and accept their own errors and shall not distort or alter the facts to justify their own decisions.

3. If licensees know or have reason to believe that another person or firm may be in violation of any Iowa law or rule regarding ethics or conduct of professional engineering or professional land surveying practice, those licensees shall present such information to the engineering and land surveying examining board in writing and shall cooperate with the board in furnishing further information or assistance required by the board.

4. Licensees shall not assist in the application of an individual they know is unqualified for licensure by reason of education, experience or character.

[ARC 0362C, IAB 10/3/12, effective 11/7/12]

193C—8.5(542B) Engineering and land surveying services offered by business entities.

8.5(1) Purpose of rule. The purpose of this rule is to protect the public from misleading or deceptive advertising by business entities that hold themselves out to the public as providing professional engineering or professional land surveying services and to guard against the unlicensed practice of professional engineering or professional land surveying by persons who are not properly licensed to perform such services in the state of Iowa. This rule shall not be construed as restricting truthful advertising by business entities that appropriately place professional engineers or professional land surveyors in responsible charge of the professional services offered to and performed for the public.

8.5(2) Definitions. For purposes of this rule, the following definitions shall apply:

“*Business entity*” shall include corporations, partnerships, limited liability companies, persons using fictitious or assumed names, or any other form of entity which may conduct business.

“*In responsible charge*” means having direct control of and personal supervision over any professional land surveying work or work involving the practice of professional engineering. One or more persons, jointly or severally, may be in responsible charge. Indicia of being “in responsible charge” include:

1. Obtaining or setting the project or service parameters or criteria.

2. Dictating the manner and methods by which professional services are performed.

3. Establishing procedures for quality control and authority over professional services in a manner that ensures that the professional licensee is in control of the work and of all individuals performing the work under the licensee’s supervision.

4. Spending sufficient time directly performing the work or directly supervising the work to ensure that the licensee is familiar with all significant details of the work.

5. Maintaining familiarity with the capabilities and methods of the persons performing professional services, and providing adequate training for all persons working under the licensee's direct supervision.

6. Sustaining readily accessible contact with all persons performing professional services by direct physical proximity, or as appropriate in the licensee's professional judgment, by frequent communication, in clear and complete verbal and visual form, of information about the work being performed.

7. Specifically pertaining to land surveying, reviewing all field evidence and making all final decisions concerning the placement of survey monuments and surveyed lines.

"Professional services" shall include professional engineering and professional land surveying services, as defined in Iowa Code sections 542B.2(5) and (8) and 542B.27, as applicable to the fact situation at issue.

8.5(3) General rule. Business entities offering professional services to the public must be owned, managed, or appropriately staffed by one or more professional engineers or professional land surveyors, as applicable, who are in responsible charge of all professional services offered and performed.

8.5(4) Appropriate staffing. The nature and extent of appropriate staffing by licensed professionals is necessarily a fact-based determination dependent on such factors as the nature and volume of professional services offered and performed, the risk of unlicensed practice, the impact of the professional services on the life, health and safety of the public and the public's property, and the representations made to the public. While the legal nature of the business entity's relationship (e.g., owner, manager, employee) with a licensed professional engineer or professional land surveyor is not necessarily determinative, licensed professionals must be in responsible charge of all professional services offered and performed.

8.5(5) Professional engineering or professional land surveying firms. Business entities holding themselves out to the public as professional engineering or professional land surveying firms cannot satisfy the requirements of this rule solely by retaining, through employment or contract, a licensed professional on an as-needed, occasional or consulting basis. Such an arrangement fosters unlicensed practice by the unlicensed owners or managers who place themselves in charge of determining when a licensed professional is needed. When a business entity conveys to the public that it is organized as a firm of licensed professionals, the public has a right to expect that the firm retains the full-time services of one or more licensed professionals. "Full-time" in this context is not measured by hours, but by a licensee's sustained, meaningful, and effective, direct supervision of all professional services performed, whether the firm performs services, for example, 20 hours per month or 80 hours per week.

8.5(6) Restricted services. Business entities that do not generally hold themselves out to the public as professional engineering or professional land surveying firms, but that do offer some type of professional engineering or professional land surveying service, shall be appropriately staffed by licensed professionals in a manner that (a) corresponds with the representations made to the public, (b) places licensed professionals in responsible charge of all professional services performed, and (c) guards against the unlicensed practice of professional engineering or professional land surveying.

8.5(7) Permitted practices.

a. Nothing in this rule is intended to prevent an individual or business entity from truthfully offering services as a project manager, administrator, or coordinator of a multidisciplinary project.

b. Nothing in this rule shall prevent a joint venture arrangement between an engineering or land surveying firm and a business entity that is not owned, managed, or staffed by professional engineers or professional land surveyors, in which the venturing entities jointly and truthfully offer professional engineering or professional land surveying services on a project-by-project basis. Licensed professional engineers and professional land surveyors who participate in such arrangements shall ensure that the public is accurately informed as to the nature of all professional services to be performed and by whom the services will be performed.

8.5(8) Remedies against licensees. Licensed professional engineers or professional land surveyors who aid and abet the unlicensed offering or practice of professional engineering or professional land

surveying, or who otherwise knowingly participate in a business entity that does not comply with this rule, are engaging in unethical practices that are harmful or detrimental to the public and are subject to disciplinary action by the board.

8.5(9) Remedies against business entities and unlicensed individuals. Pursuant to Iowa Code section 542B.27, the board may by order impose civil penalties against any business entity or unlicensed individual that offers or performs professional services in violation of Iowa Code chapter 542B. The board shall apply the guidelines set forth in this rule in determining whether a violation exists and in establishing an appropriate civil penalty. Civil penalties may not exceed \$1000 for each offense. Each day of a continued violation constitutes a separate offense. In addition to a civil penalty or as an alternative to such remedy, the board may seek an injunction in district court to prevent future violations by business entities or by licensed or unlicensed individuals.

[ARC 0362C, IAB 10/3/12, effective 11/7/12]

These rules are intended to implement Iowa Code sections 542B.6, 542B.21 and 542B.26 and chapter 272C.

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ECONOMIC DEVELOPMENT AUTHORITY[261]

[Created by 1986 Iowa Acts, chapter 1245]

[Prior to 1/14/87, see Iowa Development Commission[520] and Planning and Programming[630]]

[Prior to 9/7/11, see Economic Development, Iowa Department of[261];
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AGGREGATE TAX CREDIT LIMIT FOR
CERTAIN ECONOMIC DEVELOPMENT PROGRAMS

261—76.1(15) Authority. The authority for establishing rules governing the aggregate tax credit limit for certain economic development programs under this chapter is Iowa Code sections 15.106A and 15.119.

[ARC 7954B, IAB 7/15/09, effective 7/1/09; ARC 8146B, IAB 9/23/09, effective 10/28/09; ARC 1573C, IAB 8/20/14, effective 9/24/14]

261—76.2(15) Purpose. The purpose of the aggregate tax credit limit for certain economic development programs is to limit the amount of tax credits awarded during a fiscal year.

[ARC 7954B, IAB 7/15/09, effective 7/1/09; ARC 8146B, IAB 9/23/09, effective 10/28/09; ARC 1573C, IAB 8/20/14, effective 9/24/14]

261—76.3(15) Definitions.

“*Authority*” means the economic development authority.

“*Board*” means the members of the board in whom the powers of the authority are vested pursuant to Iowa Code chapter 15.

[ARC 7954B, IAB 7/15/09, effective 7/1/09; ARC 8146B, IAB 9/23/09, effective 10/28/09; ARC 1573C, IAB 8/20/14, effective 9/24/14]

261—76.4(15) Tax credit cap—exceeding the cap—reallocation of declinations.

76.4(1) *Maximum aggregate limit on tax credits.* Except as provided in subrule 76.4(2), the authority shall not authorize for any one fiscal year an amount of tax credits that is in excess of \$170 million.

76.4(2) *Exceeding the cap.* The authority may authorize an amount of tax credits during a fiscal year that is in excess of the amount specified in subrule 76.4(1), but the amount of such excess will not exceed 20 percent of the amount specified in subrule 76.4(1) and will be counted against the total amount of tax credits that may be authorized for the next fiscal year.

76.4(3) *Reallocation of declinations.* Any amount of tax credits authorized and awarded during a fiscal year for a program specified in rule 261—76.5(15) which is irrevocably declined by the awarded business on or before June 30 of the next fiscal year may be reallocated, authorized, and awarded during the fiscal year in which the declination occurs. Tax credits authorized pursuant to this subrule will not be considered for purposes of subrule 76.4(2).

[ARC 7954B, IAB 7/15/09, effective 7/1/09; ARC 8146B, IAB 9/23/09, effective 10/28/09; ARC 1573C, IAB 8/20/14, effective 9/24/14]

261—76.5(15) Programs subject to the cap.

76.5(1) Tax credits authorized under the following economic development programs are subject to the tax credit cap:

- a. The high quality jobs program.
- b. The enterprise zone program.
- c. The assistive device tax credit program.
- d. The tax credits for investments in qualifying businesses and community-based seed capital funds.
- e. The tax credits for investments in certified innovation funds.
- f. The redevelopment tax credit program for brownfields and grayfields.

76.5(2) Pursuant to rule 261—76.6(15), the authority will allocate a certain amount of tax credits to the programs listed in this rule.

[ARC 7954B, IAB 7/15/09, effective 7/1/09; ARC 8146B, IAB 9/23/09, effective 10/28/09; ARC 1573C, IAB 8/20/14, effective 9/24/14]

261—76.6(15) Allocating the tax credit cap.

76.6(1) *Procedure for allocations.* At a scheduled meeting of the board prior to the start of a fiscal year, the board will allocate a portion of the tax credits available under the cap to the programs listed in

rule 261—76.5(15). The board is not required to allocate a portion of the cap to every program listed. The board may allocate a portion of the cap to be shared by programs with a common purpose. For example, the business awards made under the enterprise zone program and high quality jobs program may be allocated one amount to jointly serve both programs. Throughout the fiscal year, the board may review the allocation as necessary, but shall review the allocation at least one time during the fiscal year. Based on its review, the board may make adjustments to the allocation as deemed necessary.

76.6(2) Required suballocations. Iowa Code section 15.119 requires the authority to make certain suballocations to the programs subject to the cap. In some cases, there is a minimum required suballocation and in others a maximum suballocation. The authority will make the required suballocations and count them against the maximum aggregate cap before making any discretionary allocations.

76.6(3) Allocation to programs subject to the cap. For the fiscal year beginning July 1, 2013, and for all subsequent fiscal years in which the required suballocations are not changed, the authority will allocate the maximum aggregate tax credit cap as follows:

a. \$2 million to the credits for investments in qualifying businesses and community-based seed capital funds, unless the authority determines that the program demand is less than that amount.

b. \$8 million to the tax credits for investments in certified innovation funds, unless the authority determines that the program demand is less than that amount.

c. \$10 million to the redevelopment tax credit program for brownfields and grayfields, unless the authority determines that the program demand is less than that amount.

d. To the assistive device tax credit program, an amount necessary to meet the demand for that year.

e. To any other programs that may be made subject to the cap but which are not listed in this subrule, any amount that may be required by law or such amount as the board determines prudent given the amount of tax credits available.

f. To the high quality jobs program and the enterprise zone program, an amount equal to the amount necessary to meet the demand for that year, provided that such amount will not exceed the remainder of the maximum aggregate tax credit limit for that year.

[ARC 7954B, IAB 7/15/09, effective 7/1/09; ARC 8146B, IAB 9/23/09, effective 10/28/09; ARC 1573C, IAB 8/20/14, effective 9/24/14]

261—76.7(83GA,SF483) Exceeding the cap. Rescinded ARC 1573C, IAB 8/20/14, effective 9/24/14.

261—76.8(15) Reporting to the department of revenue. The authority shall submit an initial report to the department of revenue by August 15 of each year, which shows the initial allocation of the maximum aggregate tax credit cap. At the start of each subsequent fiscal year, the authority shall prepare a report to summarize the final allocation for the fiscal year that just ended, the total amount of awards made under each program subject to the cap during that fiscal year, and the initial allocation for the subsequent fiscal year.

[ARC 7954B, IAB 7/15/09, effective 7/1/09; ARC 8146B, IAB 9/23/09, effective 10/28/09; ARC 1573C, IAB 8/20/14, effective 9/24/14]

These rules are intended to implement Iowa Code section 15.119.

[Filed Emergency ARC 7954B, IAB 7/15/09, effective 7/1/09]

[Filed ARC 8146B (Notice ARC 7953B, IAB 7/15/09), IAB 9/23/09, effective 10/28/09]

[Filed ARC 1573C (Notice ARC 1430C, IAB 4/16/14), IAB 8/20/14, effective 9/24/14]

CHAPTER 112
MANAGEMENT TALENT RECRUITMENT PROGRAM
Rescinded **ARC 0611C**, IAB 2/20/13, effective 3/27/13

CHAPTER 113
COMMUNITY MICROENTERPRISE DEVELOPMENT ORGANIZATION
GRANT PROGRAM
Rescinded **ARC 1573C**, IAB 8/20/14, effective 9/24/14

PART VIII
LEGAL AND COMPLIANCE

CHAPTER 187
CONTRACTING

[Prior to 7/4/07, see 261—Ch 168, div VI]

261—187.1(15) Applicability. This chapter is applicable to the programs identified in 261—173.1(15).

261—187.2(15) Contract required.

187.2(1) Notice of award. Successful applicants will be notified in writing of an award of assistance, including any conditions and terms of the approval.

187.2(2) Contract required. The authority shall prepare a contract that includes, but is not limited to, a description of the project to be completed by the business; the jobs to be created or retained; length of the project completion period and maintenance project completion period; the project completion date and maintenance period completion date; conditions to disbursement; a requirement for annual reporting to the authority; and the repayment requirements of the business or other penalties imposed on the business in the event the business does not fulfill its obligations described in the contract and other specific repayment provisions (“clawback provisions”) to be established on a project-by-project basis. The contract shall include the requirements that must be met to confirm eligibility pursuant to the program and the requirements that must be maintained throughout the period of the contract in order to retain the incentives or financial assistance received.

187.2(3) Contract-signing deadline. Successful applicants will be required to execute an agreement with the authority within 120 days of the authority’s or board’s approval of an award. Failure to do so may result in action by the entity that approved the award (the authority or the board) to rescind the award. The 120-day time limit may be extended by the final decision maker that approved the award (the authority or the board) for good cause shown.

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09; ARC 0442C, IAB 11/14/12, effective 12/19/12; ARC 1573C, IAB 8/20/14, effective 9/24/14]

261—187.3(15) Project completion date and maintenance period completion date.

187.3(1) Projects shall be completed by the project completion date and maintained through the end of the maintenance date. The contract will establish the duration of the project period and maintenance period. Requests to change the project completion date and the maintenance period completion date shall follow the process for an amended award or contract as described in rule 261—187.4(15).

187.3(2) Projects receiving assistance from programs covered by this chapter shall conform to the time periods established by this rule.

187.3(3) By the project completion date, a recipient shall have completed the project as required by the contract. The jobs and project shall be maintained through the end of the maintenance period completion date. The project completion date is calculated by the authority from the end of the month during which an award is made. For example, if an award is made on June 13, 2007, the three-year project completion date will be calculated from June 30, 2007. The project completion date for this award would be June 30, 2010. The maintenance period completion date would be June 30, 2012.

187.3(4) The following table describes, by program, the length of the project completion period and the maintenance period:

Program	Project Completion Period	Maintenance Period	Total Contract Length
Grow Iowa Values Financial Assistance Program (all components)	3 years	2 more years	5 years
High Quality Jobs Program	3 years	2 more years	5 years
Enterprise Zone Program	3 years	2 more years	5 years

187.3(5) Notwithstanding the standard project completion period and maintenance period lengths described in subrule 187.3(4), the authority may vary the length of the periods provided that the project completion period will not be less than three years and the total contract length will not be less than five years.

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09; **ARC 0442C**, IAB 11/14/12, effective 12/19/12]

261—187.4(15) Contract and award amendment approval procedures.

187.4(1) General rule. Generally, the final decision maker that approved the initial award shall approve any amendments or changes to that award.

187.4(2) Contract amendments.

a. General. In general, the amendment process for both awards and contracts mirrors the application process. That is, the same entity that recommended the initial application will also recommend the amendment, and the same entity that had final approval of the initial application will have final approval of the amendment. As with awards, contract amendments must comply with the statutory requirements for each individual program or funding source and the applicable administrative rules. In general, the amendment process begins with review of an amendment request by authority staff. After review by staff, the amendment may be sent to a committee for further recommendation followed by final action on the amendment by the board or by the director, as the case may be. The director may take action on any amendment that is not specifically identified as requiring board action. The authority's various programs and the amendment procedures are described in paragraph 187.4(2) "c," which contains the applicable recommending and approving entities by funding source and program.

b. Key to table. ACE – The accelerated career education program job credits authorized under Iowa Code chapter 260G.

ASSISTIVE – The assistive device tax credits authorized in Iowa Code section 422.33.

BRN – The brownfield redevelopment advisory council established in Iowa Code section 15.294.

BROWN – Redevelopment tax credits for brownfield and grayfield sites and the brownfield redevelopment fund as established in Iowa Code chapter 15.

CDBG – Federal community development block grant funded programs.

DDC – Due diligence committee organized by the board pursuant to 261—Chapter 1.

EDSA – The economic development set aside component of the CDBG program established in 261—Chapter 23.

ETAP – The export trade assistance program established in 261—Chapter 72.

EZ – Enterprise zone program as established in Iowa Code chapter 15E, including both the business and housing development tax credits.

FILM – The film and video project promotion program tax credits available under the now repealed Iowa Code section 15.393.

GIVF – The grow Iowa values fund and financial assistance program established pursuant to the now repealed Iowa Code chapter 15G, including all prior versions and funding sources of the program.

HQJP – High quality jobs program, as established in Iowa Code chapter 15, including both tax incentives and project completion assistance.

INNOVATION – Programs related to innovation, commercialization, and targeted industries development, including the programs described in Iowa Code section 15.411 and the program rules in 261—Part V.

LCG – Loan and credit guarantee program as established in the now repealed Iowa Code chapter 15E, division XX.

NSP – Neighborhood stabilization program as established in 261—Chapter 27.

TCC – Technology commercialization committee organized by the board pursuant to 261—Chapter 1.

TJWTC – Targeted jobs withholding tax credit program for pilot project cities established in Iowa Code section 403.19A.

TSB – Targeted small business advisory council established in Iowa Code section 15.247(8).

TSB LOAN – The targeted small business financial assistance program established in Iowa Code section 15.247.

c. Recommendation and approval entities for state and federal programs. The contract amendment process for tax incentives, project completion assistance, other financial assistance, or other benefits under the authority’s various programs is as follows:

PROGRAM	STATE/FEDERAL	RECOMMENDATION BY	FINAL DECISION BY
HQJP	State	DDC	Board
GIVF	State	DDC	Board
EZ (Business)	State	DDC	Board
EZ (Housing)	State		Director
INNOVATION	State	TCC	Board
LCG	State	DDC	Board
FILM	State		Director
ASSISTIVE	State		Director
EDSA	Federal	DDC	Board
CDBG	Federal		Director
NSP	Federal		Director
HOME	Federal		Director
BROWN	State	BRN	Director
TSB LOAN	State	TSB	Director
ETAP	State		Director
ACE	State		Director
TJWTC	State		Director

d. Exception. Notwithstanding paragraph 187.4(2)“c,” the director may approve contract amendments for the targeted industries internship program consistent with Iowa Code section 15.106C without board approval.

187.4(3) Amendments and other requests the authority is authorized to implement. The authority is authorized by the board to take action on nonsubstantive changes, including but not limited to the following:

- a.* Recipient name, address and similar changes.
- b.* Collateral changes that are the same or better security than originally approved by the board or director (e.g., securing a letter of credit to replace a UCC blanket filing) or collateral changes that do not materially and substantially impact the authority’s security.
- c.* Line item budget changes that do not reduce overall total project costs.
- d.* Loan repayment amounts or due dates that do not extend the final due date of a loan.

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09; ARC 0442C, IAB 11/14/12, effective 12/19/12]

261—187.5(15) Default.

187.5(1) Events of default. The authority may, for cause, determine that a recipient is in default under the terms of the contract. The reasons for which the authority may determine that the recipient is in default of the contract include, but are not limited to, any of the following:

- a.* Any material representation or warranty made by the recipient in connection with the application that was incorrect in any material respect when made.
- b.* A material change in the business ownership or structure that occurs without prior written disclosure and the permission of the authority.
- c.* A relocation or abandonment of the business or jobs created or retained through the project.
- d.* Expenditure of funds for purposes not described in the application or authorized in the agreement.

- e. Failure of the recipient to make timely payments under the terms of the agreement, note or other obligation.
- f. Failure of the recipient to fulfill its job obligations.
- g. Failure of the recipient to comply with wage or benefit packages.
- h. Failure of the recipient to perform or comply with the terms and conditions of the contract.
- i. Failure of the recipient to comply with any applicable state rules or regulations.
- j. Failure of the recipient to file the required annual report.
- k. Failure of the recipient to comply with any other provision of the agreement required pursuant to Iowa Code section 15.330 or 15.330A.

187.5(2) *Layoffs or closures.* If a recipient experiences a layoff within the state or closes any of its facilities within the state prior to receiving the incentives and assistance, the authority may reduce or eliminate all or a portion of the incentives and assistance. If a business experiences a layoff within the state or closes any of its facilities within the state after executing a contract to receive the incentives and assistance, the authority may consider this an event of default and the business may be subject to repayment of all or a portion of the incentives and assistance that it has received.

187.5(3) *Authority actions upon default—direct financial assistance programs.*

a. The authority will take prompt, appropriate, and aggressive debt collection action to recover any funds misspent by recipients.

b. If the authority determines that the recipient is in default, the authority may seek recovery of all program funds plus interest, assess penalties, negotiate alternative repayment schedules, suspend or discontinue collection efforts, and take other appropriate action as the board deems necessary.

c. Determination of appropriate repayment plan. Upon determination that the recipient has not met the contract obligations, the authority will notify the recipient of the amount to be repaid to the authority. If the enforcement of such penalties would endanger the viability of the recipient, the board may extend the term of the loan to ensure payback, stability, and survival of the recipient. In certain instances, additional flexibility in a repayment plan may be necessary to ensure payback, stability, and survival of the recipient. Flexibility in a repayment plan may include, but is not limited to, deferring principal payments or collecting monthly payments below the amortized amount. In these cases, review and approval by the board, committee or director, as applicable, are necessary before the authority may finalize the repayment plan with the recipient.

d. The authority shall attempt to collect the amount owed. Negotiated settlements, write-offs or discontinuance of collection efforts is subject to final review and approval by the board, committee or director, as applicable, and described in paragraph 187.5(3) “f.”

e. If the authority or board refers defaulted contracts to outside counsel for collection, then the terms of the agreement between the authority and the outside counsel regarding scope of counsel’s authorization to accept settlements shall apply. No additional approvals by the board, committee or director shall be required.

f. The table below describes the approval procedures that shall be followed for all negotiated settlements, write-offs or discontinuance of collection efforts for state direct financial assistance programs, federal programs, and other programs administered by the authority.

PROGRAM	STATE/FEDERAL	RECOMMENDATION BY	FINAL DECISION BY
HQJP	State	DDC	Board
GIVF	State	DDC	Board
EZ (Business)	State	DDC	Board
EZ (Housing)	State		Director
INNOVATION	State	TCC	Board
LCG	State	DDC	Board
FILM	State		Director
ASSISTIVE	State		Director
EDSA	Federal	DDC	Board

CDBG	Federal		Director
NSP	Federal		Director
HOME	Federal		Director
BROWN	State	BRN	Director
TSB LOAN	State	TSB	Director
ETAP	State		Director
ACE	State		Director
TJWTC	State	DDC	Board

187.5(4) Authority actions upon default—tax credit programs. If the authority determines that an event of default has occurred under the contract and that state tax incentives are required to be repaid, the eligible business and the department of revenue will both be notified of the event of default and of the required repayment amount. If the contract provided for local tax incentives, the community where the project is located will also be notified of the default. In the case of state tax incentives, the department of revenue will undertake collection efforts. In the case of local tax incentives, the local community will undertake collection efforts.

a. Repayment. If an eligible business or eligible housing business has received incentives or assistance under the EZ program or the HQJP and fails to meet and maintain any one of the requirements of the program or applicable rules, the business is subject to repayment of all or a portion of the incentives and assistance that it has received. If the business is an entity that has elected pass-through taxation status for income tax purposes, the department of revenue may undertake collection efforts against members, individuals, or shareholders to whom the tax incentives were passed through.

b. Calculation of repayment due for a business. If the authority, in consultation with the city or county, determines that a business has failed in any year to meet any one of the requirements of the tax credit program, the business is subject to repayment of all or a portion of the amount of the incentives received.

(1) Job creation shortfall. If a business does not meet its job creation requirement or fails to maintain the required number of jobs, the repayment amount shall be the same proportion as the amount of the shortfall in created jobs. For example, if the business creates 50 percent of the jobs required, the business shall repay 50 percent of the incentives received.

(2) Capital investment shortfall. If a business does not meet the capital investment requirement, the repayment amount shall be the same proportion as the amount of the shortfall in required capital investment. For example, if the business meets 75 percent of the amount of required capital investment, the business shall repay 25 percent of the amount of the incentives received.

(3) Job creation and capital investment shortfalls. If a business has a shortfall in both capital investment and job creation requirements, the repayment amount shall be the same proportion as the greater of the two shortfalls. For example, if a business creates 50 percent of the required jobs and meets 75 percent of the required capital investment, the business shall be required to repay 50 percent of the amount of the incentives received.

(4) Wages and benefits. Notwithstanding any other provision in this subrule, if a business fails to comply with the wage and benefit requirements of the contract, the business shall be required to repay all of the incentives received during the year in which the business was not in compliance with the wage and benefit requirements of the contract.

(5) Minimum eligibility. Notwithstanding any other provision in this subrule, if a program requires a minimum amount of job creation or capital investment in order to qualify for the program and a business fails to meet such minimum eligibility, the business shall repay all of the incentives received.

(6) Definitions. For purposes of this subrule, “incentives received” includes both amounts claimed from the department of revenue or the local community and any future incentives that remain unclaimed as of the date of default. “Capital investment” means the qualifying investment or investment qualifying for tax credits, as specified in the required contract.

c. Department of revenue; county/city recovery. Once it has been established, through the business's annual certification, monitoring, audit or otherwise, that the business is required to repay all or a portion of the incentives received, the department of revenue and the city or county, as appropriate, shall collect the amount owed. The city or county, as applicable, shall have the authority to take action to recover the value of taxes not collected as a result of the exemption provided by the community to the business. The department of revenue shall have the authority to recover the value of state taxes or incentives provided under the program pursuant to Iowa Code section 15.330 or 15E.196. The value of state incentives provided under the program shall include all applicable interest and penalties.

d. Layoffs or closures. If an eligible business experiences a layoff within the state or closes any of its facilities within the state prior to receiving the incentives and assistance, the authority may reduce or eliminate all or a portion of the incentives and assistance. If a business experiences a layoff within the state or closes any of its facilities within the state after receiving the incentives and assistance, the business shall be subject to repayment of all or a portion of the incentives and assistance that it has received.

e. Extensions. If an eligible business or eligible housing business fails to meet its requirements under the Act, these rules, or the agreement described in rule 261—187.2(15), the authority, in consultation with the city or county, may elect to grant the business a one-year extension period to meet the requirements.

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09; ARC 0442C, IAB 11/14/12, effective 12/19/12; ARC 1373C, IAB 3/19/14, effective 2/24/14; ARC 1573C, IAB 8/20/14, effective 9/24/14]

261—187.6(15) Compliance cost fees. An eligible business that executes a contract required pursuant to this chapter is subject to the imposition of certain compliance cost fees as provided in this rule.

187.6(1) One-time fee for closing costs. After execution of the contract and prior to the issuance of a tax incentive certificate or the disbursement of financial assistance, an eligible business shall remit to the authority a one-time compliance cost fee in the amount of \$500.

187.6(2) Ongoing fees based on claims. For each contract with an aggregate tax incentive value of \$100,000 or greater, the business shall remit a compliance cost fee equal to one-half of 1 percent of the value of the tax incentives claimed pursuant to the agreement. The fee required pursuant to this subrule shall be due and payable upon the filing of the business's annual tax return for each tax year in which the business claims incentives under the required contract. The authority will coordinate with the department of revenue to determine which businesses claim incentive benefits each year and will invoice each business accordingly. The requirement to pay the fee required under this subrule shall continue for the duration of the applicable carryforward period of the tax incentives notwithstanding the duration of the other contract requirements.

187.6(3) Applicability. This rule applies to contracts entered into under the high quality jobs program and the enterprise zone program.

[ARC 1573C, IAB 8/20/14, effective 9/24/14]

These rules are intended to implement Iowa Code chapters 15 and 15E.

[Filed emergency 6/15/07—published 7/4/07, effective 6/15/07]

[Filed 8/22/07, Notice 7/4/07—published 9/26/07, effective 10/31/07]

[Filed Emergency ARC 7970B, IAB 7/15/09, effective 7/1/09]

[Filed ARC 8145B (Notice ARC 7971B, IAB 7/15/09), IAB 9/23/09, effective 10/28/09]

[Filed ARC 0442C (Notice ARC 0293C, IAB 8/22/12), IAB 11/14/12, effective 12/19/12]

[Filed Emergency After Notice ARC 1373C (Notice ARC 1248C, IAB 12/25/13), IAB 3/19/14, effective 2/24/14]

[Filed ARC 1573C (Notice ARC 1430C, IAB 4/16/14), IAB 8/20/14, effective 9/24/14]

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PART XIII

IOWA BROADBAND DEPLOYMENT GOVERNANCE BOARD

CHAPTER 410

BOARD STRUCTURE AND PROCEDURES

Rescinded **ARC 1573C**, IAB 8/20/14, effective 9/24/14

COLLEGE STUDENT AID COMMISSION[283]

[Prior to 8/10/88, see College Aid Commission[245]]

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[ARC 1572C, IAB 8/20/14, effective 9/24/14]

283—28.2(261) Definitions. As used in this chapter:

“*Commission*” means the Iowa college student aid commission.

“*Department*” means the Iowa department of education.

“*Eligible school or agency*” means a public school district, area education agency, charter school, and accredited nonpublic school recognized and approved by the department.

“*Eligible student loan*” means a recipient’s total subsidized, unsubsidized, and consolidated Federal Stafford Loan amount under the Federal Family Education Loan Program, Federal Direct Loan Program, federal Graduate PLUS Loan, or federal Perkins Loan, including principal and interest. Only the outstanding portion of a federal consolidation loan that was used to repay an eligible subsidized or unsubsidized Federal Stafford Loan qualifies as an eligible student loan.

“*Eligible teaching field*” means hard-to-staff subjects as identified by the director of the department. In selecting hard-to-staff subjects, the department shall consider the varying regional needs in the state.

“*Preparation program*” means the programs of practitioner preparation leading to licensure of teachers, administrators, and other professional school personnel.

“*Teacher*” means an individual who holds a practitioner’s license or a statement of professional recognition issued under Iowa Code chapter 272 and who is employed in a nonadministrative position by a school district or area education agency pursuant to a contract issued by a board of directors under Iowa Code section 279.13. “Teacher” also includes a preschool teacher who is licensed by the board of educational examiners under Iowa Code chapter 272 and is employed by an eligible school or agency.
[ARC 1572C, IAB 8/20/14, effective 9/24/14]

283—28.3(261) Eligibility requirements. An applicant must:

28.3(1) Have graduated in the top 25 percent academically of students completing teacher preparation programs, as certified by the postsecondary institution offering the teacher preparation program from which the applicant graduates.

28.3(2) Be a teacher providing instruction on a full-time basis in an eligible teaching field or in a combination of eligible teaching fields in an eligible school or agency.

28.3(3) File an application annually on or before the deadline established by the commission to be considered for funding.

28.3(4) Annually complete and return to the commission an affidavit of practice verifying annual employment in an eligible teaching field.
[ARC 1572C, IAB 8/20/14, effective 9/24/14]

283—28.4(261) Awarding of funds.

28.4(1) Selection criteria. All applicants meeting the eligibility requirements will be considered for funding. In the event that all on-time applicants cannot be funded with the available appropriation, criteria for selection of recipients will be prioritized as follows:

- a. Award renewal status;
- b. Iowa resident status;
- c. Graduation date, grouped by academic year, with the most recent academic year graduates given priority;
- d. Prioritized annual ranking of eligible teaching fields by the department, with the highest ranking fields being served first, if information is available;
- e. Prioritized annual ranking of regional need within eligible teaching fields by the department, with the highest ranking regions being served first within each ranked eligible teaching field, if information is available;

f. Date of application.

28.4(2) *Maximum award and extent of receipt.*

a. The maximum annual award shall not exceed \$4,000.

b. A recipient may receive up to \$20,000 over a five-year period, beginning with the first year of receipt.

c. Designated applicants teaching hard-to-staff subjects shall not be impacted in subsequent years if the subject is no longer identified by the department as a hard-to-staff subject.

28.4(3) *Disbursement of award.* The maximum annual award will be paid either directly to the teacher or to the teacher's eligible student loan holder upon successful completion of each annual employment obligation. The commission will annually verify completion of the teacher's employment obligation with the eligible school or agency prior to payment.

[ARC 1572C, IAB 8/20/14, effective 9/24/14]

283—28.5(261) Award cancellation.

28.5(1) The teacher must notify the commission within 30 days following termination or change of employment in an eligible teaching field or an eligible school or agency.

28.5(2) The teacher is responsible for notifying the commission immediately of a change in contact information including, but not limited to, name, telephone number and e-mail address.

[ARC 1572C, IAB 8/20/14, effective 9/24/14]

These rules are intended to implement Iowa Code section 261.110.

[Filed ARC 1572C (Notice ARC 1419C, IAB 4/16/14), IAB 8/20/14, effective 9/24/14]

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Rescinded IAB 10/25/95, effective 11/29/95

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Rescinded IAB 6/16/99, effective 7/21/99

CHAPTER 31
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Rescinded IAB 6/18/97, effective 7/23/97

PUBLIC EMPLOYMENT RELATIONS BOARD[621]

[Prior to 11/5/86, Public Employment Relations Board [660]]

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CHAPTER 1
GENERAL PROVISIONS

621—1.1(20) Construction and severability. These rules shall be liberally construed to effectuate the purposes and provisions of the public employment relations Act. If any provisions of these rules are held to be invalid, it shall not be construed to invalidate any of the other provisions of these rules.

621—1.2(20) General agency description. The purpose of the public employment relations board established by the Public Employment Relations Act is to implement the provisions of the Act and adjudicate and conciliate employment related cases involving the state of Iowa and other public employers and employee organizations. For these purposes the powers and duties of the board include, but are not limited to, the following:

Determining appropriate bargaining units and conducting representation elections.

Adjudicating prohibited practice complaints and fashioning appropriate remedial relief for violations of the Act.

Adjudicating and serving as arbitrators regarding state merit system grievances and grievances arising under collective bargaining agreements between public employers and certified employee organizations.

Providing mediators and arbitrators to resolve impasses in negotiations.

Collecting and disseminating information concerning the wages, hours, and other conditions of employment of public employees.

Preparing legal briefs and presenting oral arguments in the district courts, the court of appeals and the supreme court in cases affecting the board.

[ARC 8953B, IAB 7/28/10, effective 9/1/10]

621—1.3(20) General course and method of operation. Upon receipt of a petition or complaint, the board may assign an administrative law judge to process the case. The board may determine that the petition or complaint is without basis and dismiss it without further proceedings. Petitions and complaints not dismissed are assigned for a hearing before either an administrative law judge or the board, unless the procedures for informal settlement described in these rules are followed. The administrative law judge or the board will conduct a hearing on the complaint or petition and issue a decision and order. The decisions of administrative law judges are appealable to the board, and final orders and decisions of the board are appealable to the district court under the Iowa administrative procedure Act.

621—1.4(20) Method of obtaining information and making submissions or requests. Any person may obtain information from, make submission to, or make a request of the board by writing to Chairperson, Iowa Public Employment Relations Board, 510 East 12th Street, Suite 1B, Des Moines, Iowa 50319.

621—1.5(20) Petition for rule making. Any person may file a petition with the board for the adoption, amendment or repeal of a rule. Such petition shall be in writing and shall include:

1.5(1) The name and address of the person requesting the adoption, amendment or repeal of the rule.

1.5(2) A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation to and the relevant language of the particular portion or portions of the rule proposed to be amended or repealed.

1.5(3) A brief summary of petitioner's arguments in support of the action urged in the petition.

1.5(4) A brief summary of any data supporting the action urged in the petition.

1.5(5) The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by or interested in the proposed action which is the subject of the petition. Within 60 days after the filing of a petition, the board shall either deny the petition in writing, stating its reasons for the denial, or initiate rule-making proceedings in accordance with Iowa Code chapter 17A.

621—1.6(20) Definitions.

1.6(1) “*Act*” as used in these rules shall mean the public employment relations Act, Iowa Code chapter 20.

1.6(2) “*Board*” as used in these rules shall mean the public employment relations board. No official board action may be taken without the concurrence of at least two members of the board; provided, however, that when for compelling reasons only two members hear an appeal of a proposed decision in a contested case and the two members do not concur, the result shall be affirmation of the proposed decision. The board, in its discretion, may delegate to board employees duties which the Act does not specifically require be performed by the board.

1.6(3) *Petitioner—complainant—respondent—intervenor:*

a. “*Petitioner*” means the party filing a petition under Iowa Code section 20.13 or 20.14.

b. “*Complainant*” means the party filing a complaint under Iowa Code section 20.11, alleging the commission of a prohibited practice.

c. “*Respondent*” means the party accused of committing a prohibited practice.

d. “*Intervenor*” means a party who voluntarily interposes in a proceeding with the approval of the board or administrative law judge.

1.6(4) “*Party*” as used in these rules shall mean any person, employee organization or public employer who has filed a petition or complaint under the Act or these rules; who has been named as a party in a complaint, petition or other matter under these rules; or whose motion to intervene has been granted by the board.

1.6(5) “*Impasse item*” means any term which was a subject of negotiations and proposed to be included in a collective bargaining agreement upon which the parties have failed to reach agreement in the course of negotiations, except as provided for in 621—6.1(20). Failure of the parties to agree upon impasse procedures shall not constitute an impasse item or compel implementation of impasse procedures.

1.6(6) “*Impasse procedures*” means either the procedures set forth in Iowa Code sections 20.20 and 20.22 or any procedures agreed upon by the parties pursuant to Iowa Code section 20.19 which are designed to result in a binding collective bargaining agreement.

1.6(7) “*Contested case*” means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under 1998 Iowa Acts, chapter 1202, section 14.

1.6(8) “*Adjudicatory proceeding*” means a contested case, a proceeding that may culminate in a contested case, a petition for declaratory order, a petition for expedited resolution of a negotiability dispute, or any other proceeding which may require the board or its designee to issue a decision, order, or ruling.

1.6(9) “*Agency*” as used in these rules means the public employment relations board and the board’s employees.

1.6(10) “*Confidential information*” means information excluded from public access by federal or state law or administrative rule, court rule, court or administrative order, or case law.

1.6(11) “*Protected information*” means personal information, the nature of which warrants protection from unlimited public access, including:

a. Social security numbers.

b. Financial account numbers.

c. Dates of birth.

d. Names of minor children.

e. Individual taxpayer identification numbers.

f. Personal identification numbers.

g. Other unique identifying numbers.

[ARC 8953B, IAB 7/28/10, effective 9/1/10; ARC 1583C, IAB 8/20/14, effective 9/24/14]

621—1.7(20) Computation of time. Time periods established by these rules shall be computed pursuant to Iowa Code section 4.1(34).

621—1.8(20,279) Fees of neutrals. Qualified arbitrators and teacher termination adjudicators appointed from lists maintained by the board may be compensated by a sum not to exceed \$1,200 per day of service, plus their necessary expenses incurred.

[ARC 8953B, IAB 7/28/10, effective 9/1/10; ARC 0395C, IAB 10/17/12, effective 11/21/12]

621—1.9(17A,20) Waiver or variance of rules.

1.9(1) Definitions.

a. “*Waiver or variance*” as used in this rule means action by the board which suspends, in whole or in part, the requirements or provisions of a rule as applied to an identified individual or entity on the basis of the particular circumstances of that individual or entity. The term “waiver” as used herein shall include both a waiver and a variance.

b. “*Provision of law*” as used in this rule means a provision of law as defined by Iowa Code section 17A.2(10).

1.9(2) Purpose and scope. This rule creates a generally applicable process and specifies applicable criteria for granting individual waivers from rules adopted by the board in situations in which no other specifically applicable provision of law provides for waiver. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific waiver provision shall supersede this rule with respect to any waiver of that rule.

1.9(3) When waiver unavailable. No waiver may be granted pursuant to this rule unless the board has jurisdiction over the rule to which the waiver request applies and the requested waiver is consistent with any applicable statute, constitutional provision or other provision of law. The board may not waive requirements created or duties imposed by statute.

1.9(4) Criteria for waiver. In response to a petition filed in accordance with this rule the board may, in its sole discretion, issue an order waiving the requirements of a rule or rules if the board finds, based on clear and convincing evidence, all of the following:

a. The application of the rule would pose an undue hardship on the entity or individual for whom the waiver is requested;

b. The waiver of the rule in the particular case would not prejudice the substantial legal rights of any individual or entity;

c. The provisions of the rule or rules to which the waiver request applies are not specifically mandated by statute or other provision of law; and

d. Substantially equal protection of public health, safety and welfare will be afforded by a means other than that prescribed in the particular rule or rules to which the waiver request applies.

1.9(5) Filing of petition. All petitions requesting a waiver must be filed personally or by mail with the board at its offices at 510 East 12th Street, Suite 1B, Des Moines, Iowa 50319. If the petition relates to a pending contested case proceeding or a proceeding pending before the agency which could culminate in a contested case proceeding, the petition shall be filed in and bear the caption of that proceeding. The board shall acknowledge the filing of a petition by providing the petitioner with a file-stamped copy.

1.9(6) Content of petition. A petition requesting a waiver shall be in writing and shall include the following information where applicable and known to the petitioner:

a. The name, address and telephone number of the individual or entity requesting the waiver and of the individual’s or entity’s authorized representative, if any.

b. A citation of the specific rules, rule or part thereof from which a waiver is requested.

c. A description of the precise scope and duration of the waiver requested.

d. A statement of the relevant facts the petitioner believes would justify a waiver under each of the criteria specified in subrule 1.9(4), together with an affirmation signed by the petitioner attesting to the accuracy of the facts asserted in the petition.

e. A history of any prior contacts within the last five years by or between the board or its representatives and the petitioner concerning the matter which would be affected by the requested waiver, including references to all past or pending agency proceedings relating to the matter.

f. Any information known to the petitioner regarding the board’s treatment of waiver requests by similarly situated individuals or entities under similar circumstances.

g. The name, address and telephone number of any other governmental agency or entity which also regulates the activity in question or which might be affected by the granting of the requested waiver.

h. The name, address and telephone number of each individual or entity, public or private, which might be adversely affected by the granting of the requested waiver.

i. The name, address and telephone number of each individual with knowledge of the relevant facts relating to the requested waiver.

j. Signed releases of information authorizing individuals with knowledge of relevant facts relating to the requested waiver to furnish the board with such information.

1.9(7) *Timing and effect of petition.* If the petition seeks waiver of a time requirement specified by a rule, it must be filed as soon as possible but, in every case, before the expiration of the time period sought to be waived. The filing of a petition does not itself stay the operation of any agency rule, including the rule which is the subject of the petition.

1.9(8) *Service of petition.* The petitioner shall, within ten days of the filing of the petition, serve a copy thereof, in accordance with the provisions of rule 621—2.15(20), upon all entities or individuals named in or potentially affected by the petition or to whom notice is required by any provision of law and shall file proof of such service with the board. The board may also give notice of the petition to other individuals or entities.

1.9(9) *Additional information.* Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner or other individuals or entities relating to the petition and the surrounding circumstances. Unless the petition is filed in a pending contested case proceeding, the board may, on its own motion or at the request of the petitioner or other interested individual or entity, schedule and conduct a telephonic or in-person meeting with the petitioner to discuss the request and surrounding circumstances and may include other interested individuals or entities.

1.9(10) *Procedure in contested cases.* The provisions of Iowa Code sections 17A.10 through 17A.18A regarding contested case hearings shall apply to petitions for a waiver which are filed in a pending contested case proceeding, but shall otherwise apply to proceedings on such petitions only when required by statute or when the board so provides by rule or order.

1.9(11) *Board discretion.* The final decision to grant or deny a waiver is vested in the board and shall be made wholly at its discretion following its consideration of all relevant factors, including the unique, individual circumstances set out in the petition. When the rule to which the petition relates establishes administrative deadlines, the board's consideration shall include a balancing of the individual circumstances of the petitioner with the board's policy favoring the uniform treatment of all similarly situated individuals or entities.

1.9(12) *Burden of persuasion.* The petitioner bears the burden of demonstrating, by clear and convincing evidence, that the board should exercise its discretion to grant a waiver pursuant to this rule.

1.9(13) *Ruling on petition.* The board shall issue a written ruling which includes an order granting or denying the requested waiver. The ruling shall contain a statement of the relevant facts and reasons upon which the order is based and a description of the precise scope and duration of any waiver granted.

1.9(14) *Time for ruling.* The board will issue its ruling as soon as practicable, but shall do so within 120 days of its receipt of the petition unless the petitioner agrees to a later date. However, if the petition was filed in a contested case proceeding or in a pending agency proceeding which has subsequently become a contested case proceeding, ruling on the petition may be withheld until the issuance of the final agency decision in that case.

1.9(15) *Deemed denial of petition.* Failure by the board to grant or deny a petition within the time required by subrule 1.9(14) shall be deemed a denial of the petition. However, notwithstanding such deemed denial, the board shall remain responsible for issuing a ruling pursuant to subrule 1.9(13).

1.9(16) *Scope and conditions of waiver.* Any waiver granted shall provide the narrowest exception possible to the provisions of the rule being waived. The board may include as a part of its granting of a waiver such conditions as it finds desirable to protect the public welfare or to achieve through alternative means the objectives of the particular rules, rule or part thereof being waived. A waiver shall not be permanent unless the petitioner has shown that a temporary waiver would be impracticable. Should a temporary waiver be granted, there is no automatic right to its renewal. A waiver may be renewed, in

the sole discretion of the board, upon the filing and service of a petition for renewal which complies with the provisions of this rule and a finding by the board that grounds for a waiver continue to exist.

1.9(17) *Service of ruling.* Within seven days of its issuance, the board's ruling on the petition shall be served by the board by ordinary mail upon the petitioner, any entity or individual to whom the ruling pertains and any other individuals or entities entitled to notice pursuant to any other provision of law.

1.9(18) *Indexing and public availability.* The board shall maintain a record of all rulings on petitions filed pursuant to this rule, which shall be indexed and available for public inspection at the board's offices subject to the provisions of Iowa Code section 17A.3. Because petitions and rulings may contain information which the board is authorized or required to keep confidential, the board may redact such confidential information from such petitions and rulings prior to public inspection.

1.9(19) *Effect of waiver.* Any waiver granted by the board shall constitute a defense, within the terms and the specific facts set forth therein, for the entity or individual to whom the waiver pertains in any proceeding in which the rule in question is sought to be invoked. The waiver is effective only as to the entity or individual to whom it was granted, is not assignable and does not inure to the benefit of the individual's or entity's successor(s) in interest.

1.9(20) *Cancellation of waiver.* A waiver granted pursuant to this rule may be canceled, withdrawn or modified if, after appropriate notice and hearing, the board finds:

a. An entity or individual who requested or was the subject of the waiver withheld from or knowingly misrepresented to the board material facts relevant to the propriety or desirability of the waiver; or

b. The alternative means for ensuring that the public welfare will be adequately protected and the purposes of the rule or set of rules waived will be adequately served after issuance of the waiver have been demonstrated to be insufficient, or

c. The subject of the waiver has failed to comply with all of the conditions specified in the order granting the waiver.

1.9(21) *Violations.* A violation of a condition specified in an order granting a waiver shall be treated as a violation of the particular rules, rule or portion thereof waived by the board. As a result, the recipient of a waiver under this rule who violates such a condition may be subject to the same remedies or penalties as an entity or individual who violates the rules, rule or portion thereof waived by the board.

1.9(22) *Appeals.* Any intra-agency or judicial review of rulings granting or denying waivers pursuant to this rule shall be in accordance with other applicable board rules and Iowa Code chapter 17A.

1.9(23) *Summary reports.* All orders granting or denying a waiver pursuant to this rule shall be summarized in semiannual reports which comply with and are distributed pursuant to the requirements of Iowa Code section 17A.9A.

621—1.10(20) Agency record and files.

1.10(1) *Agency record.* The official agency record for all adjudicatory proceedings includes the following:

- a.* Electronic files maintained in the agency's electronic document management system;
- b.* Paper documents maintained by the agency in paper form when permitted by the board's order; and
- c.* Exhibits and other materials filed with or delivered to and maintained by the agency as part of the case file.

1.10(2) *Paper case files.* Except as otherwise provided in the agency's rules or directed by the board, the agency will not maintain paper case files in adjudicatory proceedings filed on or after January 1, 2015. [ARC 1583C, IAB 8/20/14, effective 9/24/14]

These rules are intended to implement Iowa Code section 17A.9A and chapters 20 and 279.

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[Filed ARC 1583C (Notice ARC 1507C, IAB 6/25/14), IAB 8/20/14, effective 9/24/14]

CHAPTER 2
GENERAL PRACTICE AND HEARING PROCEDURES

621—2.1(20) Hearing—time and place—administrative law judge. A member of the board or an administrative law judge shall fix the time and place for all hearings. Hearings may be conducted by the board, or by one or more of its members, or by an administrative law judge designated by the board. At their discretion the board or administrative law judge may order a prehearing conference.

621—2.2(20) Notice of hearing—contents. Written notice of a contested case hearing shall be delivered by the board to all parties by ordinary mail. The notice shall include:

- 2.2(1) A statement of the date, time, place and nature of the hearing.
- 2.2(2) A statement of the legal authority and jurisdiction under which the hearing is to be held.
- 2.2(3) A reference to the particular sections of the statutes and rules involved.
- 2.2(4) A short and plain statement of the matters asserted.

621—2.3(20) Default.

2.3(1) If a party fails to appear or participate in a contested case hearing after proper service of notice, the presiding officer may, if no continuance is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

2.3(2) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case hearing become final agency action unless, within 20 days after the mailing of the decision to the parties, a motion to vacate pursuant to subrule 2.3(3) is filed and served on all parties or, if the decision is a proposed decision within the meaning of Iowa Code section 17A.15(2), an appeal from the decision to the board on the merits is filed within the time provided by rule 621—9.2(20) or, in cases brought pursuant to Iowa Code section 19A.14, a petition for review by the board on the merits is filed within the time provided by rule 621—11.8(19A,20).

2.3(3) A motion to vacate may be filed only by a party who failed to appear for the hearing and against whom the decision was rendered. The motion must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to and filed and served with the motion.

2.3(4) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to the existence of good cause is on the moving party. Adverse parties may, within ten days of the service of the motion and supporting affidavit(s) upon them, file a response to the motion. Adverse parties shall be allowed to conduct discovery as to the issue of the existence of good cause and to present evidence on the issue prior to a ruling on the motion, if a request to do so is included in that party's response.

2.3(5) The time for the filing of an intra-agency appeal from or petition for review of a decision for which a timely motion to vacate has been filed is stayed pending the issuance of the presiding officer's ruling on the motion to vacate.

621—2.4(20) Intervention and additional parties. Any interested person may request intervention in any proceeding before the public employment relations board. An application for intervention shall be in writing, except that applications made during a hearing may be made orally to the hearing officer, and shall contain a statement of the reasons for such intervention. When an application for intervention is filed regarding a petition for bargaining representative determination, the rules set forth in 621—subrules 4.3(2), 4.4(4) and 5.1(4) shall apply.

Where necessary to achieve a more proper decision, the board or administrative law judge may, on its own motion or the motion of any party, order the bringing in of additional parties. When so ordered the board shall serve upon such additional parties all relevant pleadings, and allow such parties a reasonable time to respond thereto where appropriate.

621—2.5(20) Continuance. Hearings or proceedings on any matter may be continued by order of the board or an administrative law judge, with the reasons therefor set out in said order, and notice thereof to all parties. Parties may, upon written application to the board prior to commencement of the hearing or other proceeding, or oral application to the administrative law judge during the hearing, but not ex parte, request a continuance. A continuance may be allowed for any cause not growing out of the fault or negligence of the applicant, which satisfies the board or administrative law judge that a proper decision or result will be more nearly obtained by granting a continuance. The continuance may also be granted if agreed to by all parties and approved by the board or administrative law judge.

621—2.6(20) Appearances and conduct of parties. Any party may appear and be heard on its own behalf, or by its designated representative. Designated representatives shall file a notice of appearance with the board for each case in which they appear for a party. Filing of pleadings on behalf of a party shall be equivalent to filing a notice of appearance. All persons appearing in proceedings before the board shall conform to the standard of ethical conduct required of attorneys before the courts of the state of Iowa. If any person refuses to conform to such standards, the board may decline to permit such person to appear in any proceeding.

621—2.7(20) Evidence—objections. Rules of evidence shall be those set forth in the Administrative Procedure Act. Any objection with respect to the conduct of the hearing, including an objection to the introduction of evidence, may be stated orally or in writing, accompanied by a short statement of the grounds of such objection, and included in the record. No such objection shall be deemed waived by further participation in the hearing.

621—2.8(20) Order of procedure. The employer shall present its evidence first in unit determination hearings. The complainant shall present its evidence first and shall have the burden of proof in prohibited practice hearings. Intervenors shall follow the parties in whose behalf the intervention is made; if not made in support of a principal party, the administrative law judge shall designate at what stage such intervenors shall be heard. The order of other parties shall be determined by the administrative law judge. All parties shall be allowed cross-examination and an opportunity for rebuttal. At any stage of the hearing or after the close of the hearing but prior to decision, the board or administrative law judge may call for further evidence to be presented by the party or parties concerned.

621—2.9(20) Amendments. A petition, complaint or answer may be amended for good cause shown, but not ex parte, upon motion at any time prior to the decision. Allowance of such amendments, including those to conform to the proof, shall be within the discretion of the board or administrative law judge. The board or administrative law judge may impose terms, or grant a continuance with or without terms, as a condition of such allowance. Such motions prior to hearing shall be in writing filed with the board, and the moving party shall serve a copy thereof upon all parties by ordinary mail.

621—2.10(20) Briefs and arguments. At the discretion of the board or administrative law judge, oral arguments may be presented by the parties with such time limits as determined by the board or administrative law judge. Briefs may be filed in such order and within such time limits as set by the board or administrative law judge.

621—2.11(20) Sequestration of witnesses. Upon its own motion, or the motion of any party, the board or administrative law judge may order the sequestration of witnesses in any proceeding.

621—2.12(20) Subpoenas.

2.12(1) Attendance of witnesses. The board, an administrative law judge, or an arbitrator selected pursuant to Iowa Code section 20.22 shall issue subpoenas to compel the attendance of witnesses and the production of relevant records upon written application of any party filed with the agency prior to the hearing. The application shall specify the names and addresses of the witnesses or the person or party having possession of the requested documents and shall list with specificity the records or other items

sought. The requested subpoenas may be provided electronically to a registered user of the electronic document management system. A motion to quash a subpoena may be filed, and when the subpoena has been served more than seven days prior to the hearing, the motion shall be filed not less than three days prior to the hearing.

2.12(2) *Witness fees.* Witnesses shall receive from the subpoenaing party fees and expenses as are prescribed by statute for witnesses in civil actions before a district court. Witnesses may, however, waive such fees and expenses.

2.12(3) *Service of subpoenas.* Subpoenas shall be served as provided in Iowa Code section 622.63. [ARC 8953B, IAB 7/28/10, effective 9/1/10; ARC 1583C, IAB 8/20/14, effective 9/24/14]

621—2.13(20) Form of documents and treatment of confidential or protected information.

2.13(1) *Form.* All documents which relate to any proceeding before the agency should be typewritten and bear the docket number of the proceeding to which it relates. Such documents may be single- or double-spaced at the option of the submitting party.

2.13(2) *Confidential information.* When a party files any document which contains material or a reproduction, quotation, or extensive paraphrase of confidential information as defined by 621—subrule 1.6(10), it is the responsibility of the filer to ensure that confidential information is omitted or redacted, or to certify the confidential nature of the document in the manner provided by the electronic document management system. If a document is certified as confidential, omission or redaction of the confidential information contained in the document is not required. The agency will not review filings to determine whether appropriate omissions or redactions have been made.

2.13(3) *Protected information.* When a party files any document which contains protected information as defined by 621—subrule 1.6(11), it is the responsibility of the filer to ensure that the protected information is omitted or redacted from the document before the document is filed unless the protected information is required by statute or rule to be included or is material to the proceeding. The agency will not review filings to determine whether appropriate omissions or redactions have been made.

[ARC 1583C, IAB 8/20/14, effective 9/24/14]

621—2.14(20) Captions. The following captions for documents other than forms provided by the board are suggested for use in practice before the board:

2.14(1) In prohibited practice proceedings:
Before the Public Employment Relations Board

XYZ,
Complainant

and

J. Doe,
Respondent

} [name of document]
Case No. 1234

2.14(2) In proceedings pursuant to a petition:
Before the Public Employment Relations Board

In the matter of
XYZ,
Public Employer
and

J. Doe, Petitioner

} [name of document]
Case No. 1234

621—2.15(20) Service of pleadings and other papers.

2.15(1) Service—upon whom made. Whenever under these rules nonelectronic service is required or permitted to be made upon a person or party, such service shall be as follows:

- a. Upon any city, or board, commission, council or agency thereof, by serving the mayor or city clerk.
- b. Upon any county, or office, board, commission or agency thereof, by serving the county auditor or the chairperson of the county board of supervisors.
- c. Upon any school district, school township, or school corporation, by serving the presiding officer or secretary of its governing body.
- d. Upon the state of Iowa, or board, commission, council, office or agency thereof, by serving the governor or the director of the department of administrative services.
- e. Upon the state judicial department, by serving the state court administrator.
- f. Upon any other governing body, by serving its presiding officer, clerk or secretary.
- g. Upon an employee organization, by serving the person designated by the employee organization to receive service pursuant to 621—subrule 8.2(2) or by service upon the president or secretary of the employee organization.
- h. Upon any other person, by serving that person or that person’s attorney of record.

2.15(2) Service—how made. Except as provided in rules 621—3.4(20) and 621—5.7(20) and subrule 2.12(3) and 621—subrule 4.2(2), whenever nonelectronic service of any document is permitted or required by these rules, the service shall be sufficient if made by ordinary mail. If the document served is an initial filing in a proceeding, the serving party shall also serve with the document an agency-approved information sheet regarding mandatory electronic filing.

2.15(3) Proof of service. Where personal service or service by certified or ordinary mail is permitted or required by these rules, the serving party shall file the return of personal service or certified mail return receipt with the agency. Where service by ordinary mail is permitted under these rules, the serving party shall include the following or a substantially similar certificate on the original document filed with the agency:

“I hereby certify that on _____ I sent a copy of the foregoing matter to
(date)

the following parties of record or their representatives at the addresses indicated, by depositing same in a United States mail receptacle with sufficient postage affixed.

(Signed) _____”
(party or representative)

Unless excepted by 621—subrule 16.4(2), proof of service shall be filed electronically in accordance with 621—Chapter 16.

[ARC 1583C, IAB 8/20/14, effective 9/24/14]

621—2.16(20) Consolidation. Upon application of any party or upon its own motion, the board or an administrative law judge may consolidate for hearing any cases which involve common questions of law or fact.

621—2.17(20) Prohibition against testimony of mediators, arbitrators and board employees. Except as authorized by Iowa Code section 20.31, a mediator, arbitrator, administrative law judge, member of the board or other officer or employee of the board shall not testify on behalf of any party to a prohibited practice, representation or impasse resolution proceeding, pending in any court or before the board, with respect to any information, facts, or other matter coming to that individual’s knowledge through a party or parties in an official capacity as a resolver of disputes.

[ARC 8953B, IAB 7/28/10, effective 9/1/10]

621—2.18(20) Delivery of decisions and orders. Decisions and orders of the board or administrative law judge shall be filed and served in accordance with 621—Chapter 16.

[ARC 1583C, IAB 8/20/14, effective 9/24/14]

621—2.19(20) Stays of agency action. Application for stays of agency actions must be filed with the board and served upon all interested parties pursuant to rule 621—2.15(20). The board may in its discretion and on such terms as it deems proper, grant or deny an application.

621—2.20(20) Ex parte communications.

2.20(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, a presiding officer in a contested case or in proceedings on a petition for declaratory order in which there are two or more parties, shall not communicate directly or indirectly with any party, representative of any party or any other person with a direct or indirect interest in such case, nor shall any such party, representative or person communicate directly or indirectly with the presiding officer concerning any issues of fact or law in that case, except upon notice and opportunity for all parties to participate. Nothing in this provision precludes the presiding officer, without such notice and opportunity for all parties to participate, from communicating with members of the agency or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish or modify the evidence in the record. The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another’s investigative work product in the course of determining whether to initiate a proceeding or exposure to factual information while performing other agency functions, including fact-gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as a presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202.

2.20(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and with the filing of the petition in a declaratory order proceeding in which there are two or more parties, and continue for as long as the case is pending.

2.20(3) Communications with a presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties prior to seeking to continue hearings or other deadlines.

2.20(4) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case or proceedings on a petition for declaratory order in which there are two or more parties shall disclose to all parties and place on the record of the pending matter all such written communications, all written responses to the communication, and a memorandum stating the substance of all such oral and other communications received, all responses made and the identity of each person from whom the presiding officer received a prohibited ex parte communication. The presiding officer shall notify all parties that these matters have been placed on the record. Any party desiring to rebut the prohibited communication will be allowed the opportunity to do so upon written request filed within ten days after the giving of notice that the matters have been placed on the record.

2.20(5) If the presiding officer determines that the effect of a prohibited ex parte communication is so prejudicial that it cannot be cured by the procedure specified in subrule 2.20(4), the presiding officer shall be disqualified and the portions of the record pertaining to the communication shall be sealed by protective order.

2.20(6) Promptly after being assigned to serve as presiding officer, either individually, on a hearing panel or on an intra-agency appeal, a presiding officer shall disclose to all parties any material factual information received through ex parte communication prior to such assignment, unless the factual information has or soon will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery.

2.20(7) Sanctions for prohibited communications.

a. The agency and any party may report any violation of this rule to appropriate authorities for any disciplinary proceedings provided by law.

b. The presiding officer may render a proposed decision or, in the case of the board or a majority thereof, a final decision, imposing appropriate sanctions for violations of this rule including a decision against the offending party, censure, suspension, or revocation of the privilege to practice before the agency.

c. Alleged violations of ex parte communication prohibitions by agency personnel shall be reported to the chairperson for the possible imposition of sanctions including censure, suspension, dismissal or other disciplinary action.

621—2.21(20) Transcripts of record. Oral proceedings in all hearings shall be recorded by a certified shorthand reporter or by mechanized means. The board does not furnish transcriptions, but oral proceedings shall be transcribed at the expense of any party requesting the transcription. Arguments on motions, oral arguments on appeal to the board, and arguments made in declaratory order and expedited negotiability dispute proceedings need not be recorded.

621—2.22(20) Dismissal. The board or an administrative law judge may dismiss cases for want of prosecution if, after receiving notice by certified mail, the parties do not show good cause why the case should be retained.

These rules are intended to implement Iowa Code chapter 20.

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CHAPTER 3
PROHIBITED PRACTICE COMPLAINTS

621—3.1(20) Filing of complaint. A complaint that any person, employee, organization or public employer has engaged in or is engaging in a prohibited practice under the Act may be filed by any person, employee organization or public employer. A complaint shall be in writing and signed according to these rules, and may be on a form provided by the board. The complaint shall be filed with the board within 90 days following the alleged violation.

621—3.2(20) Contents of complaint. The complaint shall include the following:

3.2(1) The name, address and organizational affiliation, if any, of the complainant, and the title of any representative filing the complaint.

3.2(2) The name and address of the respondent(s) and any other party named therein.

3.2(3) A clear and concise statement of the facts constituting the alleged prohibited practice, including the names of the individuals involved in the alleged act, the dates and places of the alleged occurrence, and the specific section(s) of the Act alleged to have been violated.

621—3.3(20) Clarification of complaint. The board may, on its own motion or motion of the respondent, require the complainant to make the complaint more specific.

621—3.4(20) Service of complaint. The complainant shall, within a reasonable time following the filing of a complaint, serve the respondent(s) with a copy of the complaint in the manner of an original notice or by certified mail, return receipt requested. Such service shall be upon the person designated for service by 621—subrule 2.15(1), and the complainant shall file proof thereof with the agency in accordance with 621—subrules 2.15(3) and 16.10(1).

[ARC 1583C, IAB 8/20/14, effective 9/24/14]

621—3.5(20) Answer to complaint.

3.5(1) Filing and service. Within ten days of service of a complaint, the respondent(s) shall file with the board a written answer to the complaint, and cause a copy to be delivered to the complainant by ordinary mail to the address set forth in the complaint. The answer shall be signed by the respondent(s) or the designated representative of the respondent(s).

3.5(2) Extension of time to answer. Upon application and good cause shown, the board may extend the time to answer to a time and date certain.

3.5(3) Contents of answer. The answer shall include a specific admission or denial of each allegation of the complaint or, if the respondent is without knowledge thereof, the respondent shall so state and such statement shall operate as a denial. Admissions or denials may be made to all or part of an allegation, but shall fairly meet the circumstances of the allegations. The answer shall include a specific statement of any affirmative defense. Matters contained in the answer shall be deemed denied by the complainant.

3.5(4) Admission by failure to answer. If the respondent fails to file a timely answer, such failure may be deemed by the board to constitute an admission of the material facts alleged in the complaint and a waiver by the respondent of a hearing.

621—3.6(20) Withdrawal of complaint. A complaint or any part thereof may be withdrawn with the consent of the board, and upon conditions the board may deem proper. Withdrawal shall constitute a bar to refiling the same complaint or part thereof by the complainant.

621—3.7(20) Amendment of complaint or answer. Amendments to a party's complaint or answer shall be governed by rule 621—2.9(20).

621—3.8(20) Investigation of complaint. The board or its designee may conduct a preliminary investigation of the allegations of any complaint. In conducting such investigation, the board may require the complainant and respondent to furnish evidence, including affidavits and other documents

if appropriate. If a review of the evidence shows that the complaint has no basis in fact, the complaint may be dismissed with prejudice by the board and the parties notified. Board employees involved in investigations under this rule shall not act as administrative law judges in any proceeding related to the investigation.

621—3.9 Rescinded, effective December 22, 1976.

621—3.10(20) Informal disposition. Any party seeking to settle a controversy which may result in a contested case may request assistance from the board. The board may schedule meetings between the parties and assist the parties in reaching a settlement of the dispute; provided, however, that no party shall be required to settle the controversy pursuant to this rule. Any prohibited practice case commenced with the board may be informally settled by stipulation, agreed settlement, consent order, default, or by any other method agreed upon by the parties, subject, however, to approval by the board.

621—3.11(20) Evidence of settlement negotiations. Evidence of proposed offers of settlement of a prohibited practice complaint shall be inadmissible at the hearing thereon.

These rules are intended to implement Iowa Code chapter 20.

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CHAPTER 6
NEGOTIATIONS AND NEGOTIABILITY DISPUTES

621—6.1(20) Scope of negotiations. The scope of negotiations shall be as provided in Iowa Code section 20.9. Either party may introduce other, nonmandatory matters for negotiation, and negotiation on these matters may continue until resolved by mutual agreement of the parties or until negotiations reach the arbitration stage of impasse; provided, however, that no party may be required to negotiate on nonmandatory subjects of bargaining. Unresolved nonmandatory matters shall be excluded from arbitration unless submission of the matter has been mutually agreed upon by the parties. Such an agreement is applicable only to negotiations toward the collective bargaining agreement then sought and is not binding upon the parties for future negotiations.

[ARC 8953B, IAB 7/28/10, effective 9/1/10]

621—6.2(20) Consolidated negotiations. Nothing in these rules shall prohibit, by agreement of the parties, more than one certified bargaining representative from bargaining jointly with a common public employer, or more than one public employer from bargaining jointly with a common certified bargaining representative, or any other combination thereof.

621—6.3(20) Negotiability disputes.

6.3(1) Defined. “*Negotiability dispute*” is a dispute arising in good faith during the course of collective bargaining as to whether a proposal is subject to collective bargaining under Iowa Code section 20.9 or whether a proposal which is subject to collective bargaining under Iowa Code section 20.9 is a mandatory topic of bargaining.

6.3(2) Expedited resolution. In the event that a negotiability dispute arises between the employer and the certified employee organization, either party may petition the agency for expedited resolution of the dispute. The petition shall set forth the material facts of the dispute and the precise question of negotiability submitted for resolution. The petitioner shall promptly serve the other party with a copy of the petition and file proof thereof with the agency in accordance with 621—subrules 2.15(3) and 16.10(1). Unless the dispute is resolved prior to the arbitration hearing, the parties shall present evidence on all items to the arbitrator, including the item which is the subject of the negotiability dispute. A negotiability dispute raised at the arbitration hearing shall be upon written objection to the submission of the proposal to the arbitrator. The objection shall request the arbitrator to seek a negotiability ruling from the agency regarding the proposal or state that the objecting party will file a petition for resolution of the dispute, which petition shall be filed within five days of the making of the objection. Arbitrators shall rule on all items submitted to them including the item which is the subject of the negotiability dispute, unless explicitly stayed by the board. Arbitration awards issued prior to the final determination of the negotiability dispute will be contingent upon that determination.

6.3(3) Decisions. Petitions filed pursuant to subrule 6.3(2) shall be given priority by the board. If deemed necessary by the board, the petition may be set for oral argument.

[ARC 8953B, IAB 7/28/10, effective 9/1/10; ARC 1583C, IAB 8/20/14, effective 9/24/14]

621—6.4(20) Acceptance of proposed agreement. Where the parties have reached a proposed (or “tentative”) collective bargaining agreement, the terms of that agreement shall be made public by the public employer, and the employee organization shall give reasonable notice of the date, time and place of a ratification election on the tentative agreement to the public employees; provided, however, that such notice shall be at least 24 hours prior to the election and the election shall be within seven days of the date of the tentative agreement. The vote shall be by secret ballot and only members of the employee organization shall be entitled to vote; provided, however, that the employee organization may, pursuant to its internal procedures, extend voting rights to nonmember bargaining unit employees. The employee organization shall within 24 hours notify the public employer whether the proposed agreement has been ratified.

The public employer shall, within ten days of the tentative agreement, likewise meet to accept or reject the agreement, and shall within 24 hours serve notice on the employee organization of its

acceptance or rejection of the proposed agreement; provided, however, that the public employer shall not be required to either accept or reject the tentative agreement if it has been rejected by the employee organization.

The above time limits may be modified by a written mutual agreement between the public employer and the employee organization.

The above time limits shall not apply to proposed agreements between the state and any bargaining unit of state employees.

[ARC 8953B, IAB 7/28/10, effective 9/1/10]

621—6.5(20) Negotiations report—filing of agreement. Not later than 60 days after conclusion of an agreement, the public employer shall submit to the board a report of negotiations procedures on a form provided by the board and shall attach two copies of the agreement.

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CHAPTER 7
IMPASSE PROCEDURES

621—7.1(20) General. Except as provided in the second paragraph of subrule 7.5(6), the rules set forth in this chapter are applicable only in the absence of an impasse agreement between the parties or the failure of either to utilize its procedures. Nothing in these rules shall be deemed to prohibit the parties, by mutual agreement, from proceeding directly to binding arbitration at any time after impasse.

621—7.2(20) Fees of neutrals. Transferred to 621—1.8(20,279), IAB 11/14/90, effective 12/19/90.

621—7.3(20) Mediation.

7.3(1) Request for mediation. Either party to an impasse may request the board in writing to appoint a mediator to the impasse.

An original and one copy of the request for mediation shall be filed with the board and shall, in addition to the request for mediation, contain:

a. The name, address, and telephone number of the requesting party, and the name, address and telephone number of its bargaining representative or of the chairperson of its bargaining team.

b. The name, address, and telephone number of the opposing party to the impasse, and the name, address and telephone number of its bargaining representative or of the chairperson of its bargaining team.

c. A description of the collective bargaining unit involved and the approximate number of employees in the unit.

d. A statement indicating whether the public employer of the unit involved is subject to the budget certification requirements of Iowa Code section 24.17 and, if the public employer is not subject to those requirements, a statement of the date upon which the public employer's next fiscal or budget year commences.

e. A concise and specific listing of the negotiated items upon which the parties have reached impasse.

7.3(2) Date, signature and notice. The request for mediation shall be dated and signed by an authorized representative of the requesting party. The requesting party shall also serve a copy of the request upon other parties to the negotiations either by personal delivery or by ordinary mail.

7.3(3) Appointment of mediator. Upon receipt of a request for mediation, the board may appoint an impartial and disinterested person as mediator of the dispute and notify all parties of the appointment of the mediator. The board shall determine the effective date of this appointment.

7.3(4) Confidential nature of mediation. Any information, either written or oral, disclosed by the parties to the mediator in the performance of mediation duties shall not be discussed by the mediator voluntarily or by compulsion unless approved by the parties involved or permitted by Iowa Code section 20.31.

The mediator shall not disclose any information with regard to any mediation conducted on behalf of any party to any cause pending in a proceeding before a court, board, investigatory body or arbitrator, except as permitted by Iowa Code section 20.31, without the written consent of the public employment relations board. Without such written consent, the mediator shall respectfully decline, by reason of this rule, to divulge any information disclosed by a party in the performance of the mediator's duties.

7.3(5) Mediation proceedings. The mediator may hold separate or joint meetings with the parties or their representatives, and those meetings shall not be public. Mediation meetings shall be conducted at a time and place designated by the mediator. If an impasse exists ten days after the effective date of the appointment of a mediator, the mediator shall so notify the board.

7.3(6) Board mediator. When the mediator is an employee of the Public Employment Relations Board, that mediator shall not participate in any contested case arising out of any transaction or occurrence relating to those mediation activities.

7.3(7) *Costs of mediation.* The mediator shall submit in writing to the board a list of fees and expenses.

[ARC 8317B, IAB 12/2/09, effective 11/1/09; ARC 8338B, IAB 12/2/09, effective 11/10/09; ARC 8953B, IAB 7/28/10, effective 9/1/10]

621—7.4(20) Fact-finding. Rescinded IAB 7/28/10, effective 9/1/10.

621—7.5(20) Binding arbitration.

7.5(1) *Request for arbitration.* If the dispute remains unresolved ten days after the effective date of the appointment of the mediator, either party to the impasse may request the board to arrange for binding arbitration.

7.5(2) *Form and contents of request.* The request for arbitration shall be in writing and shall include the name, address and signature of the requesting party and the capacity in which acting.

7.5(3) *Service of request.* The requesting party shall serve a copy of the request for arbitration upon the opposing party by ordinary mail.

7.5(4) *Exchange of final offers.* Within four days of the board's receipt of the request for arbitration, each party shall serve its final offer on each of the impasse items to the other party to the impasse. Final offers shall not be amended. A party shall not submit a final offer for arbitration which has not been offered to the other party in the course of negotiations.

7.5(5) *Selection of arbitrator.* Upon the filing of a timely request for arbitration, the board shall serve a list of five arbitrators upon the parties. Within five days of service of the list, the parties shall select their arbitrator from the list in the manner specified in Iowa Code section 20.22(4) as amended by 2010 Iowa Acts, House File 2485, section 26.

7.5(6) *Date and conduct of hearings.* Impasse items are deemed submitted to binding arbitration on the date of the commencement of the arbitration hearing, regardless of its duration. In disputes where the public employer is a community college, or where all or a portion of the public employees in the bargaining unit are teachers licensed under Iowa Code chapter 272 and the public employer is a school district or area education agency, the submission of impasse items to binding arbitration shall occur not later than May 13 of the year when the resulting collective bargaining agreement is to become effective.

Arbitration hearings shall be open to the public and shall be recorded either by mechanized means or by a certified shorthand reporter. The arbitration hearing shall be limited to those factors listed in Iowa Code section 20.22(9) and such other relevant factors as may enable the arbitrator to select the most reasonable offer, in the arbitrator's judgment, of the final offers submitted by the parties on each impasse item. Arbitrators appointed pursuant to impasse procedures agreed upon by the parties shall likewise consider the factors listed in Iowa Code section 20.22(9).

7.5(7) *Continued bargaining.* The parties may continue to bargain on the impasse items before the arbitrator until the arbitrator's selections are made. Should the parties reach agreement on an impasse item following its submission to arbitration, they shall immediately report their agreement to the arbitrator. The agreed upon term shall be incorporated into the parties' collective bargaining agreement, and the arbitrator shall no longer consider the final offers of the parties on that impasse item.

7.5(8) *Report of the arbitrator.* Within 15 days after the arbitration hearing, the arbitrator shall issue a written award specifying and explaining the arbitrator's selections and serve each party and the board with a copy by ordinary mail.

7.5(9) *Dismissal of arbitrator.* In the event of a failure of the arbitrator to issue an award within 15 days after the arbitration hearing, the arbitrator shall notify the board and the parties of this failure. Either party may thereafter request a new arbitrator. Unless the parties agree otherwise, the procedures in subrules 7.5(1) to 7.5(5) shall apply; provided, however, that the parties may submit new final offers. No arbitrator shall issue a partial award except by mutual consent of the parties.

7.5(10) *Costs of arbitration.* The arbitrator shall submit to the parties a written statement of fees and expenses with a copy sent to the board. The parties shall share the costs of arbitration equally.

[ARC 8953B, IAB 7/28/10, effective 9/1/10]

621—7.6(20) Impasse procedures after completion deadline.

7.6(1) Objections. Any objection by a party to mediation or the conduct of arbitration proceedings which will not be completed by the applicable deadline for completion of impasse procedures shall be filed with the agency in accordance with rule 621—16.4(20). The objecting party shall promptly serve the other party with a copy of the objection and file proof thereof with the agency in accordance with 621—subrules 2.15(3) and 16.10(1). The objection shall be filed and served no later than 10 days after the filing with the agency of the request for mediation or arbitration to which the objection refers. For purposes of this rule, a single-party request for mediation which is filed more than 120 days prior to the applicable deadline for completion of impasse procedures or a request for arbitration which is filed prior to the filing period specified in subrule 7.5(1) shall be deemed filed on the first day of that filing period. Failure to file an objection in a timely manner may constitute waiver of such objection, in which case the applicable deadline for completion of impasse procedures shall not apply.

7.6(2) Response to objection. The nonobjecting party may, within 10 days following the filing of an objection with the board, file a response asserting that, because of deliberate delay on the part of the objecting party, or unavoidable casualty, misfortune or other events beyond the parties' control, impasse procedures should continue beyond the applicable deadline. A response may additionally or alternatively assert that the deadline relied upon by the objecting party is inapplicable for reasons set forth in the response, or may assert other reasons why impasse procedures should not be terminated. If a response is not filed within the time allowed by this subrule, the board may issue an order terminating further impasse procedures.

7.6(3) Procedure. Filing of an objection before the applicable deadline for completion of impasse procedures shall not affect the obligation of each party to continue the impasse procedures. Further, the board may postpone hearing on the objection if it determines that mediation may take place or that an arbitration award may be rendered on or before the applicable deadline. In making that determination, the board will attempt to expedite any remaining impasse proceedings, but no party shall be required to waive or shorten any mandatory statutory time periods which apply to that party.

7.6(4) Hearings. Insofar as is applicable, hearings on a party's objection shall be conducted pursuant to 621—Chapter 2. The nonobjecting party shall proceed first and shall have the burden to show that impasse procedures should not be terminated. The board shall then issue a final order that further impasse procedures should be completed or should continue for a specified period of time or should be terminated. [ARC 8953B, IAB 7/28/10, effective 9/1/10; ARC 1583C, IAB 8/20/14, effective 9/24/14]

621—7.7(20) Impasse procedures for state employees.

7.7(1) Procedures. Statutory procedures in Iowa Code sections 20.20 to 20.22, and independent impasse procedures negotiated by the parties must provide that the impasse be submitted to binding arbitration and the arbitration hearing concluded no later than February 28, and that any arbitrator's award will be issued on or before March 15. This rule does not preclude the parties from mutually agreeing to a date other than February 28, but the agreement must result in an arbitration award on or before March 15.

7.7(2) Independent procedures. Independent impasse procedures negotiated by the parties must provide that the impasse will be submitted to binding arbitration, and any hearing thereon concluded no later than February 28, and that any arbitrator's award will be issued on or before March 15.

7.7(3) Statutory procedures. In the absence of independent procedures, the procedures in Iowa Code sections 20.20 and 20.22 and rules 621—7.1(20) to 621—7.5(20) shall apply, except that a single-party request for mediation must be filed no later than December 14, a request for binding arbitration must be filed by February 1, and an arbitration hearing must be concluded no later than February 28.

7.7(4) New certifications. Statutory impasse procedures under these rules shall not be available if the employee organization has been certified later than December 1. This rule does not preclude the parties from negotiating independent impasse procedures if an employee organization is certified after December 1 and the procedures will result in an arbitration award on or before March 15.

7.7(5) Negotiability disputes. Disputes concerning the negotiability of any subject of bargaining shall be submitted to the board for determination pursuant to 621—6.3(20) no later than March 1.

An arbitration award rendered prior to final determination of the negotiability dispute will be made conditional upon such determination. Notwithstanding the provisions of 621—2.19(20), no stay of impasse procedures will be granted during the pendency of any negotiability dispute, petition for declaratory order, or prohibited practice complaint.

This rule is intended to implement Iowa Code section 20.17.

[ARC 8953B, IAB 7/28/10, effective 9/1/10]

These rules are intended to implement Iowa Code chapter 20.

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¹ Effective date of 7.2 delayed by the Administrative Rules Review Committee 45 days after convening of the next General Assembly pursuant to §17A.8(9).

CHAPTER 9
ADMINISTRATIVE REMEDIES

621—9.1(20) Final decisions. When a quorum of the members of the board presides at the evidentiary hearing in a contested case proceeding, the decision entered thereon is the final decision of the agency. When the hearing is presided over by other than a quorum of the members of the board, the administrative law judge shall render a proposed decision, which shall become the final decision of the agency unless within 20 days of the filing of such proposed decision:

- 9.1(1) A party aggrieved by the proposed decision files an appeal to the board, or
- 9.1(2) The board, on its own motion, determines to review the proposed decision.

621—9.2(20) Appeals to board.

9.2(1) Notice of appeal. An appeal to the board from a proposed decision of an administrative law judge in a contested case proceeding shall be commenced within 20 days of the filing of the proposed decision by filing a written notice of appeal with the agency in accordance with rule 621—16.4(20). The appealing party shall promptly serve all other parties with a copy of the notice and file proof thereof with the agency in accordance with rule 621—16.10(20).

9.2(2) Cross-appeals. A cross-appeal may be taken in the same manner as an appeal within the 20 days for taking an appeal or within 5 days after the appeal is taken, whichever is later.

9.2(3) Hearing. On appeal the board shall utilize the record as submitted before the administrative law judge but may, upon application of a party, order that additional evidence be taken on appeal if it is shown that the additional evidence is material and that there were good reasons for the party's failure to present it before the administrative law judge. Any person, employee organization or public employer who has a significant interest in the outcome of the appeal may petition the board for intervention in the appeal proceedings. Where intervention is granted by the board, the intervening parties may submit briefs and arguments and participate in the same manner as an original party to the proceeding. The board shall set a time and place of hearing or argument and give notice thereof to the parties. The decision rendered by the board shall be a final decision of the agency.

[ARC 8953B, IAB 7/28/10, effective 9/1/10; ARC 1583C, IAB 8/20/14, effective 9/24/14]

These rules are intended to implement Iowa Code chapter 20.

[Filed 3/4/75]

[Filed 10/26/77, Notice 9/21/77—published 11/16/77, effective 12/21/77]

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[Filed emergency 7/23/85—published 8/14/85, effective 7/23/85]

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[Filed Without Notice ARC 8953B, IAB 7/28/10, effective 9/1/10]

[Filed ARC 1583C (Notice ARC 1507C, IAB 6/25/14), IAB 8/20/14, effective 9/24/14]

CHAPTER 10
DECLARATORY ORDERS

621—10.1(17A,20) Who may petition. Any person, public employer or employee organization may file a petition with the board for a declaratory order as to the applicability to specified circumstances of a statute, rule or order within the primary jurisdiction of the agency.

621—10.2(20) Contents of petition. A petition for a declaratory order must include:

10.2(1) The name, address and telephone number of the petitioner.

10.2(2) A clear and concise statement of the specific facts upon which the board is to base the declaratory order.

10.2(3) A citation to and the relevant language of the specific statute, rule or order whose applicability is questioned, and any other relevant law.

10.2(4) The specific questions which the petitioner wants answered, stated clearly and concisely.

10.2(5) The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.

10.2(6) The reasons for requesting the declaratory order and disclosure of the petitioner’s interest in the outcome.

10.2(7) A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner’s knowledge, those questions have been decided by, are pending determination by, or are under investigation by any governmental entity.

10.2(8) The names and addresses of other persons or entities, or a description of any class of persons or entities known by petitioner to be affected by or interested in the questions presented in the petition.

10.2(9) A certificate of service of the petition upon any persons or entities required to be served with a copy by rule 621—10.7(17A,20). Service of the petition and proof thereof shall be in accordance with 621—subrules 2.15(3) and 16.10(1).

[ARC 1583C, IAB 8/20/14, effective 9/24/14]

621—10.3(17A,20) Caption. The following caption is suggested for petitions for declaratory orders:

BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD	
IN THE MATTER OF:	CASE NO.
(NAME OF THE PARTY REQUESTING THE RULING), PETITIONER.	} PETITION FOR DECLARATORY ORDER

621—10.4(17A,20) Notice of petition. Within ten days after receipt of a petition for a declaratory order, the board shall give notice of the petition to all persons not served by the petitioner pursuant to rule 621—10.7(17A,20) to whom notice is required by any provision of law. The board may also give notice to any other persons or entities.

621—10.5(17A,20) Intervention.

10.5(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention which complies with subrule 10.5(3) within 20 days of the filing of a petition for declaratory order shall be allowed to intervene in the proceeding.

10.5(2) Any person who files a petition for intervention which complies with subrule 10.5(3) at any time prior to the issuance of the agency’s final order in the matter may be allowed to intervene in the proceeding at the discretion of the board.

10.5(3) A petition for intervention in a declaratory order proceeding must include:

a. The name, address and telephone number of the person seeking intervention.

b. A clear and concise statement of the facts supporting the intervenor’s standing and qualifications for intervention.

c. A citation to and the relevant language of any additional statutes, rules or orders and any other additional, relevant law not specified in the petition for declaratory order.

d. The answers to the questions presented in the petition for declaratory order desired by the intervenor and a summary of the reasons urged by the intervenor in support of those answers.

e. The reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.

f. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by any governmental entity.

g. The names and addresses of other persons or entities, or a description of any class of persons or entities known by intervenor to be affected by or interested in the questions presented.

621—10.6(17A,20) Briefs. The petitioner or any intervenor may file a brief in support of the position urged by that party. The board may request a brief from the petitioner, any intervenor or any other person or entity concerning the questions raised.

621—10.7(17A,20) Service of petitions and other papers. Every petition for declaratory order, petition for intervention, brief or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding and on all other persons or entities identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing with the board. The party filing a document is responsible for service on all parties and other affected or interested persons.

621—10.8(17A,20) Action on petition. Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the board or its designee shall take action on the petition as required by that section.

621—10.9(17A,20) Refusal to issue order.

10.9(1) The board shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

- a.* The petition does not substantially comply with rule 621—10.2(20).
- b.* The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the board's failure to issue a declaratory order.
- c.* The board does not have jurisdiction over the questions presented in the petition.
- d.* The questions presented by the petition are also presented in a current rule-making, contested case or other agency or judicial proceeding that may definitively resolve them.
- e.* The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
- f.* The facts or questions presented in the petition are unclear, overbroad, insufficient or otherwise inappropriate as a basis upon which to issue a declaratory order.
- g.* There is no need to issue a declaratory order because the questions raised in the petition have been settled due to a change in circumstances.
- h.* The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.
- i.* The petition requests a declaratory order that would necessarily determine the legal rights, duties or responsibilities of persons or entities who have not joined in the petition, intervened separately or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of the petitioner.
- j.* The petitioner requests the board to determine whether a statute is unconstitutional on its face.

10.9(2) A refusal to issue a declaratory order shall indicate the ground or grounds for the refusal and constitutes final agency action on the petition.

10.9(3) Refusal to issue a declaratory order pursuant to this rule does not preclude the filing of a new petition that seeks to eliminate the grounds for the prior refusal.

621—10.10(17A,20) Copies of orders. A copy of all orders issued in response to a petition for declaratory order or petition for intervention shall be promptly mailed to the petitioner and all intervenors.

These rules are intended to implement Iowa Code section 17A.9 and chapter 20.

[Filed 10/29/76, Notice 9/22/76—published 11/17/76, effective 12/22/76]

[Filed 11/7/80, Notice 9/17/80—published 11/26/80, effective 12/31/80]

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[Filed 4/15/99, Notice 3/10/99—published 5/5/99, effective 7/1/99]

[Filed ARC 1583C (Notice ARC 1507C, IAB 6/25/14), IAB 8/20/14, effective 9/24/14]

CHAPTER 11
STATE EMPLOYEE APPEALS OF GRIEVANCE DECISIONS
AND DISCIPLINARY ACTIONS

621—11.1(19A,20) Notice of appeal rights. Whenever the director of the Iowa department of personnel (hereinafter referred to as the director) issues a response to an employee on a matter appealable to the public employment relations board (hereinafter referred to as the board) pursuant to Iowa Code section 19A.14 as amended by 1988 Iowa Acts, House File 2399, section 1, in which the director does not grant the relief sought by the employee, the director shall also provide notice to the affected employee of appeal procedures and time limitations governing the appeal.

621—11.2(19A,20) Filing of appeal.

11.2(1) Appeals shall be filed with the board on the State Employee Grievance and Disciplinary Action Appeal Form.

11.2(2) Grievances. An employee, except an employee covered by a collective bargaining agreement which provides otherwise, who is not satisfied with the director's response to the employee's grievance may file an appeal with the board if the grievance alleged either a violation of Iowa Code chapter 19A or the rules of the department of personnel. Such appeal must be filed within 30 calendar days following the date the director's response was issued or should have been issued.

11.2(3) Disciplinary appeals. A nonprobationary merit system employee, except an employee covered by a collective bargaining agreement, who is discharged, suspended, demoted, or otherwise reduced in pay, and appeals the action to the director and is not satisfied with the director's response, may file an appeal with the board. Such appeal must be filed within 30 calendar days following the date the director's response was issued or should have been issued.

11.2(4) The board shall serve copies of the appeal upon the director by ordinary mail.

621—11.3(19A,20) Content of the appeal.

11.3(1) The appeal shall contain the following:

1. Name and social security number of the appealing employee;
2. Name of agency/department by which the appealing employee is/was employed;
3. A request for hearing, if desired;
4. A statement of the reasons supporting the appealing employee's dissatisfaction with the director's response;
5. A statement of the desired relief;
6. The name of the appealing employee's representative, if any;
7. Copies of all relevant documents;
8. Signature of the appealing employee;
9. Copy of the director's response to the employee;
10. A statement of the Iowa Code chapter 19A provision and department of personnel rule(s) which has allegedly been violated. (Note: This statement is required only for appeals of grievance decisions, not appeals of disciplinary actions.)

11.3(2) Completion of the State Employee Grievance and Disciplinary Action Appeal Form shall constitute compliance with all subrule 11.3(1) requirements.

621—11.4(19A,20) Content of director's answer to the appeal.

11.4(1) The director shall have 15 days from the date of receipt of notice of the employee's appeal in which to file an answer with the board.

11.4(2) The answer shall contain the following:

1. The names of the appealing employee and the employing agency/department;
2. A statement of the director's findings concerning the grievance or disciplinary action which forms the basis of the appeal. This statement must be complete and concise, and shall include the reasons supporting the director's response to the appealing employee;

3. A specific reply admitting, denying, or explaining each allegation contained in the appealing employee's appeal;
 4. All relevant documents contained in the director's record of the proceeding;
 5. Designation of and signature by the director or the director's designee.
- [ARC 1583C, IAB 8/20/14, effective 9/24/14]

621—11.5(19A,20) Right to a hearing.

11.5(1) The appealing employee has a right to an evidentiary hearing closed to the public unless a public hearing is requested by the employee. If the employee chooses to have a hearing, the board shall appoint an administrative law judge to adjudicate the matter. The administrative law judge shall set the time, date, and place of the hearing. The hearing shall be conducted in accordance with Chapter 2 of the board's rules, and shall be limited to the facts and issues contained in the employee's appeal and the director's answer.

11.5(2) Alternatively, the appealing employee may choose to have the administrative law judge determination based upon the record consisting of all the pleadings and documents filed with the board, without a hearing. If the employee chooses to have a decision based upon the record, the following procedure shall apply:

1. The employee shall submit the State Employee Grievance and Disciplinary Action Appeal Form to the board pursuant to subrule 11.3(1);
2. The director shall be notified and shall answer within 15 days as required in subrule 11.4(1);
3. The employee shall have 10 days following receipt of the director's answer to reply. The record shall then be closed and the hearing officer shall issue the decision based upon the record.

621—11.6(19A,20) Witnesses. Every state agency shall make its employees available to furnish sworn statements or to appear as witnesses at the hearing. When providing statements or testimony, witnesses shall be on official duty status.

621—11.7(19A,20) Finality of decision. The administrative law judge's proposed decision shall become final unless a timely petition for review is filed with the board or the board, on its own motion, determines to review the proposed decision.

621—11.8(19A,20) Review by board.

11.8(1) A petition for the board's review of an administrative law judge's proposed decision shall be filed with the board within 20 days of the filing of the proposed decision. The petitioning party shall serve a copy of the petition for review upon all parties or their attorney(s) of record by personal delivery or by ordinary mail.

11.8(2) Should the board determine to review a proposed decision on its own motion, the board shall provide all parties or their attorney(s) of record with written notice of such determination by personal delivery or by ordinary mail.

11.8(3) Where a petition for review is filed or the board determines to review a proposed decision on its own motion, the board may also, at its own discretion:

1. Require the filing of briefs,
2. Hear oral arguments, or
3. Take any other action necessary for final disposition of the case.

621—11.9(19A,20) Other rules. Any matters not specifically addressed by the rules contained in this chapter shall be governed by the general provisions of the rules of the public employment relations board.

621—11.10(19A,20) Applicability. This chapter shall apply to appeals filed with the board on or after July 1, 1988. Appeals filed prior to that date shall be governed by the board's prior rules governing "Merit Appeals," 621—11.1(20) through 621—11.9(20), filed October 15, 1986, and effective December 10, 1986.

These rules are intended to implement Iowa Code chapters 19A and 20.

[Filed emergency 8/4/86—published 8/27/86, effective 8/4/86]

[Filed 10/15/86, Notice 8/27/86—published 11/5/86, effective 12/10/86]

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[Filed ARC 1583C (Notice ARC 1507C, IAB 6/25/14), IAB 8/20/14, effective 9/24/14]

CHAPTERS 13 to 15
Reserved

CHAPTER 16
ELECTRONIC DOCUMENT MANAGEMENT SYSTEM

621—16.1(20) Effective date and scope. This chapter governs the filing of all documents in adjudicatory proceedings before the agency that are filed on or after September 24, 2014. This chapter also governs the filing of all documents in adjudicatory proceedings converted to electronic proceedings upon the board's order. To the extent the rules in this chapter are inconsistent with any other administrative rule of the board, the rules in this chapter shall govern.

[ARC 1583C, IAB 8/20/14, effective 9/24/14]

621—16.2(20) Definitions.

“Electronic filing” means the electronic transmission of a document to the electronic document management system together with the production and transmission of a notice of electronic filing.

“Electronic record” means a record, file, or document created, generated, sent, communicated, received, or stored by electronic means.

“Electronic service” means the electronic transmission of a link where the registered users who are entitled to receive notice of the filing may view and download filed documents.

“Nonelectronic filing” means a process by which a paper document or other nonelectronic item is filed with the agency.

“Notice of electronic filing” means a document generated by the electronic document management system when a document is electronically filed.

“PDF” means an electronic document filed in a portable document format which is readable by the free Adobe® Acrobat® Reader.

“Public access terminal” means a computer located at the agency's office where the public may view, print, and electronically file documents.

“Registered user” means an individual who can electronically file documents and electronically view and download files through the use of a username and password.

“Remote access” means a registered user's ability to electronically search, view, copy, or download electronic documents in an electronic record without the need to physically visit the agency's office.

“Signature” means a registered user's username and password accompanied by one of the following:

1. *“Digitized signature”* means an embeddable image of a person's handwritten signature;
2. *“Electronic signature”* means an electronic symbol (“/s/” or “/registered user's name/”) executed or adopted by a person with the intent to sign; or
3. *“Nonelectronic signature”* means a handwritten signature applied to an original document that is then scanned and electronically filed.

[ARC 1583C, IAB 8/20/14, effective 9/24/14]

621—16.3(20) Registration, username, and passwords.

16.3(1) Registration.

a. *Registration required.* Every individual filing documents or viewing or downloading documents filed in an adjudicatory proceeding must register as a registered user of the electronic document management system.

b. *How to register.* To register, the individual must complete the registration process located at <https://perb.iowa.gov/efiling> and obtain a username and password for the electronic document management system.

c. *Registration complete.* When the registration process is completed, the registered user will be assigned a username and password and the registered user may utilize the electronic document management system.

d. *Changing passwords.* Once registered, the user may change the user's password. If the registered user believes the security of an existing password has been compromised, the registered user must change the password immediately. The agency may require password changes periodically.

e. *Changes in registered user's contact information.* If a registered user's e-mail address, mailing address, or telephone number changes, the user must promptly make the necessary changes to the

registered user's information contained in the electronic document management system. The registered user shall promptly give notice of changes in contact information to any nonregistered party in every active proceeding in which the registered user is a party.

f. Duties of registered user. Each registered user shall ensure that the user's e-mail account information is current, that the account is monitored regularly, and that e-mail notices sent to the account are timely opened.

g. Canceling registration. Withdrawal from participation in the electronic document management system cancels the registered user's profile but does not authorize nonelectronic filing of documents and is not a withdrawal from a proceeding.

16.3(2) Use of username and password. A registered user is responsible for all documents filed with the user's username and password unless proven by clear and convincing evidence that the registered user did not make or authorize the filing.

16.3(3) Username and password security. If a username or password is lost, misappropriated, misused, or compromised, the registered user of that username/password shall notify the agency promptly.

16.3(4) Denial of access. The agency may refuse to allow an individual to electronically file or download information in the electronic document management system due to misuse, fraud or other good cause.

[ARC 1583C, IAB 8/20/14, effective 9/24/14]

621—16.4(20) Mandatory electronic filing and exceptions.

16.4(1) Electronic filing mandatory. Unless otherwise required or authorized by these rules, all documents in adjudicatory proceedings commenced on or after January 1, 2015, must be filed using the agency's electronic document management system.

16.4(2) Exceptions.

a. A show of interest submitted in a representative certification, combined bargaining unit determination or reconsideration/representative certification, or decertification proceeding shall not be filed electronically.

b. Any item that is not capable of being filed in an electronic format shall be filed in a nonelectronic format.

c. Upon a showing of exceptional circumstances that it is not feasible for an individual to file documents by electronic means, the board may excuse the individual from electronic filing in a particular proceeding.

d. All filings in proceedings initially filed prior to January 1, 2015, unless converted to an electronic proceeding by board order shall not be filed electronically.

16.4(3) What constitutes filing. The electronic transmission of a document to the electronic document management system consistent with the procedures specified in these rules, together with the production and transmission of a notice of electronic filing, constitutes filing of the document.

16.4(4) Electronic file stamp. Electronic documents are officially filed when affixed with an electronic file stamp. Filings so endorsed shall have the same force and effect as documents time-stamped in a nonelectronic manner.

16.4(5) E-mail or fax. E-mailing or faxing a document to the agency will not generate a notice of electronic filing and does not constitute electronic filing of the document unless otherwise ordered by the agency.

16.4(6) Public access terminal. At least one public access terminal shall be maintained at the agency's office.

[ARC 1583C, IAB 8/20/14, effective 9/24/14]

621—16.5(20) Filing of paper documents.

16.5(1) Conversion of paper documents filed. If the board allows a party to file paper documents in accordance with paragraph 16.4(2) "c," the agency will convert the filed documents to an electronic format viewable to registered users of the electronic document management system.

16.5(2) *Form of paper documents.* Each document must be printed on only one side and be delivered to the agency with no tabs, staples, or permanent clips, but may be organized with paperclips, clamps, or some other type of temporary fastener or may be delivered to the agency in an appropriate file folder.

16.5(3) *Return of copies by mail.* If a party wants a document filed in paper form to be returned by mail, the party must deliver to the agency a self-addressed envelope, with proper postage, large enough to accommodate the returned document.

[ARC 1583C, IAB 8/20/14, effective 9/24/14]

621—16.6(20) Date and time of filing.

16.6(1) *Date of filing.* An electronic filing may be made any day of the week, including holidays and weekends, and any time of the day the electronic document management system is available.

16.6(2) *Time of filing.* A document is timely filed if it is filed before midnight on the date the filing is due.

[ARC 1583C, IAB 8/20/14, effective 9/24/14]

621—16.7(20) Signatures.

16.7(1) *Registered user.* A username and password accompanied by a digitized, electronic, or nonelectronic signature serve as the registered user's signature on all electronically filed documents.

16.7(2) *Documents requiring oaths, affirmations or verifications.* Any document filed requiring a signature under oath or affirmation or with verification may be signed electronically or nonelectronically but shall be filed electronically.

16.7(3) *Format.* Any filing requiring a signature must be signed, with either a nonelectronic signature (actual signature scanned), an electronic signature (the symbol “/s/” or “/registered user's name/”), or a digitized signature (an inserted image of a handwritten signature). The following information about the person shall be included under the person's signature:

- a. Name;
- b. Name of firm, certified employee organization, or governmental agency;
- c. Mailing address;
- d. Telephone number; and
- e. E-mail address.

16.7(4) *Multiple signatures.* By filing a document containing multiple signatures, the registered user confirms that the content of the document is acceptable to all persons signing the document and that all such persons consent to having their signatures appear on the document.

[ARC 1583C, IAB 8/20/14, effective 9/24/14]

621—16.8(20) Format and redaction of electronic documents. All documents must be converted to a PDF format before they are filed in the electronic document management system. Prior to filing any document, the registered user shall ensure that the document is certified as confidential or the confidential information is omitted or redacted in accordance with 621—subrule 2.13(2), and that protected information is omitted or redacted in accordance with 621—subrule 2.13(3).

[ARC 1583C, IAB 8/20/14, effective 9/24/14]

621—16.9(20) Exhibits and other attachments. Any attachments to a filing, such as an exhibit, shall be uploaded and electronically attached to the filing.

[ARC 1583C, IAB 8/20/14, effective 9/24/14]

621—16.10(20) Service.

16.10(1) *Initial filing.* An initial filing in a proceeding shall be served upon other parties nonelectronically in the manner specified in rule 621—2.15(20). The document being served must be accompanied by an agency-approved information sheet regarding mandatory electronic filing. Unless exempted by subrule 16.4(2), proof of service of the initial filing shall be electronically filed.

16.10(2) *Subsequent filings.* All subsequent filings shall be electronically served via the electronic document management system, unless a party to the proceeding is exempted from electronically filing

documents by subrule 16.4(2). If a party is so exempted, all documents filed by all parties to the proceeding shall be served in accordance with rule 621—2.15(20).

16.10(3) *Proof of service of nonelectronic filings.*

- a. Parties filing pursuant to paragraph 16.4(2)“b” shall file a proof of service electronically.
- b. Parties filing pursuant to the exceptional circumstances provision in paragraph 16.4(2)“c” must attach a nonelectronic proof of service to the filing.
- c. Parties to a proceeding initially filed prior to January 1, 2015, must attach a nonelectronic proof of service to their nonelectronic filings.

16.10(4) *Electronic service and distribution of electronic filings.*

- a. When a document is electronically filed, it will be served through the electronic document management system to all parties to the adjudicatory proceeding who are registered users. No other service is required unless ordered by the agency.
- b. Notices of electronic filing will continue to be sent to registered users appearing or intervening in a proceeding until they have filed a withdrawal of appearance.

16.10(5) *Agency-generated documents.*

- a. *Electronic filing and service.* All agency-generated documents issued in adjudicatory proceedings governed by this chapter shall be electronically filed and served.
- b. *Paper copies.* The agency shall not mail paper copies of any documents absent approval by the board.

[ARC 1583C, IAB 8/20/14, effective 9/24/14]

621—16.11(20) Discovery. Parties shall file a notice with the agency when a notice of deposition or a discovery request or response is served on another party. The notice filed with the agency shall include the date, manner of service, and the names and addresses of the persons served. Other discovery materials shall not be filed unless ordered by the presiding officer.

[ARC 1583C, IAB 8/20/14, effective 9/24/14]

621—16.12(20) Transcripts, briefs and exhibits.

16.12(1) *Transcripts.* If a hearing or oral argument is transcribed, the transcript shall be made available to registered users electronically after final agency action.

16.12(2) *Briefs.* Briefs and memoranda shall be electronically filed.

16.12(3) *Exhibits.* A party’s exhibits admitted into evidence at a hearing shall be electronically filed by the party not later than the date ordered by the presiding officer or board.

[ARC 1583C, IAB 8/20/14, effective 9/24/14]

These rules are intended to implement Iowa Code section 20.24 as amended by 2014 Iowa Acts, House File 2172.

[Filed ARC 1583C (Notice ARC 1507C, IAB 6/25/14), IAB 8/20/14, effective 9/24/14]

CHAPTER 8
UNIVERSAL PRACTICE STANDARDS
[Prior to 2/10/88, see Pharmacy Examiners[620] Ch 6]

657—8.1(155A) Purpose and scope. The requirements of these rules apply to all Iowa-licensed pharmacists and to all pharmacies providing the services addressed in this chapter to patients in Iowa and are in addition to rules of the board relating to specific types of pharmacy licenses issued by the board.

657—8.2(155A) Pharmaceutical care. Pharmaceutical care is a comprehensive, patient-centered, outcomes-oriented pharmacy practice in which the pharmacist accepts responsibility for assisting the prescriber and the patient in optimizing the patient's drug therapy plan and works to promote health, to prevent disease, and to optimize drug therapy. Pharmaceutical care does not include the prescribing of drugs without the consent of the prescribing practitioner.

8.2(1) Drug therapy problems. In providing pharmaceutical care, the pharmacist shall strive to identify, resolve, and prevent drug therapy problems.

8.2(2) Drug therapy plan. In providing pharmaceutical care, the pharmacist shall access and evaluate patient-specific information, identify drug therapy problems, and utilize that information in a documented plan of therapy that assists the patient or the patient's caregiver in achieving optimal drug therapy. In concert with the patient, the patient's prescribing practitioner, and the patient's other health care providers, the pharmacist shall assess, monitor, and suggest modifications of the plan as appropriate.

8.2(3) Eligibility. Any Iowa-licensed pharmacist may practice pharmaceutical care.

657—8.3(155A) Responsibility.

8.3(1) Pharmacy operations. The pharmacy and the pharmacist in charge share responsibility for ensuring that all operations of the pharmacy are in compliance with federal and state laws, rules, and regulations relating to pharmacy operations and the practice of pharmacy.

8.3(2) Practice functions. The pharmacist is responsible for all functions performed in the practice of pharmacy. The pharmacist maintains responsibility for any and all delegated functions including functions delegated to pharmacist-interns, pharmacy technicians, and pharmacy support persons.

8.3(3) Pharmacist-documented verification. The pharmacist shall provide, document, and retain a record of the final verification for the accuracy, validity, completeness, and appropriateness of the patient's prescription or medication order prior to the delivery of the medication to the patient or the patient's representative.

[ARC 8673B, IAB 4/7/10, effective 6/1/10; ARC 1576C, IAB 8/20/14, effective 9/24/14]

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

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

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

8.4(3) Temporary or intermittent pharmacy staff. The pharmacy shall maintain a log of all pharmacists, pharmacist-interns, pharmacy technicians, and pharmacy support persons who have worked at that pharmacy and who are not regularly staffed at that pharmacy. Such log shall include the dates and shifts worked by each pharmacist, pharmacist-intern, pharmacy technician, and pharmacy

support person and shall be available for inspection and copying by the board or its representative for a minimum of two years following the date of the entry.

8.4(4) Identification badge. A pharmacist shall wear a visible identification badge while on duty that clearly identifies the person as a pharmacist and includes at least the pharmacist's first name.

[ARC 8673B, IAB 4/7/10, effective 6/1/10; ARC 9409B, IAB 3/9/11, effective 4/13/11]

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. Space and equipment in an amount and type to provide secure, environmentally controlled storage of drugs shall be available.

8.5(1) Refrigeration. The pharmacy shall maintain one or more refrigeration units. The temperature of the refrigerator shall be maintained within a range compatible with the proper storage of drugs requiring refrigeration, and a thermometer shall be maintained in the refrigerator to verify the temperature.

8.5(2) Sink. The pharmacy shall have a sink with hot and cold running water located within the pharmacy department and available to all pharmacy personnel; the sink shall be maintained in a sanitary condition.

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

8.5(4) Remodel or relocation—inspection. A pharmacy planning to remodel or relocate a licensed pharmacy department on or within the premises currently occupied by the pharmacy department, or a pharmacy intending to remodel or install a sterile compounding facility or equipment, shall provide written notification to the board at least 30 days prior to commencement of the remodel, pharmacy relocation, or sterile compounding installation. The board may require on-site inspection of the facility, equipment, or pharmacy department prior to or during the pharmacy's remodel, relocation, or opening. The board may also require on-site inspection of a temporary pharmacy location intended to be utilized during the remodel, construction, or relocation of the pharmacy department.

8.5(5) Orderly and clean. The pharmacy shall be arranged in an orderly fashion and kept clean. All required equipment shall be in good operating condition and maintained in a sanitary manner. Animals shall not be allowed within a licensed pharmacy unless that pharmacy is exclusively providing services for the treatment of animals or unless the animal is a service dog or assistive animal as defined in Iowa Code subsection 216C.11(1).

8.5(6) Light, ventilation, temperature, and humidity. The pharmacy shall be properly lighted and ventilated. The temperature and humidity of the pharmacy shall be maintained within a range compatible with the proper storage of drugs.

8.5(7) Other equipment. The pharmacist in charge shall ensure the availability of any other equipment necessary for the particular practice of pharmacy and to meet the needs of the patients served by the pharmacy.

8.5(8) Bulk counting machines. Unless bar-code scanning is required and utilized to verify the identity of each stock container of drugs utilized to restock a counting machine cell or bin, a pharmacist shall verify the accuracy of the drugs to be restocked prior to filling the counting machine cell or bin. A record identifying the individual who verified the drugs to be restocked, the individual who restocked the counting machine cell or bin, and the date shall be maintained. The pharmacy shall have a method to calibrate and verify the accuracy of the counting device and shall, at least quarterly, verify

the accuracy of the device and maintain a dated record identifying the individual who performed the quarterly verification.

[ARC 8671B, IAB 4/7/10, effective 5/12/10; ARC 0503C, IAB 12/12/12, effective 1/16/13]

657—8.6(155A) Health of personnel. Only personnel authorized by the responsible pharmacist shall be in the immediate vicinity of the drug dispensing, preparation, compounding, or storage areas. Any person shown, either by medical examination or pharmacist determination, to have an apparent illness or open lesions that may adversely affect the quality or safety of a drug product or another individual shall be excluded from direct contact with components, bulk drug substances, drug product containers, closures, in-process materials, drug products, and patients until the condition is corrected or determined by competent medical personnel not to jeopardize the quality or safety of drug products or patients. All personnel who normally assist the pharmacist shall be instructed to report to the pharmacist any health conditions that may have an adverse effect on drug products or may pose a health or safety risk to others.

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

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

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

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

8.7(4) Storage temperatures. All drugs and devices shall be stored at the proper temperature, as defined by the following terms:

a. “Controlled room temperature” means temperature maintained thermostatically between 15 degrees and 30 degrees Celsius (59 degrees and 86 degrees Fahrenheit);

b. “Cool” means temperature between 8 degrees and 15 degrees Celsius (46 degrees and 59 degrees Fahrenheit). Drugs and devices may be stored in a refrigerator unless otherwise specified on the labeling;

c. “Refrigerate” means temperature maintained thermostatically between 2 degrees and 8 degrees Celsius (36 degrees and 46 degrees Fahrenheit); and

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

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

657—8.8(124,155A) Out-of-date drugs or devices. Any drug or device bearing an expiration date shall not be dispensed for use beyond the expiration date of the drug or device. Outdated drugs or devices shall be removed from dispensing stock and shall be quarantined until such drugs or devices are properly disposed of.

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

8.9(1) Drug supplier invoices. All pharmacies shall maintain supplier invoices of prescription drugs and controlled substances upon which the actual date of receipt of the controlled substances by the pharmacist or other responsible individual is clearly recorded.

8.9(2) *Drug supplier credits.* All pharmacies shall maintain supplier credit memos for controlled substances and prescription drugs.
[ARC 8539B, IAB 2/24/10, effective 4/1/10]

657—8.10 Reserved.

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

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

8.11(2) *Undue influence.*

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

b. A prescriber may employ a pharmacist to provide nondispensing, drug information, or other cognitive services.

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

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

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

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

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

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

during practice at or in the hospital generic prescription blanks or forms bearing the name, address, or telephone number of the hospital pharmacy.

8.11(6) *Discrimination.* It is unethical to unlawfully discriminate between patients or groups of patients for reasons of religion, race, creed, color, gender, gender identity, sexual orientation, marital status, age, national origin, physical or mental disability, or disease state when providing pharmaceutical services.

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

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

[ARC 9526B, IAB 6/1/11, effective 7/6/11]

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

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

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

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

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

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

a. A person who has a criminal record, founded dependent adult abuse report, or founded child abuse report shall not be employed by a pharmacy to provide in-home services unless the department of human services has evaluated the crime or founded abuse report, has concluded that the crime or founded

abuse does not merit prohibition from such employment, and has notified the pharmacy that the person may be employed to provide in-home services.

b. The pharmacy shall keep copies of all record checks and evaluations for a minimum of two years following receipt of the record or for a minimum of two years after the individual is no longer employed by the pharmacy, whichever is greater.

657—8.14(155A) Training and utilization of pharmacy technicians or pharmacy support persons. All Iowa-licensed pharmacies utilizing pharmacy technicians or pharmacy support persons shall develop, implement, and periodically review written policies and procedures for the training and utilization of pharmacy technicians and pharmacy support persons appropriate to the practice of pharmacy at that licensed location. Pharmacy policies shall specify the frequency of review. Pharmacy technician and pharmacy support person training shall be documented and maintained by the pharmacy for the duration of employment. Policies and procedures and documentation of pharmacy technician and pharmacy support person training shall be available for inspection by the board or an agent of the board.

[ARC 8673B, IAB 4/7/10, effective 6/1/10]

657—8.15(155A) Delivery of prescription drugs and devices. Prescription drug orders, prescription devices, and completed prescription drug containers may be delivered, in compliance with all laws, rules, and regulations relating to the practice of pharmacy, to patients at any place of business licensed as a pharmacy.

8.15(1) Alternative methods. A licensed pharmacy may, by means of its employee or by use of a common carrier, pick up or deliver prescriptions to the patient or the patient's caregiver as follows:

- a.* At the office or home of the prescriber.
- b.* At the residence of the patient or caregiver.
- c.* At the hospital or medical care facility in which a patient is confined.
- d.* At an outpatient medical care facility where the patient receives treatment only pursuant to the following requirements:

- (1) The pharmacy shall obtain and maintain the written authorization of the patient or patient's caregiver for receipt or delivery at the outpatient medical care facility;

- (2) The prescription shall be delivered directly to or received directly from the patient, the caregiver, or an authorized agent identified in the written authorization;

- (3) A prescription authorized by a prescriber not treating the patient at the outpatient medical care facility may be transmitted to the pharmacy by the authorized agent via facsimile provided that the means of transmission does not obscure or render the prescription information illegible due to security features of the paper utilized by the prescriber to prepare the prescription and provided that the original written prescription is delivered to the pharmacy prior to delivery of the filled prescription to the patient; and

- (4) The outpatient medical care facility shall store the patient's filled prescriptions in a secure area pending delivery to the patient.

- e.* At the patient's or caregiver's place of employment only pursuant to the following requirements:

- (1) The pharmacy shall obtain and maintain the written authorization of the patient or patient's caregiver for receipt or delivery at the place of employment;

- (2) The prescription shall be delivered directly to or received directly from the patient, the caregiver, the prescriber, or an authorized agent identified in the written authorization; and

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

8.15(2) Policies and procedures required. Every pharmacy shipping or otherwise delivering prescription drugs or devices to Iowa patients shall develop and implement policies and procedures to ensure accountability, safe delivery, and compliance with temperature requirements as defined by subrule 8.7(4).

[ARC 7636B, IAB 3/11/09, effective 4/15/09]

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

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

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

- a. Pursuant to the express written authorization of the patient or the order or direction of a court.
- b. To the patient or the patient’s authorized representative.
- c. To the prescriber or other licensed practitioner then caring for the patient.
- d. To another licensed pharmacist when the best interests of the patient require such release.
- e. To the board or its representative or to such other persons or governmental agencies duly authorized by law to receive such information.

A pharmacist shall utilize the resources available to determine, in the professional judgment of the pharmacist, that any persons requesting confidential patient information pursuant to this rule are entitled to receive that information.

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

- a. Transferring a prescription to another pharmacy upon the request of the patient or the patient’s authorized representative.
- b. Providing a copy of a nonrefillable prescription to the person for whom the prescription was issued which is clearly marked as a copy and not to be filled.
- c. Providing drug therapy information to physicians or other authorized prescribers for their patients.
- d. Disclosing information necessary for the processing of claims for payment of health care operations or services.
- e. Transferring, subject to the provisions of subrule 8.35(7), prescription and patient records of a pharmacy that discontinues operation as a pharmacy to another licensed pharmacy that is held to the same standards of confidentiality and that agrees to act as custodian of the transferred records.

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

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

[ARC 9526B, IAB 6/1/11, effective 7/6/11]

657—8.17 and 8.18 Reserved.

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

8.19(1) Requirements for a prescription. A valid prescription drug order shall be based on a valid patient-prescriber relationship.

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

- (1) The date issued.
- (2) The name and address of the patient.
- (3) The name, strength, and quantity of the drug or device prescribed.
- (4) The name and address of the prescriber and, if the prescription is for a controlled substance, the prescriber's DEA registration number.
- (5) The written or electronic signature of the prescriber.

b. Written prescription. In addition to the requirements of paragraph 8.19(1)“a,” a written prescription shall be manually signed, with ink or indelible pencil, by the prescriber. The requirement for manual signature shall not apply when an electronically prepared and signed prescription for a noncontrolled substance is printed on security paper as provided in 657—paragraph 21.7(3)“b.”

c. Facsimile prescription. In addition to the requirements of paragraph 8.19(1)“a,” a prescription transmitted via facsimile shall include:

- (1) The identification number of the facsimile machine used to transmit the prescription to the pharmacy.
- (2) The time and date of transmission of the prescription.
- (3) The name, address, telephone number, and facsimile number of the pharmacy to which the prescription is being transmitted.
- (4) If the prescription is for a controlled substance and in compliance with DEA regulations, the manual signature of the prescriber.

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

- (1) An electronically prepared prescription for a controlled substance that is printed out or faxed by the prescriber or the prescriber's agent shall be manually signed by the prescriber.
- (2) The prescriber shall ensure that the electronic prescription application used to prepare and transmit the electronic prescription complies with applicable state and federal laws, rules, and regulations regarding electronic prescriptions.
- (3) The prescriber or the prescriber's agent shall provide verbal verification of an electronic prescription upon the request of the pharmacy.

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

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

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

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

(1) If the transmission is completed by the prescriber's agent and the first and last names and title of the transmitting agent are included in the order, the prescriber's signature is not required on the fax or alternate electronic transmission.

(2) If the order differs in any manner from the original order, such as a change of the drug strength, dosage form, or directions for use, the prescriber shall sign the order as provided by paragraph 8.19(3) "a."

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

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

8.19(6) Refills. A refill is one or more dispensings of a prescription drug or device that result in the patient's receipt of the quantity authorized by the prescriber for a single fill as indicated on the prescription drug order.

a. Noncontrolled prescription drug or device. A prescription for a prescription drug or device that is not a controlled substance may authorize no more than 12 refills within 18 months following the date on which the prescription is issued.

b. Controlled substance. A prescription for a Schedule III, IV, or V controlled substance may authorize no more than 5 refills within 6 months following the date on which the prescription is issued.

[ARC 8171B, IAB 9/23/09, effective 10/28/09; ARC 9912B, IAB 12/14/11, effective 1/18/12]

657—8.20(155A) Valid prescriber/patient relationship. Prescription drug orders and medication orders shall be valid as long as a prescriber/patient relationship exists. Once the prescriber/patient relationship is broken and the prescriber is no longer available to treat the patient or oversee the patient's use of a prescription drug, the order loses its validity and the pharmacist, on becoming aware of the situation, shall cancel the order and any remaining refills. The pharmacist shall, however, exercise prudent judgment based upon individual circumstances to ensure that the patient is able to obtain a sufficient amount of the prescribed drug to continue treatment until the patient can reasonably obtain the service of another prescriber and a new order can be issued.

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

1. Overutilization or underutilization;
2. Therapeutic duplication;
3. Drug-disease contraindications;
4. Drug-drug interactions;
5. Incorrect drug dosage or duration of drug treatment;
6. Drug-allergy interactions;
7. Clinical abuse/misuse;
8. Drug-prescriber contraindications.

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

657—8.22 to 8.25 Reserved.

657—8.26(155A) Continuous quality improvement program. Each pharmacy licensed to provide pharmaceutical services to patients in Iowa shall implement or participate in a continuous quality improvement program or CQI program. The CQI program is intended to be an ongoing, systematic program of standards and procedures to detect, identify, evaluate, and prevent medication errors, thereby improving medication therapy and the quality of patient care. A pharmacy that participates as an active member of a hospital or corporate CQI program that meets the objectives of this rule shall not be required to implement a new program pursuant to this rule.

8.26(1) Reportable program events. For purposes of this rule, a reportable program event or program event means a preventable medication error resulting in the incorrect dispensing of a prescribed drug received by or administered to the patient and includes but is not necessarily limited to:

- a. An incorrect drug;
- b. An incorrect drug strength;
- c. An incorrect dosage form;
- d. A drug received by the wrong patient;
- e. Inadequate or incorrect packaging, labeling, or directions; or
- f. Any incident related to a prescription dispensed to a patient that results in or has the potential to result in serious harm to the patient.

8.26(2) Responsibility. The pharmacist in charge is responsible for ensuring that the pharmacy utilizes a CQI program consistent with the requirements of this rule. The pharmacist in charge may delegate program administration and monitoring, but the pharmacist in charge maintains ultimate responsibility for the validity and consistency of program activities.

8.26(3) Policies and procedures. Each pharmacy shall develop, implement, and adhere to written policies and procedures for the operation and management of the pharmacy's CQI program. A copy of the pharmacy's CQI program description and policies and procedures shall be maintained and readily available to all pharmacy personnel. The policies and procedures shall address, at a minimum, a planned process to:

- a. Train all pharmacy personnel in relevant phases of the CQI program;
- b. Identify and document reportable program events;
- c. Minimize the impact of reportable program events on patients;
- d. Analyze data collected to assess the causes and any contributing factors relating to reportable program events;
- e. Use the findings to formulate an appropriate response and to develop pharmacy systems and workflow processes designed to prevent and reduce reportable program events; and
- f. Periodically, but at least annually, meet with appropriate pharmacy personnel to review findings and inform personnel of changes that have been made to pharmacy policies, procedures, systems, or processes as a result of CQI program findings.

8.26(4) Event discovery and notification. As provided by the procedures of the CQI program, the pharmacist in charge or appropriate designee shall be informed of and review all reported and documented program events. All pharmacy personnel shall be trained to immediately inform the pharmacist on duty of any discovered or suspected program event. When the pharmacist on duty determines that a reportable program event has occurred, the pharmacist shall ensure that all reasonably necessary steps are taken to remedy any problems or potential problems for the patient and that those steps are documented. Necessary steps include, but are not limited to, the following:

- a. Notifying the patient or the patient's caregiver and the prescriber or other members of the patient's health care team as warranted;

- b. Identifying and communicating directions or processes for correcting the error; and
- c. Communicating instructions for minimizing any negative impact on the patient.

8.26(5) CQI program records. All CQI program records shall be maintained on site at the pharmacy or shall be accessible at the pharmacy and be available for inspection and copying by the board or its representative for at least two years from the date of the record. When a reportable program event occurs or is suspected to have occurred, the program event shall be documented in a written or electronic storage record created solely for that purpose. Records of program events shall be maintained in an orderly manner and shall be filed chronologically by date of discovery.

a. The program event shall initially be documented as soon as practicable by the staff member who discovers the event or is informed of the event.

b. Program event documentation shall include a description of the event that provides sufficient information to permit categorization and analysis of the event and shall include:

- (1) The date and time the program event was discovered and the name of the staff person who discovered the event; and
- (2) The names of the individuals recording and reviewing or analyzing the program event information.

8.26(6) Program event analysis and response. The pharmacist in charge or designee shall review each reportable program event and determine if follow-up is necessary. When appropriate, information and data collected and documented shall be analyzed, individually and collectively, to assess the cause and any factors contributing to the program event. The analysis may include, but is not limited to, the following:

a. A consideration of the effects on the quality of the pharmacy system related to workflow processes, technology utilization and support, personnel training, and both professional and technical staffing levels;

b. Any recommendations for remedial changes to pharmacy policies, procedures, systems, or processes; and

c. The development of a set of indicators that a pharmacy will utilize to measure its program standards over a designated period of time.

657—8.27 to 8.29 Reserved.

657—8.30(126,155A) Sterile products. Rescinded IAB 6/6/07, effective 7/11/07.

657—8.31 Reserved.

657—8.32(124,155A) Individuals qualified to administer. The board designates the following as qualified individuals to whom a practitioner may delegate the administration of prescription drugs. Any person specifically authorized under pertinent sections of the Iowa Code to administer prescription drugs shall construe nothing in this rule to limit that authority.

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

657—8.33(155A) Vaccine administration by pharmacists. An authorized pharmacist may administer vaccines pursuant to protocols established by the CDC in compliance with the requirements of this rule.

8.33(1) Definitions. For the purposes of this rule, the following definitions shall apply:

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

“ACPE” means the Accreditation Council for Pharmacy Education.

“Authorized pharmacist” means an Iowa-licensed pharmacist who has met the requirements identified in subrule 8.33(2).

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

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

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

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

8.33(2) *Authorized pharmacist training and continuing education.* An authorized pharmacist shall document successful completion of the requirements in paragraph 8.33(2)“*a*” and shall maintain competency by completing and maintaining documentation of the continuing education requirements in paragraph 8.33(2)“*b*.”

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

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

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

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

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

8.33(3) *Protocol requirements.* A pharmacist may administer vaccines pursuant to CDC protocols. A protocol shall be unique to a pharmacy and shall identify all pharmacists authorized to administer vaccines pursuant to the protocol. Links to CDC protocols shall be provided on the board’s Web site at www.iowa.gov/ibpe. A protocol:

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

8.33(4) *Influenza and other emergency vaccines.* An authorized pharmacist shall only administer via protocol, to patients six years of age and older, influenza vaccines and other emergency vaccines in response to a public health emergency.

8.33(5) *Other adult vaccines.* An authorized pharmacist shall only administer via protocol, to patients 18 years of age and older, the following vaccines:

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

8.33(6) *Vaccines administered via prescription.* An authorized pharmacist may administer any vaccine pursuant to a prescription or medication order for an individual patient. In case of serious complications, the authorized pharmacist shall notify the prescriber who authorized the prescription within 24 hours and shall submit a VAERS report.

8.33(7) Verification and reporting. The requirements of this subrule do not apply to influenza and other emergency vaccines administered via protocol pursuant to subrule 8.33(4). An authorized pharmacist shall:

a. Prior to administering a vaccine identified in subrule 8.33(5) or subrule 8.33(6), consult the statewide immunization registry or health information network.

b. Within 30 days following administration of a vaccine identified in subrule 8.33(5) or subrule 8.33(6), report the vaccine administration to the statewide immunization registry or health information network and to the patient's primary health care provider, if known.

[ARC 1030C, IAB 9/18/13, effective 9/1/13]

657—8.34(155A) Collaborative drug therapy management. An authorized pharmacist may only perform collaborative drug therapy management pursuant to protocol with a physician pursuant to the requirements of this rule. The physician retains the ultimate responsibility for the care of the patient. The pharmacist is responsible for all aspects of drug therapy management performed by the pharmacist.

8.34(1) Definitions.

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

"Board" means the board of pharmacy.

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

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

"Community practice protocol" means a written, executed agreement entered into voluntarily between an authorized pharmacist and a physician establishing drug therapy management for one or more of the pharmacist's and physician's patients residing in a community setting. A community practice protocol shall comply with the requirements of subrule 8.34(2).

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

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

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

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

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

"Hospital practice protocol" means a written plan, policy, procedure, or agreement that authorizes drug therapy management between hospital pharmacists and physicians within a hospital and the hospital's clinics as developed and determined by the hospital's P&T committee. Such a protocol may apply to all pharmacists and physicians at a hospital or the hospital's clinics or only to those pharmacists

and physicians who are specifically recognized. A hospital practice protocol shall comply with the requirements of subrule 8.34(3).

“*IBM*” means the Iowa board of medicine.

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

“*Physician*” means a person who is currently licensed in Iowa to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy. A physician who executes a written protocol with an authorized pharmacist shall supervise the pharmacist’s activities involved in the overall management of patients receiving medications or disease management services under the protocol. The physician may delegate only drug therapies that are in areas common to the physician’s practice.

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

8.34(2) Community practice protocol.

a. An authorized pharmacist shall engage in collaborative drug therapy management with a physician only under a written protocol that has been identified by topic and has been submitted to the board or a committee authorized by the board. A protocol executed after July 1, 2008, will no longer be required to be submitted to the board; however, written protocols executed or renewed after July 1, 2008, shall be made available upon request of the board or the IBM.

b. The community practice protocol shall include:

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

(2) The name, signature, date, and contact information for each physician who may prescribe drugs and is responsible for supervising a patient’s drug therapy management. The physician who initiates a protocol shall be considered the main caregiver for the patient respective to that protocol and shall be noted in the protocol as the principal physician.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(14) Procedures to follow in emergency situations.

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

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

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

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

d. The collaborative drug therapy protocol must be filed with the board, kept on file in the pharmacy, and be made available upon request of the board or the IBM. After July 1, 2008, protocols shall no longer be filed with the board but shall be maintained in the pharmacy and made available to the board and the IBM upon request.

e. A physician may terminate or amend the collaborative drug therapy management protocol with an authorized pharmacist if the physician notifies, in writing, the pharmacist and the board. Notification shall include the name of the authorized pharmacist, the desired change, and the proposed effective date of the change. After July 1, 2008, the physician shall no longer be required to notify the board of changes in a protocol but the written notification shall be maintained in the pharmacy and made available upon request of the board or the IBM.

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

8.34(3) Hospital practice protocol.

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

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

c. The hospital practice protocol shall include:

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

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

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

1. Medication orders and prescription drug orders. The protocol may authorize therapeutic interchange or modification of drug dosages based on symptoms or laboratory or physical findings

defined in the protocol. The protocol shall include information specific to the dosage, frequency, duration, and route of administration of the drug authorized by the physician. The protocol shall not authorize the hospital pharmacist to change a Schedule II drug or to initiate a drug not included in the established protocol.

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

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

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

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

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

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

657—8.35(155A) Pharmacy license. A pharmacy license issued by the board is required for all sites where prescription drugs are offered for sale or dispensed under the supervision of a pharmacist. A pharmacy license issued by the board is also required for all sites where drug information or other cognitive pharmacy services, including but not limited to drug use review and patient counseling, are provided by a pharmacist. The board may issue any of the following types of pharmacy licenses: a general pharmacy license, a hospital pharmacy license, a special or limited use pharmacy license, or a nonresident pharmacy license. Nonresident pharmacy license applicants shall comply with board rules regarding nonresident pharmacy practice except when specific exemptions have been granted. Applicants for general or hospital pharmacy practice shall comply with board rules regarding general or hospital pharmacy practice except when specific exemptions have been granted. Any pharmacy located within Iowa that dispenses controlled substances must also register pursuant to 657—Chapter 10.

8.35(1) Exemptions. Applicants who are granted exemptions shall be issued a "general pharmacy license with exemption," a "hospital pharmacy license with exemption," a "nonresident pharmacy license with exemption," or a "limited use pharmacy license with exemption" and shall comply with the provisions set forth by that exemption. A written petition for exemption from certain licensure requirements shall be submitted pursuant to the procedures and requirements of 657—Chapter 34 and will be determined on a case-by-case basis.

8.35(2) Limited use pharmacy license. Limited use pharmacy license may be issued for nuclear pharmacy practice, correctional facility pharmacy practice, and veterinary pharmacy practice. Applications for limited use pharmacy license for these and other limited use practice settings shall be determined on a case-by-case basis.

8.35(3) Application form. Application for licensure and license renewal shall be on forms provided by the board. The application for a pharmacy license shall require an indication of the pharmacy ownership classification. If the owner is a sole proprietorship (100 percent ownership), the name and address of the owner shall be indicated. If the owner is a partnership or limited partnership, the names and addresses of all partners shall be listed or attached. If the owner is a corporation, the names and addresses of the officers and directors of the corporation shall be listed or attached. Any other pharmacy ownership classification shall be further identified and explained on the application. The application form shall require the name, signature, and license number of the pharmacist in charge. The names and license numbers of all pharmacists engaged in practice in the pharmacy, the names and registration numbers of all pharmacy technicians and pharmacy support persons working in the pharmacy, and the

average number of hours worked by each pharmacist, pharmacy technician, and pharmacy support person shall be listed or attached. Additional information may be required of specific types of pharmacy license applicants. The application shall be signed by the pharmacy owner or the owner's, partnership's, or corporation's authorized representative.

8.35(4) License expiration and renewal. General pharmacy licenses, hospital pharmacy licenses, special or limited use pharmacy licenses, and nonresident pharmacy licenses shall be renewed before January 1 of each year. The fee for a new or renewal license shall be \$135.

a. Late payment penalty. Failure to renew the pharmacy license before January 1 following expiration shall require payment of the renewal fee and a penalty fee of \$135. Failure to renew the license before February 1 following expiration shall require payment of the renewal fee and a penalty fee of \$225. Failure to renew the license before March 1 following expiration shall require payment of the renewal fee and a penalty fee of \$315. Failure to renew the license before April 1 following expiration shall require payment of the renewal fee and a penalty fee of \$405 and may require an appearance before the board. In no event shall the combined renewal fee and penalty fee for late renewal of a pharmacy license exceed \$540.

b. Delinquent license. If a license is not renewed before its expiration date, the license is delinquent and the licensee may not operate or provide pharmacy services to patients in the state of Iowa until the licensee renews the delinquent license. A pharmacy that continues to operate in Iowa without a current license may be subject to disciplinary sanctions pursuant to the provisions of 657—subrule 36.1(4).

8.35(5) Inspection of new pharmacy location. If the new pharmacy location within Iowa was not a licensed pharmacy immediately prior to the proposed opening of the new pharmacy, the pharmacy location shall require an on-site inspection by a pharmacy board inspector prior to the issuance of the pharmacy license. The purpose of the inspection is to determine compliance with requirements pertaining to space, library, equipment, security, temperature control, and drug storage safeguards. Inspection may be scheduled anytime following submission of necessary license and registration applications and prior to opening for business as a pharmacy. Prescription drugs, including controlled substances, may not be delivered to a new pharmacy location prior to satisfactory completion of the opening inspection.

8.35(6) Pharmacy license changes. When a pharmacy changes its name, location, ownership, or pharmacist in charge, a new pharmacy license application with a license fee as provided in subrule 8.35(4) shall be submitted to the board office. Upon receipt of the fee and properly completed application, the board will issue a new pharmacy license certificate. The old license certificate shall be returned to the board office within ten days of the change of name, location, ownership, or pharmacist in charge.

a. Location. A change of pharmacy location in Iowa shall require an on-site inspection of the new location as provided in subrule 8.35(5) if the new location was not a licensed pharmacy immediately prior to the relocation.

b. Ownership. A change of ownership of a currently licensed Iowa pharmacy, or a change of pharmacy location to another existing Iowa pharmacy location, shall not require on-site inspection pursuant to subrule 8.35(5). A new pharmacy license is required as provided in this subrule. A change of ownership effectively consists of a closing pharmacy, which is subject to the requirements for a closing pharmacy, and of a new pharmacy, which is subject to the requirements of a new pharmacy, with the possible exception of the on-site inspection as provided by this paragraph. In those cases in which the pharmacy is owned by a corporation, the sale or transfer of all stock of the corporation does not constitute a change of ownership provided the corporation that owns the pharmacy continues to exist and continues to own the pharmacy following the stock sale or transfer.

c. Pharmacist in charge. A change of pharmacist in charge shall require completion and submission of the application and fee for new pharmacy license.

(1) If a permanent pharmacist in charge has not been identified by the time of the vacancy, a temporary pharmacist in charge shall be identified. Written notification identifying the temporary pharmacist in charge, signed by the pharmacy owner or corporate officer and the temporary pharmacist in charge, shall be submitted to the board within 10 days following the vacancy.

(2) Within 90 days following the vacancy, a permanent pharmacist in charge shall be identified, and an application for pharmacy license, including the license fee as provided in subrule 8.35(4), shall be submitted to the board office.

8.35(7) Closing pharmacy. A closing pharmacy shall ensure that all patient and prescription records are transferred to another pharmacy that is held to the same standards of confidentiality as the closing pharmacy and that agrees to act as custodian of the records for the appropriate retention period for each record type as required by federal or state laws, rules, or regulations. A pharmacy shall not execute a sale or closing of a pharmacy unless there exists an adequate period of time prior to the pharmacy closing for delivery of the notifications to the pharmacist in charge, the board, the Drug Enforcement Administration (DEA), and pharmacy patients as required by this subrule. However, the provisions of this subrule regarding prior notifications to the board, the DEA, and patients shall not apply in the case of a board-approved emergency or unforeseeable closure, including but not limited to emergency board action, foreclosure, fire, or natural disaster.

a. Pharmacist in charge notification. At least 40 days prior to the effective date of the sale of a pharmacy, the pharmacist in charge of the closing pharmacy, if that individual is not an owner of the closing pharmacy, shall be notified of the proposed sale. The owner of the closing pharmacy may direct the pharmacist in charge to maintain information regarding the pending closure of the pharmacy confidential until public notifications are required 30 days prior to the pharmacy closing. The pharmacist in charge of the closing pharmacy shall provide input and direction to the pharmacy owner regarding the responsibilities of the closing pharmacy, including the notifications, deadlines, and time lines established by this subrule. The pharmacist in charge of the closing pharmacy shall prepare patient notifications pursuant to paragraph 8.35(7)“d.” At least 30 days prior to the effective date of the sale of a pharmacy, the pharmacist in charge of the purchasing or receiving pharmacy, if that individual is not an owner of the pharmacy, shall be notified of the pending transaction.

b. Board and DEA notifications. At least 30 days prior to the closing of a pharmacy, including a closing by sale of a pharmacy, a written notice shall be sent to the board and to the Drug Enforcement Administration (DEA) notifying those agencies of the intent to discontinue business or to sell the pharmacy and including the anticipated date of closing. These prior notifications shall include the name, address, DEA registration number, Iowa pharmacy license number, and Iowa controlled substances Act (CSA) registration number of the closing pharmacy and of the pharmacy to which prescription drugs will be transferred. Notifications shall also include the name, address, DEA registration number, Iowa pharmacy license number, and CSA registration number of the location at which prescription files, patient profiles, and controlled substance receipt and disbursement records will be maintained.

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

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

(1) Written notification shall identify the pharmacy that will be receiving the patient’s prescriptions and records. The notification shall advise patients that if they have any questions regarding their prescriptions and records that they may contact the closing pharmacy. If the closing pharmacy receives no contact from the patient within the 30-day notification period prior to the pharmacy closing, all patient information will be transferred to the receiving pharmacy. The notification shall also advise patients that after the date of closing patients may contact the pharmacy to which the prescriptions and records have been transferred.

(2) Written notification shall be delivered to each patient at the patient’s last address on file with the closing pharmacy by direct mail or personal delivery and also by public notice. Public notice refers to the display, in a location and manner clearly visible to patients, of signs in pharmacy pickup locations including drive-through prescription pickup lanes, on pharmacy or retail store entry and exit doors, or at

pharmacy prescription counters. In addition, notice may be posted on the pharmacy's Web site, displayed on a marquee or electronic sign, communicated via automated message on the pharmacy's telephone system, or published in one or more local newspapers or area shopper publications.

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

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

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

(2) The inventory of controlled substances shall be completed pursuant to the requirements in 657—10.35(124,155A).

(3) The inventory of all noncontrolled prescription drugs may be estimated.

(4) The inventory shall include the name, strength, dosage form, and quantity of all prescription drugs transferred.

(5) Controlled substances requiring destruction or other disposal shall be transferred in the same manner as all other drugs. The new owner is responsible for the disposal of these substances as provided in rule 657—10.18(124).

g. Surrender of certificates and forms. The pharmacy license certificate and CSA registration certificate of the closing or selling pharmacy shall be returned to the board office within ten days of closing or sale. The DEA registration certificate and all unused DEA Forms 222 shall be returned to the DEA within ten days of closing. All authorizations to utilize the DEA's online controlled substances ordering system (CSOS) and all digital certificates issued for the purpose of ordering controlled substances for the closing pharmacy shall be canceled or revoked within ten days of closing.

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

8.35(8) Failure to complete licensure. An application for a pharmacy 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 within six months of receipt by the board of the required applications. The licensure process shall be complete upon the pharmacy's opening for business at the licensed location following an inspection rated as satisfactory by an agent of the board if such an inspection is required pursuant to this rule. When an applicant fails to timely complete the licensure process, fees submitted with applications will not be transferred or refunded.

[ARC 8673B, IAB 4/7/10, effective 6/1/10; ARC 9526B, IAB 6/1/11, effective 7/6/11 (See Delay note at end of chapter); ARC 9693B, IAB 9/7/11, effective 8/11/11; ARC 0504C, IAB 12/12/12, effective 1/16/13]

657—8.36 to 8.39 Reserved.

657—8.40(155A,84GA,ch63) Pharmacy pilot or demonstration research projects. The purpose of this rule is to specify the procedures to be followed in applying for approval of a pilot or demonstration research project for innovative applications in the practice of pharmacy as authorized by 2011 Iowa Acts, chapter 63, section 36, as amended by 2012 Iowa Acts, House File 2464, section 31. In reviewing projects, the board will consider only projects that expand pharmaceutical care services that contribute to positive patient outcomes. The board will not consider any project intended only to provide a competitive advantage to a single applicant or group of applicants.

8.40(1) Definitions. For the purposes of this rule, the following definitions shall apply:

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

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

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

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

8.40(2) *Scope of project.* A project may not expand the definition of the practice of pharmacy. A project may include therapeutic substitution or substitution of medical devices used in patient care if such substitution is included under a collaborative drug therapy management protocol established pursuant to rule 657—8.34(155A).

8.40(3) *Board approval of a project.* Board approval of a project may include the grant of an exception to or a waiver of rules adopted under the Act or under any law relating to the authority of prescription verification and the ability of a pharmacist to provide enhanced patient care in the practice of pharmacy. Project approval, including exception to or waiver of board rules, shall initially be for a specified period of time not exceeding 18 months from commencement of the project. The board may approve the extension or renewal of a project following consideration of a petition that clearly identifies the project, that includes a report similar to the final project report described in paragraph 8.40(6) “a,” that describes and explains any proposed changes to the originally approved and implemented project, and that justifies the need for extending or renewing the term of the project.

8.40(4) *Applying for approval of a project.* A person who wishes the board to consider approval of a project shall submit to the board a petition for approval that contains at least the following information:

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

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

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

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

8.40(5) *Review and approval or denial of a proposed project.*

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

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

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

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

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

8.40(6) Presentation of reports. The pharmacist responsible for overseeing a project shall be responsible for submitting to the board any reports required as a condition of a project, including the final project report.

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

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

[ARC 0393C, IAB 10/17/12, effective 11/21/12; ARC 1032C, IAB 9/18/13, effective 10/23/13]

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

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[◇] Two or more ARCs

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CHAPTER 10
CONTROLLED SUBSTANCES
[Prior to 2/10/88, see Pharmacy Examiners[620] Ch 8]

657—10.1(124) Who shall register. Any person or business located in Iowa that manufactures, distributes, dispenses, prescribes, imports or exports, conducts research or instructional activities, or conducts chemical analysis with controlled substances in the state of Iowa, or that proposes to engage in such activities with controlled substances in the state, shall obtain and maintain a registration issued by the board unless exempt from registration pursuant to rule 657—10.6(124). A person or business required to be registered shall not engage in any activity for which registration is required until the application for registration is granted and the board has issued a certificate of registration to such person or business.

Manufacturers, distributors, reverse distributors, importers and exporters, individual practitioners (M.D., D.O., D.D.S., D.V.M., D.P.M., O.D., P.A., resident physician, advanced registered nurse practitioner), pharmacies, hospitals and animal shelters, care facilities, researchers and dog trainers, analytical laboratories, and teaching institutions shall register on forms provided by the board office. To be eligible to register, individual practitioners must hold a current, active license in good standing, issued by the appropriate Iowa professional licensing board, to practice their profession in Iowa.

657—10.2(124) Application forms. Application forms may be obtained from the Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688. Forms are also available on the board's Web site, www.state.ia.us/ibpe. Registration renewal forms will be mailed to each registrant approximately 60 days before the expiration date of the registration. A registrant who has not received a renewal form 45 days before the expiration date of the registration is responsible for contacting the board to request an application.

10.2(1) Signature requirements. Each application, attachment, or other document filed as part of an application shall be signed by the applicant as follows:

a. If the applicant is an individual practitioner, the practitioner shall sign the application and supporting documents.

b. If the applicant is a business, the application and supporting documents shall be signed by the person ultimately responsible for the security and maintenance of controlled substances at the registered location.

10.2(2) Submission of multiple applications. Any person or business required to obtain more than one registration may submit all applications in one package. Each application shall be complete and shall not refer to any accompanying application or any attachment to an accompanying application for required information.

657—10.3(124) Registration and renewal. For each registration or timely renewal of a registration to manufacture, distribute, dispense, prescribe, import or export, conduct research or instructional activities, or conduct chemical analysis with controlled substances listed in Schedules I through V of Iowa Code chapter 124, registrants shall pay a biennial fee of \$90.

10.3(1) Time and method of payment. Registration and renewal fees shall be paid at the time the application for registration or renewal is submitted. Payment should be made in the form of a personal, certified, or cashier's check or a money order made payable to the Iowa Board of Pharmacy. Payments made in the form of foreign currency or third-party endorsed checks will not be accepted.

10.3(2) Late renewal. Any registered person or business may apply, on forms provided by the board office, for registration renewal not more than 60 days prior to the expiration of the registration. Failure to renew a registration prior to the first day of the month following expiration shall require payment of the renewal fee and a penalty fee of \$90. Payment shall be made as specified in subrule 10.3(1).

[ARC 0504C, IAB 12/12/12, effective 1/16/13]

657—10.4(124) Exemptions—registration fee. The registration fee is waived for federal, state, and local law enforcement agencies and for the following federal and state institutions: hospitals, health care

or teaching institutions, and analytical laboratories authorized to possess, manufacture, distribute, and dispense controlled substances in the course of official duties.

10.4(1) *Law enforcement officials.* In order to enable law enforcement agency laboratories to obtain and transfer controlled substances for use as standards in chemical analysis, such laboratories shall maintain a registration to conduct chemical analysis. Such laboratories shall be exempt from payment of a fee for registration.

10.4(2) *Registration and duties not exempt.* Exemption from payment of a registration or registration renewal fee as provided in this rule does not relieve the agency or institution of registration or of any other requirements or duties prescribed by law.

657—10.5(124) Separate registration for independent activities; coincident activities. The following activities are deemed to be independent of each other and shall require separate registration. Any person or business engaged in more than one of these activities shall be required to separately register for each independent activity, provided, however, that registration in an independent activity shall authorize the registrant to engage in activities identified coincident with that independent activity.

10.5(1) *Manufacturing controlled substances.* A person or business registered to manufacture controlled substances in Schedules I through V may distribute any substances for which registration to manufacture was issued. A person or business registered to manufacture controlled substances in Schedules II through V may conduct chemical analysis and preclinical research, including quality control analysis, with any substances listed in those schedules for which the person or business is registered to manufacture.

10.5(2) *Distributing controlled substances.* This independent activity includes the delivery, other than by administering or dispensing, of controlled substances listed in Schedules I through V. No coincident activities are authorized.

10.5(3) *Dispensing or instructing with controlled substances.* This independent activity includes, but is not limited to, prescribing by individual practitioners, dispensing by pharmacies and hospitals, and conducting instructional activities with controlled substances listed in Schedules II through V. A person or business registered for this independent activity may conduct research and instructional activities with those substances for which the person or business is registered to the extent authorized under state law.

10.5(4) *Conducting research with controlled substances listed in Schedule I.* A researcher may manufacture or import the substances for which registration was issued provided that such manufacture or import is permitted under the federal Drug Enforcement Administration (DEA) registration. A researcher may distribute the substances for which registration was issued to persons or businesses registered or authorized to conduct research with that class of substances or registered or authorized to conduct chemical analysis with controlled substances.

10.5(5) *Conducting research with controlled substances listed in Schedules II through V.* A researcher may conduct chemical analysis with controlled substances in those schedules for which registration was issued, may manufacture such substances if and to the extent such manufacture is permitted under the federal DEA registration, and may import such substances for research purposes. A researcher may distribute controlled substances in those schedules for which registration was issued to persons registered or authorized to conduct chemical analysis, instructional activities, or research with such substances, and to persons exempt from registration pursuant to Iowa Code subsection 124.302(3), and may conduct instructional activities with controlled substances.

10.5(6) *Conducting chemical analysis with controlled substances.* A person or business registered to conduct chemical analysis with controlled substances listed in Schedules I through V may manufacture and import controlled substances for analytical or instructional activities; may distribute such substances to persons registered or authorized to conduct chemical analysis, instructional activities, or research with such substances and to persons exempt from registration pursuant to Iowa Code subsection 124.302(3); may export such substances to persons in other countries performing chemical analysis or enforcing laws relating to controlled substances or drugs in those countries; and may conduct instructional activities with controlled substances.

10.5(7) *Importing or exporting controlled substances.* A person or business registered to import controlled substances listed in Schedules I through V may distribute any substances for which such registration was issued.

657—10.6(124) Separate registrations for separate locations; exemption from registration. A separate registration is required for each principal place of business or professional practice location where controlled substances are manufactured, distributed, imported, exported, or dispensed unless the person or business is exempt from registration pursuant to Iowa Code subsection 124.302(3) or this rule.

10.6(1) *Warehouse.* A warehouse where controlled substances are stored by or on behalf of a registered person or business shall be exempt from registration except as follows:

a. Registration of the warehouse shall be required if such controlled substances are distributed directly from that warehouse to registered locations other than the registered location from which the substances were delivered to the warehouse.

b. Registration of the warehouse shall be required if such controlled substances are distributed directly from that warehouse to persons exempt from registration pursuant to Iowa Code subsection 124.302(3).

10.6(2) *Sales office.* An office used by agents of a registrant where sales of controlled substances are solicited, made, or supervised shall be exempt from registration. Such office shall not contain controlled substances, except substances used for display purposes or for lawful distribution as samples, and shall not serve as a distribution point for filling sales orders.

10.6(3) *Prescriber's office.* An office used by a prescriber who is registered at another location and where controlled substances are prescribed but where no supplies of controlled substances are maintained shall be exempt from registration. However, a prescriber who practices at more than one office location where controlled substances are administered or otherwise dispensed as a regular part of the prescriber's practice shall register at each location wherein the prescriber maintains supplies of controlled substances.

10.6(4) *Prescriber in hospital.* A prescriber who is registered at another location and who treats patients and may order the administration of controlled substances in a hospital other than the prescriber's registered practice location shall not be required to obtain a separate registration for the hospital.

10.6(5) *Affiliated interns, residents, or foreign physicians.* An individual practitioner who is an intern, resident, or foreign physician may dispense and prescribe controlled substances under the registration of the hospital or other institution which is registered and by whom the registrant is employed provided that:

a. The hospital or other institution by which the individual practitioner is employed has determined that the practitioner is permitted to dispense or prescribe drugs by the appropriate licensing board;

b. Such individual practitioner is acting only in the scope of employment in the hospital or institution;

c. The hospital or other institution authorizes the intern, resident, or foreign physician to dispense or prescribe under the hospital registration and designates a specific internal code number, letters, or combination thereof which shall be appended to the institution's DEA registration number, preceded by a hyphen (e.g., AP1234567-10 or AP1234567-12); and

d. The hospital or institution maintains a current list of internal code numbers identifying the corresponding individual practitioner, available for the purpose of verifying the authority of the prescribing individual practitioner.

657—10.7 to 10.9 Reserved.

657—10.10(124,147,155A) Inspection. The board may inspect, or cause to be inspected, the establishment of an applicant or registrant. The board shall review the application for registration and other information regarding an applicant or registrant in order to determine whether the applicant or registrant has met the applicable standards of Iowa Code chapter 124 and these rules.

657—10.11(124) Modification or termination of registration. A registered individual or business may apply to modify a current registration as provided by this rule.

10.11(1) Change of substances authorized. Any registrant may apply to modify the substances authorized by the registration by submitting a written request to the board. The request shall include the registrant's name, address, telephone number, registration number, and the substances or schedules to be added to or removed from the registration and shall be signed by the same person who signed the most recent application for registration or registration renewal. No fee shall be required for the modification.

10.11(2) Change of address of registered location.

a. Individual practitioner, researcher, analytical laboratory, or teaching institution. An entity registered under these classifications may apply to change the address of the registered location by submitting a written request to the board. The request shall include the registrant's name, current address, new address, telephone number, effective date of the address change, and registration number, and shall be signed by the registered individual practitioner or the same person who signed the most recent application for registration or registration renewal. No fee shall be required for the modification.

b. Pharmacy, hospital, care facility, manufacturer, distributor, importer, or exporter. An entity registered under these classifications shall apply to change the address of the registered location by submitting a completed application for registration. Applications may be obtained and shall be submitted as provided in rule 657—10.2(124). The registration fee as provided in rule 657—10.3(124) shall accompany each completed application.

10.11(3) Change of registrant's name.

a. Individual practitioner, researcher, analytical laboratory, or teaching institution. An entity registered under these classifications may apply to change the registrant's name by submitting a written request to the board. The request shall include the registrant's current name, the new name, address, telephone number, effective date of the name change, and registration number, and shall be signed by the registered individual practitioner or the same person who signed the most recent application for registration or registration renewal. No fee shall be required for the modification. Change of name, as used in this paragraph, refers to a change of the legal name of the registrant and does not authorize the transfer of a registration issued to an individual practitioner or researcher to another individual practitioner or researcher.

b. Pharmacy, hospital, care facility, manufacturer, distributor, importer, or exporter. An entity registered under these classifications shall apply to change the registrant name by submitting a completed application for registration. Applications may be obtained and shall be submitted as provided in rule 657—10.2(124). The registration fee as provided in rule 657—10.3(124) shall accompany each completed application.

10.11(4) Change of ownership of registered business entity. A change of immediate ownership of a pharmacy, hospital, care facility, manufacturer, distributor, analytical laboratory, teaching institution, importer, or exporter shall require the completion of an application for registration. Applications may be obtained and shall be submitted as provided in rule 657—10.2(124). The registration fee as provided in rule 10.3(124) shall accompany each completed application.

10.11(5) Change of responsible individual. Any registrant, except an individual practitioner, a researcher, a hospital, or a pharmacy, may apply to change the responsible individual authorized by the registration by submitting a written request to the board. The request shall include the registrant's name, address, telephone number, the name and title of the current responsible individual and of the new responsible individual, the effective date of the change, and the registration number, and shall be signed by the new responsible individual. No fee shall be required for the modification.

a. Individual practitioners and researchers. Responsibility under a registration issued to an individual practitioner or researcher shall remain with the named individual practitioner or researcher. The responsible individual under such registration may not be changed.

b. Pharmacies and hospitals. The responsible pharmacist may execute a power of attorney for DEA order forms to change responsibility under the registration issued to the pharmacy or hospital. The power of attorney shall include the name, address, DEA registration number, and Iowa uniform controlled substances Act (CSA) registration number of the registrant. The power of attorney shall

identify the current and new responsible individuals and shall authorize the new responsible individual to execute applications and official DEA order forms to requisition Schedule II controlled substances. The power of attorney shall be signed by both individuals, shall be witnessed by two adults, and shall be maintained by the registrant and available for inspection or copying by representatives of the board or other state or federal authorities.

10.11(6) Termination of registration. A registration issued to an individual shall terminate upon the death of the individual. A registration issued to an individual or business shall terminate when the registered individual or business ceases legal existence, discontinues business, or discontinues professional practice.

657—10.12(124) Denial, modification, suspension, or revocation of registration.

10.12(1) Grounds for suspension or revocation. The board may suspend or revoke any registration upon a finding that the registrant:

a. Has furnished false or fraudulent material information in any application filed under this chapter;

b. Has had the registrant's federal registration to manufacture, distribute, or dispense controlled substances suspended or revoked;

c. Has been convicted of a public offense under any state or federal law relating to any controlled substance. For the purpose of this rule only, a conviction shall include a plea of guilty, a forfeiture of bail or collateral deposited to secure a defendant's appearance in court which forfeiture has not been vacated, or a finding of guilt in a criminal action even though entry of the judgment or sentence has been withheld and the individual has been placed on probation;

d. Has committed such acts as would render the registrant's registration under Iowa Code section 124.303 inconsistent with the public interest as determined by that section; or

e. Has been subject to discipline by the registrant's respective professional licensing board and the discipline revokes, suspends, or modifies the registrant's authority regarding controlled substances (including, but not limited to, limiting or prohibiting the registrant from prescribing or handling controlled substances). A certified copy of the record of licensee discipline or a copy of the licensee's surrender of the professional license shall be conclusive evidence.

10.12(2) Limited suspension or revocation. If the board finds grounds to suspend or revoke a registration, the board may limit revocation or suspension of the registration to the particular controlled substance with respect to which the grounds for revocation or suspension exist. If the revocation or suspension is limited to a particular controlled substance or substances, the registrant shall be given a new certificate of registration for all substances not affected by revocation or suspension; no fee shall be required for the new certificate of registration. The registrant shall deliver the old certificate of registration to the board.

10.12(3) Denial of registration or registration renewal. If upon examination of an application for registration or registration renewal, including any other information the board has or receives regarding the applicant, the board determines that the issuance of the registration would be inconsistent with the public interest, the board shall serve upon the applicant an order to show cause why the registration should not be denied.

10.12(4) Considerations in denial of registration. In determining the public interest, the board shall consider all of the following factors:

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

b. Compliance with applicable state and local law.

c. Any convictions of the applicant under any federal and state laws relating to any controlled substance.

d. Past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion.

e. Furnishing by the applicant of false or fraudulent material in any application filed under this chapter.

f. Suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense controlled substances as authorized by federal law.

g. Any other factors relevant to and consistent with the public health and safety.

10.12(5) *Order to show cause.* Before denying, modifying, suspending, or revoking a registration, the board shall serve upon the applicant or registrant an order to show cause why the registration should not be denied, modified, revoked, or suspended. The order to show cause shall contain a statement of the basis therefor and shall call upon the applicant or registrant to appear before an administrative law judge or the board at a time and place not less than 30 days after the date of service of the order. The order to show cause shall also contain a statement of the legal basis for such hearing and for the denial, revocation, or suspension of registration and a summary of the matters of fact and law asserted. If the order to show cause involves the possible denial of registration renewal, the order shall be served not later than 30 days before the expiration of the registration. Proceedings to refuse renewal of registration shall not abate the existing registration, which shall remain in effect pending the outcome of the administrative hearing unless the board issues an order of immediate suspension pursuant to subrule 10.12(9).

10.12(6) *Hearing requested.* If an applicant or registrant who has received an order to show cause desires a hearing on the matter, the applicant or registrant shall file a request for a hearing within 30 days after the date of service of the order to show cause. If a hearing is requested, the board shall hold a hearing pursuant to 657—Chapter 35 at the time and place stated in the order and without regard to any criminal prosecution or other proceeding. Unless otherwise ordered by the board, an administrative law judge employed by the department of inspections and appeals shall be assigned to preside over the case and to render a proposed decision for the board's consideration.

10.12(7) *Waiver of hearing.* If an applicant or registrant entitled to a hearing on an order to show cause fails to file a request for hearing, or if the applicant or registrant requests a hearing but fails to appear at the hearing, the applicant or registrant shall be deemed to have waived the opportunity for a hearing unless the applicant or registrant shows good cause for such failure.

10.12(8) *Final board order when hearing waived.* If an applicant or registrant entitled to a hearing waives or is deemed to have waived the opportunity for a hearing, the executive director of the board may cancel the hearing and issue, on behalf of the board, the board's final order on the order to show cause.

10.12(9) *Order of immediate suspension.* The board may suspend any registration simultaneously with the service upon the registrant of an order to show cause why such registration should not be revoked or suspended if it finds there is an imminent danger to the public health or safety that warrants such action. If the board suspends a registration simultaneously with the service of the order to show cause upon the registrant, it shall serve an order of immediate suspension containing a statement of its findings regarding the danger to public health or safety upon the registrant with the order to show cause. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, under the provisions of the Iowa administrative procedure Act, unless sooner withdrawn by the board or dissolved by the order of the district court or an appellate court.

10.12(10) *Disposition of controlled substances.* If the board suspends or revokes a registration, the registrant shall promptly return the certificate of registration to the board. Also, upon service of the order of the board suspending or revoking the registration, the registrant shall deliver all affected controlled substances in the registrant's possession to the board or authorized agent of the board. Upon receiving the affected controlled substances from the registrant, the board or its authorized agent shall place all such substances under seal and retain the sealed controlled substances pending final resolution of any appeals or until a court of competent jurisdiction directs otherwise. No disposition may be made of the substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application, orders the sale of perishable substances and the deposit of proceeds of the sale with the court. Upon a revocation order's becoming final, all such controlled substances may be forfeited to the state.

10.12(11) *Notifications.* The board shall promptly notify the DEA and the Iowa department of public safety of all orders suspending or revoking registration and all forfeitures of controlled substances.

657—10.13 and **10.14** Reserved.

657—10.15(124,155A) Security requirements. All applicants and registrants shall provide effective controls and procedures to guard against theft and diversion of controlled substances. In order to determine whether a person has provided effective controls against diversion, the board shall use the security requirements set forth in these rules as standards for the physical security controls and operating procedures necessary to prevent diversion.

10.15(1) Physical security. Physical security controls shall be commensurate with the schedules and quantity of controlled substances in the possession of the registrant in normal business operation. A registrant shall periodically review and adjust security measures based on rescheduling of substances or changes in the quantity of substances in the possession of the registrant.

a. Controlled substances listed in Schedule I shall be stored in a securely locked, substantially constructed cabinet.

b. Controlled substances listed in Schedules II through V may be stored in a securely locked, substantially constructed cabinet. However, pharmacies and hospitals may disperse these substances throughout the stock of noncontrolled substances in a manner so as to obstruct the theft or diversion of the controlled substances.

10.15(2) Factors in evaluating physical security systems. In evaluating the overall security system of a registrant or applicant necessary to maintain effective controls against theft or diversion of controlled substances, the board may consider any of the following factors it deems relevant to the need for strict compliance with the requirements of this rule:

- a.* The type of activity conducted;
- b.* The type, form, and quantity of controlled substances handled;
- c.* The location of the premises and the relationship such location bears to security needs;
- d.* The type of building construction comprising the facility and the general characteristics of the building or buildings;
- e.* The type of vault, safe, and secure enclosures available;
- f.* The type of closures on vaults, safes, and secure enclosures;
- g.* The adequacy of key control systems or combination lock control systems;
- h.* The adequacy of electric detection and alarm systems, if any;
- i.* The adequacy of supervision over employees having access to controlled substances, to storage areas, or to manufacturing areas;
- j.* The extent of unsupervised public access to the facility, including the presence and characteristics of perimeter fencing, if any;
- k.* The procedures for handling business guests, visitors, maintenance personnel, and nonemployee service personnel;
- l.* The availability of local police protection or of the registrant's or applicant's security personnel; and
- m.* The adequacy of the registrant's or applicant's system for monitoring the receipt, manufacture, distribution, and disposition of controlled substances.

10.15(3) Manufacturing and compounding storage areas. Raw materials, bulk materials awaiting further processing, and finished products which are controlled substances listed in any schedule shall be stored pursuant to federal laws and regulations.

657—10.16(124) Report of theft or loss. A registrant shall report in writing, on forms provided by the board, any theft or significant loss of any controlled substance when the loss is attributable to other than inadvertent error. The report shall be submitted to the board office within two weeks of the discovery of the theft or loss. Thefts shall be reported whether or not the controlled substances are subsequently recovered or the responsible parties are identified and action is taken against them. A copy of the report shall be maintained in the files of the registrant, and the board will provide a copy of the report to the DEA. In addition to this required report, DEA requires the registrant to deliver notice, immediately

upon discovery of a theft or significant loss of controlled substances, to the nearest DEA field office via telephone, facsimile, or a brief written message explaining the circumstances.

657—10.17(124) Accountability of stock supply. An individual who administers a controlled substance from a non-patient-specific, stock supply in an institutional setting shall personally document on a separate readily retrievable record system each dose administered, wasted, or returned to the pharmacy. Such documentation shall not be delegated to another individual. Wastage documentation shall include the signature or unique electronic signature or identification of a witnessing licensed health care practitioner.

Distribution records for non-patient-specific, floor-stocked controlled substances shall bear the following information:

1. Patient's name;
2. Prescriber who ordered drug;
3. Name of drug, dosage form, and strength;
4. Time and date of administration to patient and quantity administered;
5. Signature or unique electronic signature of individual administering controlled substance;
6. Returns to the pharmacy;
7. Waste, which is required to be witnessed and cosigned by another licensed health care practitioner.

practitioner.

[ARC 9912B, IAB 12/14/11, effective 1/18/12]

657—10.18(124) Disposal. Any persons legally authorized to possess controlled substances in the course of their professional practice or the conduct of their business shall dispose of such drugs pursuant to the procedures and requirements of this rule. Disposal records shall be maintained in the files of the registrant.

10.18(1) Registrant stock supply. Pharmacy personnel, registrants, and registrant staff shall remove from current inventory and dispose of controlled substances by one of the following procedures.

a. The responsible individual shall utilize the services of a DEA-registered and Iowa-licensed disposal firm.

b. The board may authorize and instruct the registrant to dispose of the controlled substances in one of the following manners:

- (1) By delivery to an agent of the board or to the board office;
- (2) By destruction of the drugs in the presence of a board officer, agent, inspector, or other authorized individual; or
- (3) By such other means as the board may determine to ensure that drugs do not become available to unauthorized persons.

10.18(2) Waste. Except as otherwise specifically provided by federal or state law or rules of the board, the unused portion of a controlled substance resulting from administration to a patient from a registrant's stock or emergency supply or resulting from drug compounding operations may be destroyed or otherwise disposed of by the registrant or a pharmacist in witness of one other licensed health care provider or a registered pharmacy technician 18 years of age or older pursuant to this subrule. A written record of the wastage shall be made and maintained by the registrant for a minimum of two years following the destruction or other disposal. The record shall include the signatures of the individual destroying or otherwise disposing of the waste controlled substance and of the witnessing licensed health care provider or registered pharmacy technician and shall identify the following:

- a.* The controlled substance wasted;
- b.* The date of destruction or other disposition;
- c.* The quantity or estimated quantity of the wasted controlled substance;
- d.* The source of the controlled substance, including identification of the patient to whom the substance was administered or the drug compounding process utilizing the controlled substance; and
- e.* The reason for the waste.

10.18(3) *Previously dispensed controlled substances.* Controlled substances dispensed to or for a patient and subsequently requiring destruction due to discontinuance of the drug, death of the patient, or other reasons necessitating destruction may be destroyed or otherwise disposed of by a pharmacist in witness of one other responsible adult pursuant to this subrule. All licenses and registrations issued to the pharmacy, the pharmacist, and any individual witnessing the destruction or other disposition shall not be subject to sanctions relating to controlled substances at the time of the destruction or disposition. The individuals involved in the destruction or other disposition shall not have been subject to any criminal, civil, or administrative action relating to violations of controlled substances laws, rules, or regulations within the past five years. The pharmacist in charge shall be responsible for designating pharmacists authorized to participate in the destruction or other disposition pursuant to this subrule. The authorized pharmacist shall prepare and maintain in the pharmacy a readily retrievable record of the destruction or other disposition, which shall be clearly marked to indicate the destruction or other disposition of noninventory or patient drugs. The record shall include, at a minimum, the following:

- a. The source of the controlled substance (patient identifier or administering practitioner, if applicable, prescription number or other unique identification number, and date of return);
- b. The name, strength, and dosage form of the substance;
- c. The quantity returned and destroyed or otherwise disposed of;
- d. The date the substance is destroyed or otherwise disposed of;
- e. The signatures or other unique identification of the pharmacist and the witness;
- f. The name and address of the dispensing pharmacy or practitioner if the controlled substance was not dispensed by the pharmacy completing the destruction.

[ARC 0749C, IAB 5/29/13, effective 7/3/13]

657—10.19 and 10.20 Reserved.

657—10.21(124,126,155A) Prescription requirements. All prescriptions for controlled substances shall be dated as of, and signed on, the day issued. Controlled substances prescriptions shall be valid for six months following date of issue. A prescription for a Schedule III, IV, or V controlled substance may include authorization to refill the prescription no more than five times within the six months following date of issue. A prescription for a Schedule II controlled substance shall not be refilled.

10.21(1) *Form of prescription.* All prescriptions shall bear the full name and address of the patient; the drug name, strength, dosage form, quantity prescribed, and directions for use; and the name, address, and DEA registration number of the prescriber. All prescriptions issued by individual prescribers shall include the legibly preprinted, typed, or hand-printed name of the prescriber as well as the prescriber's written or electronic signature. When an oral order is not permitted, or when a prescriber is unable to prepare and transmit an electronic prescription in compliance with DEA requirements for electronic prescriptions, prescriptions shall be written with ink, indelible pencil, or typed print and shall be manually signed by the prescriber. If the prescriber utilizes an electronic prescription application that meets DEA requirements for electronic prescriptions, the prescriber may electronically prepare and transmit a prescription for a controlled substance to a pharmacy that utilizes a pharmacy prescription application that meets DEA requirements for electronic prescriptions. A prescriber's agent may prepare a prescription for the review, authorization, and manual or electronic signature of the prescriber but the prescribing practitioner is responsible for the accuracy, completeness, and validity of the prescription. An electronic prescription for a controlled substance shall not be transmitted to a pharmacy except by the prescriber in compliance with DEA regulations. A prescriber shall securely maintain the unique authentication credentials issued to the prescriber for utilization of the electronic prescription application and authentication of the prescriber's electronic signature. Unique authentication credentials issued to any individual shall not be shared with or disclosed to any other prescriber, agent, or individual. A corresponding liability rests upon the pharmacist who fills a prescription not prepared in the form prescribed by this rule.

10.21(2) *Verification by pharmacist.* The pharmacist shall verify the authenticity of the prescription with the individual prescriber or the prescriber's agent in each case when a written or oral prescription

for a Schedule II controlled substance is presented for filling and neither the prescribing individual practitioner issuing the prescription nor the patient or patient's agent is known to the pharmacist. The pharmacist shall verify the authenticity of the prescription with the individual prescriber or the prescriber's agent in any case when the pharmacist questions the validity of, including the legitimate medical purpose for, the prescription. The pharmacist is required to record the manner by which the prescription was verified and include the pharmacist's name or unique identifier.

10.21(3) *Intern, resident, foreign physician.* An intern, resident, or foreign physician exempt from registration pursuant to subrule 10.6(5) shall include on all prescriptions issued the hospital's registration number and the special internal code number assigned by the hospital in lieu of the prescriber's registration number required by this rule. Each prescription shall include the stamped or legibly printed name of the intern, resident, or foreign physician as well as the prescriber's signature.

10.21(4) *Valid prescriber/patient relationship.* Once the prescriber/patient relationship is broken and the prescriber is no longer available to treat the patient or to oversee the patient's use of the controlled substance, a prescription shall lose its validity. A prescriber/patient relationship shall be deemed broken when the prescriber dies, retires, or moves out of the local service area or when the prescriber's authority to prescribe is suspended, revoked, or otherwise modified to exclude authority for the schedule in which the prescribed substance is listed. The pharmacist, upon becoming aware of the situation, shall cancel the prescription and any remaining refills. However, the pharmacist shall exercise prudent judgment based upon individual circumstances to ensure that the patient is able to obtain a sufficient amount of the drug to continue treatment until the patient can reasonably obtain the service of another prescriber and a new prescription can be issued.

10.21(5) *Schedule II prescriptions.* With appropriate verification, a pharmacist may add information provided by the patient or patient's agent, such as the patient's address, to a Schedule II controlled substance prescription. A pharmacist shall never change the patient's name, the controlled substance prescribed except for generic substitution, or the name or signature of the prescriber. After consultation with the prescriber or the prescriber's agent and documentation of such consultation, a pharmacist may change or add the following information on a Schedule II controlled substance prescription:

- a. The drug strength;
- b. The dosage form;
- c. The drug quantity;
- d. The directions for use;
- e. The date the prescription was issued; and
- f. The prescriber's address or DEA registration number.

[ARC 9912B, IAB 12/14/11, effective 1/18/12]

657—10.22(124) Schedule II emergency prescriptions.

10.22(1) *Emergency situation defined.* For the purposes of authorizing an oral or facsimile transmission of a prescription for a Schedule II controlled substance listed in Iowa Code section 124.206, the term "emergency situation" means those situations in which the prescribing practitioner determines that all of the following apply:

- a. Immediate administration of the controlled substance is necessary for proper treatment of the intended ultimate user.
- b. No appropriate alternative treatment is available, including administration of a drug that is not a Schedule II controlled substance.
- c. It is not reasonably possible for the prescribing practitioner to provide a manually signed written prescription to be presented to the pharmacy before the pharmacy dispenses the controlled substance or the prescribing practitioner is unable to provide a DEA-compliant electronic prescription to the pharmacy before the pharmacy dispenses the controlled substance.

10.22(2) *Requirements of emergency prescription.* In the case of an emergency situation as defined in subrule 10.22(1), a pharmacist may dispense a controlled substance listed in Schedule II pursuant to a facsimile transmission or upon receiving oral authorization of a prescribing individual practitioner provided that:

a. The quantity prescribed and dispensed is limited to the smallest available quantity to meet the needs of the patient during the emergency period. Dispensing beyond the emergency period requires a written prescription manually signed by the prescribing individual practitioner or a DEA-compliant electronic prescription.

b. If the pharmacist does not know the prescribing individual practitioner, the pharmacist shall make a reasonable effort to determine that the authorization came from an authorized prescriber. The pharmacist shall record the manner by which the authorization was verified and include the pharmacist's name or unique identification.

c. The pharmacist shall prepare a temporary written record of the emergency prescription. The temporary written record shall consist of a hard copy of the facsimile transmission or a written record of the oral transmission authorizing the emergency dispensing. A written record is not required to consist of a handwritten record and may be a printed facsimile or a print of a computer-generated record of the prescription if the printed record includes all of the required elements for the prescription. If the emergency prescription is transmitted by the practitioner's agent, the record shall include the first and last names and title of the individual who transmitted the prescription.

d. If the emergency prescription is transmitted via facsimile transmission, the means of transmission shall not obscure or render the prescription information illegible due to security features of the paper utilized by the prescriber to prepare the written prescription, and the hard-copy record of the facsimile transmission shall not be obscured or rendered illegible due to such security features.

e. Within seven days after authorizing an emergency prescription, the prescribing individual practitioner shall cause a written prescription for the emergency quantity prescribed to be delivered to the dispensing pharmacist. In addition to conforming to the requirements of 657—10.21(124,126,155A), the prescription shall have written on its face "Authorization for Emergency Dispensing" and the date of the emergency order. The written prescription may be delivered to the pharmacist in person or by mail, but if delivered by mail it must be postmarked within the seven-day period. The written prescription shall be attached to and maintained with the temporary written record prepared pursuant to paragraph "c."

f. The pharmacist shall notify the board and the DEA if the prescribing individual fails to deliver a written prescription. Failure of the pharmacist to so notify the board and the DEA, or failure of the prescribing individual to deliver the required written prescription as herein required, shall void the authority conferred by this subrule.

[ARC 7636B, IAB 3/11/09, effective 4/15/09; ARC 9410B, IAB 3/9/11, effective 4/13/11; ARC 9912B, IAB 12/14/11, effective 1/18/12]

657—10.23(124) Schedule II prescriptions—partial filling. The partial filling of a prescription for a controlled substance listed in Schedule II is permitted as provided in this rule.

10.23(1) *Insufficient supply on hand.* If the pharmacist is unable to supply the full quantity called for in a prescription and makes a notation of the quantity supplied on the prescription record, a partial fill of the prescription is permitted. The remaining portion of the prescription must be filled within 72 hours of the first partial filling. If the remaining portion is not or cannot be filled within the 72-hour period, the pharmacist shall so notify the prescriber. No further quantity may be supplied beyond 72 hours without a new prescription.

10.23(2) *Long-term care or terminally ill patient.* A prescription for a Schedule II controlled substance written for a patient in a long-term care facility (LTCF) or for a patient with a medical diagnosis documenting a terminal illness may be filled in partial quantities to include individual dosage units as provided by this subrule.

a. If there is any question whether a patient may be classified as having a terminal illness, the pharmacist shall contact the practitioner prior to partially filling the prescription. Both the pharmacist and the practitioner have a corresponding responsibility to ensure that the controlled substance is for a terminally ill patient.

b. The pharmacist shall record on the prescription whether the patient is "terminally ill" or an "LTCF patient." For each partial filling, the dispensing pharmacist shall record on the back of the

prescription, or on another appropriate uniformly maintained and readily retrievable record, the date of the partial filling, the quantity dispensed, the remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist.

c. The total quantity of Schedule II controlled substances dispensed in all partial fillings shall not exceed the total quantity prescribed. Schedule II prescriptions for patients in a LTCF or patients with a medical diagnosis documenting a terminal illness shall be valid for a period not to exceed 60 days from the issue date unless sooner terminated by the discontinuance of the drug.

d. Information pertaining to current Schedule II prescriptions for patients in a LTCF or for patients with a medical diagnosis documenting a terminal illness may be maintained in a computerized system pursuant to rule 657—21.4(124,155A).

657—10.24(124) Schedule II medication order. Schedule II controlled substances may be administered or dispensed to institutionalized patients pursuant to a medication order as provided in 657—subrule 7.13(1) or rule 657—23.18(124,155A), as applicable.

657—10.25(124) Schedule II—issuing multiple prescriptions. An individual prescriber may issue multiple prescriptions authorizing the patient to receive a total of up to a 90-day supply of a Schedule II controlled substance pursuant to the provisions and limitations of this rule.

10.25(1) Refills prohibited. The issuance of refills for a Schedule II controlled substance is prohibited. The use of multiple prescriptions for the dispensing of Schedule II controlled substances, pursuant to this rule, ensures that the prescriptions are treated as separate dispensing authorizations and not as refills of an original prescription.

10.25(2) Legitimate medical purpose. Each separate prescription issued pursuant to this rule shall be issued for a legitimate medical purpose by an individual prescriber acting in the usual course of the prescriber's professional practice.

10.25(3) Dates and instructions. Each prescription issued pursuant to this rule shall be dated as of and manually signed by the prescriber on the day the prescription is issued. Each separate prescription, other than the first prescription if that prescription is intended to be filled immediately, shall contain written instructions indicating the earliest date on which a pharmacist may fill each prescription.

10.25(4) Authorized fill date unalterable. Regardless of the provisions of subrule 10.21(5), when a prescription contains instructions from the prescriber indicating that the prescription shall not be filled before a certain date, a pharmacist shall not fill the prescription before that date. The pharmacist shall not contact the prescriber for verbal authorization to fill the prescription before the fill date originally indicated by the prescriber pursuant to this rule.

10.25(5) Number of prescriptions and authorized quantity. An individual prescriber may issue for a patient as many separate prescriptions, to be filled sequentially pursuant to this rule, as the prescriber deems necessary to provide the patient with adequate medical care. The cumulative effect of the filling of each of these separate prescriptions shall result in the receipt by the patient of a quantity of the Schedule II controlled substance not exceeding a 90-day supply.

10.25(6) Prescriber's discretion. Nothing in this rule shall be construed as requiring or encouraging an individual prescriber to issue multiple prescriptions pursuant to this rule or to see the prescriber's patients only once every 90 days when prescribing Schedule II controlled substances. An individual prescriber shall determine, based on sound medical judgment and in accordance with established medical standards, how often to see patients and whether it is appropriate to issue multiple prescriptions pursuant to this rule.

[ARC 8172B, IAB 9/23/09, effective 10/28/09]

657—10.26 Reserved.

657—10.27(124,155A) Facsimile transmission of a controlled substance prescription. With the exception of an authorization for emergency dispensing as provided in rule 657—10.22(124), a prescription for a controlled substance may be transmitted via facsimile from a prescriber to a pharmacy as provided in rule 657—21.9(124,155A).

10.27(1) Schedule II prescription. A prescription for a Schedule II controlled substance may be transmitted via facsimile to the pharmacy only as provided in rules 657—21.12(124,155A) to 657—21.16(124,155A).

10.27(2) Schedule III, IV, or V prescription. A prescription for a Schedule III, IV, or V controlled substance may be transmitted via facsimile to the pharmacy only as provided in rule 657—21.9(124,155A).

[ARC 9912B, IAB 12/14/11, effective 1/18/12]

657—10.28(124,155A) Schedule III, IV, or V refills. No prescription for a controlled substance listed in Schedule III, IV, or V shall be filled or refilled more than six months after the date on which it was issued nor be refilled more than five times.

10.28(1) Record. Each filling and refilling of a prescription shall be entered on the prescription or on another uniformly maintained and readily retrievable record.

a. The following information shall be retrievable by the prescription number: the name and dosage form of the controlled substance, the date filled or refilled, the quantity dispensed, the unique identification of the dispensing pharmacist for each refill, and the total number of refills authorized for that prescription.

b. If the pharmacist merely initials or affixes the pharmacist's unique identifier and dates the back of the prescription, it shall be deemed that the full face amount of the prescription has been dispensed.

10.28(2) Oral refill authorization. The prescribing practitioner may authorize additional refills of Schedule III, IV, or V controlled substances on the original prescription through an oral refill authorization transmitted to the pharmacist provided the following conditions are met:

a. The total quantity authorized, including the amount of the original prescription, does not exceed five refills nor extend beyond six months from the date of issuance of the original prescription.

b. The pharmacist who obtains the oral authorization records from the prescriber who issued the original prescription records on or with the original prescription the date, the quantity of each refill, the number of additional refills authorized, and the pharmacist's unique identification.

c. The quantity of each additional refill is equal to or less than the quantity authorized for the initial filling of the original prescription.

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

10.28(3) Automated data processing record system. An automated data processing record system may be used for the storage and retrieval of Schedule III, IV, and V controlled substance prescription fill and refill information subject to the conditions and requirements of rules 657—21.4(124,155A) and 657—21.5(124,155A).

657—10.29(124,155A) Schedule III, IV, or V partial fills. The partial filling of a prescription for a controlled substance listed in Schedule III, IV, or V is permissible provided that each partial fill is recorded in the same manner as a refill. The total quantity dispensed in all partial fills shall not exceed the total quantity prescribed. No dispensing shall occur later than six months after the date on which the prescription was issued.

657—10.30(124,155A) Schedule III, IV, and V medication order. A Schedule III, IV, or V controlled substance may be administered or dispensed to institutionalized patients pursuant to a medication order as provided in 657—subrule 7.13(1) or rule 657—23.9(124,155A), as applicable.

657—10.31(124,155A) Dispensing Schedule V controlled substances without a prescription. A controlled substance listed in Schedule V, which substance is not a prescription drug as determined under the federal Food, Drug and Cosmetic Act, and excepting products containing ephedrine, pseudoephedrine, or phenylpropanolamine, may be dispensed or administered without a prescription by a pharmacist to a purchaser at retail pursuant to the conditions of this rule.

10.31(1) Who may dispense. Dispensing shall be by a licensed Iowa pharmacist or by a registered pharmacist-intern under the direct supervision of a pharmacist preceptor. This subrule does not prohibit,

after the pharmacist has fulfilled the professional and legal responsibilities set forth in this rule and has authorized the dispensing of the substance, the completion of the actual cash or credit transaction or the delivery of the substance by a nonpharmacist.

10.31(2) *Frequency and quantity.* Dispensing at retail to the same purchaser in any 48-hour period shall be limited to no more than one of the following quantities of a Schedule V controlled substance:

- a. 240 cc (8 ounces) of any controlled substance containing opium.
- b. 120 cc (4 ounces) of any other controlled substance.
- c. 48 dosage units of any controlled substance containing opium.
- d. 24 dosage units of any other controlled substance.

10.31(3) *Age of purchaser.* The purchaser shall be at least 18 years of age.

10.31(4) *Identification.* The pharmacist shall require every purchaser under this rule not known by the pharmacist to present a government-issued photo identification, including proof of age when appropriate.

10.31(5) *Record.* A bound record book (i.e., with pages sewn or glued to the spine) for dispensing of Schedule V controlled substances pursuant to this rule shall be maintained by the pharmacist. The book shall contain the name and address of each purchaser, the name and quantity of controlled substance purchased, the date of each purchase, and the name or unique identification of the pharmacist or pharmacist-intern who approved the dispensing of the substance to the purchaser.

10.31(6) *Prescription not required under other laws.* No other federal or state law or regulation requires a prescription prior to distributing or dispensing a Schedule V controlled substance.

657—10.32(124,155A) Dispensing products containing ephedrine, pseudoephedrine, or phenylpropanolamine without a prescription. A product containing ephedrine, pseudoephedrine, or phenylpropanolamine, which substance is a Schedule V controlled substance and is not listed in another controlled substance schedule, may be dispensed or administered without a prescription by a pharmacist to a purchaser at retail pursuant to the conditions of this rule.

10.32(1) *Who may dispense.* Dispensing shall be by a licensed Iowa pharmacist or by a registered pharmacist-intern under the direct supervision of a pharmacist preceptor. This subrule does not prohibit, after the pharmacist has fulfilled the professional and legal responsibilities set forth in this rule and has authorized the dispensing of the substance, the completion of the actual cash or credit transaction or the delivery of the substance by a nonpharmacist.

10.32(2) *Packaging of nonliquid forms.* A nonliquid form of a product containing ephedrine, pseudoephedrine, or phenylpropanolamine includes gel caps. Nonliquid forms of these products to be sold pursuant to this rule shall be packaged either in blister packaging with each blister containing no more than two dosage units or, if blister packs are technically infeasible, in unit dose packets or pouches.

10.32(3) *Frequency and quantity.* Dispensing at retail to the same purchaser within any 30-day period shall be limited to products collectively containing no more than 7,500 mg of ephedrine, pseudoephedrine, or phenylpropanolamine; dispensing at retail to the same purchaser within a single calendar day shall not exceed 3,600 mg.

10.32(4) *Age of purchaser.* The purchaser shall be at least 18 years of age.

10.32(5) *Identification.* The pharmacist shall require every purchaser under this rule to present a current government-issued photo identification, including proof of age when appropriate. The pharmacist shall be responsible for verifying that the name on the identification matches the name provided by the purchaser and that the photo image depicts the purchaser.

10.32(6) *Record.* Purchase records shall be recorded in the real-time electronic pseudoephedrine tracking system (PTS) established and administered by the governor's office of drug control policy pursuant to 657—Chapter 100. If the real-time electronic repository is unavailable for use, the purchase record shall be recorded in an alternate format and submitted to the PTS as provided in 657—subrule 100.3(4).

a. *Alternate record contents.* The alternate record shall contain the following:

- (1) The name, address, and signature of the purchaser.

(2) The name and quantity of the product purchased, including the total milligrams of ephedrine, pseudoephedrine, or phenylpropanolamine contained in the product.

(3) The date and time of the purchase.

(4) The name or unique identification of the pharmacist or pharmacist-intern who approved the dispensing of the product.

b. Alternate record format. The record shall be maintained using one of the following options:

(1) A hard-copy record.

(2) A record in the pharmacy's electronic prescription dispensing record-keeping system that is capable of producing a hard-copy printout of a record.

(3) A record in an electronic data collection system that captures each of the data elements required by this subrule and that is capable of producing a hard-copy printout of a record.

c. PTS records retrieval. Pursuant to 657—subrule 100.4(6), the pharmacy shall be able to produce a hard-copy printout of transactions recorded in the PTS by the pharmacy for one or more specific products for a specified period of time upon request by the board or its representative or to such other persons or governmental agencies authorized by law to receive such information.

10.32(7) Notice required. The pharmacy shall ensure that the following notice is provided to purchasers of ephedrine, pseudoephedrine, or phenylpropanolamine products and that the notice is displayed with or on the electronic signature device or is displayed in the dispensing area and visible to the public:

“WARNING: Section 1001 of Title 18, United States Code, states that whoever, with respect to the logbook, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any materially false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry, shall be fined not more than \$250,000 if an individual or \$500,000 if an organization, imprisoned not more than five years, or both.”

[ARC 8892B, IAB 6/30/10, effective 9/1/10]

657—10.33(124,155A) Schedule II perpetual inventory in pharmacy. Each pharmacy located in Iowa that dispenses Schedule II controlled substances shall maintain a perpetual inventory system for all Schedule II controlled substances pursuant to the requirements of this rule. All records relating to the perpetual inventory shall be maintained by the pharmacy and shall be available for inspection and copying by the board or its representative for a period of two years from the date of the record.

10.33(1) Record format. The perpetual inventory record may be maintained in a manual or an electronic record format. Any electronic record shall provide for hard-copy printout of all transactions recorded in the perpetual inventory record for any specified period of time and shall state the current inventory quantities of each drug at the time the record is printed.

10.33(2) Information included. The perpetual inventory record shall identify all receipts for and disbursements of Schedule II controlled substances by drug or by national drug code (NDC) number. The record shall be updated to identify each prescription filled and each shipment received. The record shall also include incident reports and reconciliation records pursuant to subrules 10.33(3) and 10.33(4).

10.33(3) Changes to a record. If a perpetual inventory record is able to be changed, the individual making a change to the record shall complete an incident report documenting the change. The incident report shall identify the specific information that was changed including the information before and after the change, shall identify the individual making the change, and shall include the date and the reason the record was changed. If the electronic record system documents within the perpetual inventory record all of the information that must be included in an incident report, a separate report is not required.

10.33(4) Reconciliation. The pharmacist in charge shall be responsible for reconciling the physical inventory of all Schedule II controlled substances with the perpetual inventory balance on a periodic basis but no less frequently than annually. In case of any discrepancies between the physical inventory and the perpetual inventory, the pharmacist in charge shall determine the need for further investigation, and significant discrepancies shall be reported to the board pursuant to rule 657—10.16(124) and to the DEA pursuant to federal DEA regulations. Periodic reconciliation records shall be maintained and

available for review and copying by the board or agents of the board for a period of two years from the date of the record. The reconciliation process may be completed using either of the following procedures or a combination thereof:

a. The dispensing pharmacist verifies that the physical inventory matches the perpetual inventory following each dispensing and documents that reconciliation in the perpetual inventory record. If controlled substances are maintained on the patient care unit, the nurse or other responsible licensed health care provider verifies that the physical inventory matches the perpetual inventory following each dispensing and documents that reconciliation in the perpetual inventory record. All discrepancies shall be reported to the pharmacist in charge. If any Schedule II controlled substances in the pharmacy's current inventory have been dispensed and verified in this manner within the year, and there are no discrepancies noted, no additional reconciliation action is required. A drug that has had no activity within the year shall be reconciled pursuant to paragraph "b" of this subrule.

b. A physical count of each Schedule II controlled substance stocked by the pharmacy shall be completed at least once each year, and that count shall be reconciled with the perpetual inventory record balance. The physical count and reconciliation may be completed over a period of time not to exceed one year in a manner that ensures that the perpetual inventory and the physical inventory of Schedule II controlled substances are annually reconciled. The individual performing the reconciliation shall record the date, the time, the individual's initials or unique identification, and any discrepancies between the physical inventory and the perpetual inventory. Any discrepancies between the physical inventory and the perpetual inventory shall be reported to the pharmacist in charge.

657—10.34(124,155A) Records. Every inventory or other record required to be kept under this chapter or under Iowa Code chapter 124 shall be kept by the registrant and be available for inspection and copying by the board or its representative for at least two years from the date of such inventory or record except as otherwise required in these rules. Controlled substances records shall be maintained in a readily retrievable manner that establishes the receipt and distribution of all controlled substances. Original hard-copy prescription and other pharmacy records more than 12 months old may be maintained in a secure storage area outside the licensed pharmacy department unless such remote storage is prohibited under federal law. A remote storage area shall be located within the same physical structure containing the licensed pharmacy department.

10.34(1) Schedule I and II records. Inventories and records of controlled substances listed in Schedules I and II shall be maintained separately from all other records of the registrant.

10.34(2) Schedule III, IV, and V records. Inventories and records of controlled substances listed in Schedules III, IV, and V shall be maintained either separately from all other records of the registrant or in such form that the required information is readily retrievable from the ordinary business records of the registrant.

10.34(3) Date of record. The date on which a controlled substance is actually received, imported, distributed, exported, or otherwise transferred shall be used as the date of receipt or distribution.

10.34(4) Receipt and disbursement records. Each record of receipt or disbursement of controlled substances, unless otherwise provided in these rules or pursuant to federal law, shall include the following:

- a.* The name of the substance;
- b.* The strength and dosage form of the substance;
- c.* The number of units or commercial containers acquired from other registrants, including the date of receipt and the name, address, and DEA registration number of the registrant from whom the substances were acquired;
- d.* The number of units or commercial containers distributed to other registrants, including the date of distribution and the name, address, and DEA registration number of the registrant to whom the substances were distributed; and
- e.* The number of units or commercial containers disposed of in any other manner, including the date and manner of disposal and the name, address, and DEA registration number of the registrant to whom the substances were distributed for disposal, if appropriate.

10.34(5) Dispensing records. Each record of dispensing of controlled substances to a patient or research subject shall include the following information:

- a. The name and address of the person to whom dispensed;
- b. The date of dispensing;
- c. The name of the substance;
- d. The quantity of the substance dispensed; and
- e. The name or unique identification of the individual who dispensed or administered the substance.

10.34(6) Ordering or distributing Schedule I or II controlled substances - DEA Form 222. Except as otherwise provided by subrule 10.34(7) and under federal law, a DEA Form 222 is required for each distribution of a Schedule I or II controlled substance. An order form may be executed only on behalf of the registrant named on the order form and only if the registrant's DEA and Iowa registrations for the substances being purchased have not expired or been revoked or suspended by the issuing agency.

a. Order forms shall be obtained, executed, and filled pursuant to DEA requirements. Each form shall be complete, legible, and properly prepared, executed, and endorsed and shall contain no alteration, erasure, or change of any kind.

b. The purchaser shall submit Copy 1 and Copy 2 of the order form to the supplier.

c. The purchaser shall maintain Copy 3 of the order form in the files of the registrant. Upon receipt of the substances from the supplier, the purchaser shall record on Copy 3 of the order form the quantity of each substance received, and the date of receipt, and shall initial each line identifying a substance received.

d. The supplier shall record on Copy 1 and Copy 2 of the order form the quantity of each substance distributed to the purchaser and the date on which the shipment is made. The supplier shall maintain Copy 1 of the order form in the files of the supplier and shall forward Copy 2 of the order form to the DEA district office.

e. Order forms shall be maintained separately from all other records of the registrant.

f. Each unaccepted, defective, or otherwise "void" order form and any attached statement or other documents relating to any order form shall be maintained in the files of the registrant.

g. If the registration of any purchaser of Schedule I or II controlled substances is terminated for any reason, or if the name or address of the registrant as shown on the registration is changed, the registrant shall return all unused order forms to the DEA district office.

10.34(7) Ordering or distributing Schedule I or II controlled substances - electronic ordering system. A registrant authorized to order or distribute Schedule I or II controlled substances via the DEA Controlled Substances Ordering System (CSOS) shall comply with the requirements of the DEA relating to that system, including the maintenance and security of digital certificates, signatures, and passwords and all record-keeping and reporting requirements.

a. For an electronic order to be valid, the purchaser shall sign the electronic order with a digital signature issued to the purchaser or the purchaser's agent by the DEA.

b. An electronic order may include controlled substances that are not in Schedules I and II and may also include noncontrolled substances.

c. A purchaser shall submit an order to a specific wholesale distributor appropriately licensed to distribute in Iowa.

d. Prior to filling an order, a supplier shall verify the integrity of the signature and the order, verify that the digital certificate has not expired, check the validity of the certificate, and verify the registrant's authority to order the controlled substances.

e. The supplier shall retain an electronic record of every order, including a record of the number of commercial or bulk containers furnished for each item and the date on which the supplier shipped the containers to the purchaser. The shipping record shall be linked to the electronic record of the order. Unless otherwise provided under federal law, a supplier shall ship the controlled substances to the registered location associated with the digital certificate used to sign the order.

f. If an order cannot be filled for any reason, the supplier shall notify the purchaser and provide a statement as to the reason the order cannot be filled. When a purchaser receives such a statement from a

supplier, the purchaser shall electronically link the statement of nonacceptance to the original electronic order. Neither a purchaser nor a supplier may correct a defective order; the purchaser must issue a new order for the order to be filled.

g. When a purchaser receives a shipment, the purchaser shall create a record of the quantity of each item received and the date received. The record shall be electronically linked to the original order and shall identify the individual reconciling the order. A purchaser shall, for each order filled, retain the original signed order and all linked records for that order for two years. The purchaser shall also retain all copies of each unfilled or defective order and each linked statement.

h. A supplier shall retain each original order filled and all linked records for two years. A supplier shall, for each electronic order filled, forward to the DEA within two business days either a copy of the electronic order or an electronic report of the order in a format specified by the DEA.

i. Records of CSOS electronic orders and all linked records shall be maintained by a supplier and a purchaser for two years following the date of shipment or receipt, respectively. Records may be maintained electronically or in hard-copy format. Records that are maintained electronically shall be readily retrievable from all other records, shall be easily readable or easily rendered into a readable format, shall be readily retrievable at the registered location, and shall be made available to the board, to the board's agents, or to the DEA upon request. Records maintained in hard-copy format shall be maintained in the same manner as DEA Form 222.

[ARC 8539B, IAB 2/24/10, effective 4/1/10]

657—10.35(124,155A) Physical count and record of inventory. Responsibility for ensuring that a required inventory is timely completed shall rest with the registrant or, in the case of a registered business, shall rest with the owner of the business. A registrant or owner of a registered business may delegate the actual taking of any inventory. The person or persons responsible for taking the inventory shall sign the completed inventory record.

10.35(1) Record and procedure. Each inventory record, except the periodic count and reconciliation required pursuant to subrule 10.33(4), shall comply with the requirements of this subrule and shall be maintained for a minimum of two years from the date of the inventory.

a. Each inventory shall contain a complete and accurate record of all controlled substances on hand on the date and at the time the inventory is taken.

b. Each inventory shall be maintained in a handwritten, typewritten, or electronically printed form at the registered location. An inventory of Schedule II controlled substances shall be maintained separately from an inventory of all other controlled substances.

c. Controlled substances shall be deemed to be on hand if they are in the possession of or under the control of the registrant. These shall include prescriptions prepared for dispensing to a patient but not yet delivered to the patient, substances maintained in emergency medical services programs or care facility emergency supplies, outdated or adulterated substances pending destruction, and substances stored in a warehouse on behalf of the registrant.

d. A separate inventory shall be made for each registered location and for each independent activity registered except as otherwise provided under federal law.

e. The inventory shall be taken either prior to opening or following the close of business on the inventory date, and the inventory record shall identify either opening or close of business.

f. The inventory record, unless otherwise provided under federal law, shall include the following information:

- (1) The name of the substance;
- (2) The strength and dosage form of the substance; and
- (3) The quantity of the substance.

g. For all substances listed in Schedule I or II, and for all solid oral and injectable hydrocodone-containing products, the quantity shall be an exact count or measure of the substance.

h. For all substances listed in Schedule III, IV, or V, except for hydrocodone-containing products identified in paragraph "g" herein, the quantity may be an estimated count or measure of the substance unless the container has been opened and originally held more than 100 dosage units. If the opened

commercial container originally held more than 100 dosage units, an exact count of the contents shall be made. Liquid oral hydrocodone-containing products packaged in incremented containers shall be measured to the nearest increment; products packaged in nonincremented containers may be estimated to the nearest one-fourth container.

10.35(2) *Initial inventory.* A new registrant shall take an inventory of all stocks of controlled substances on hand on the date the new registrant first engages in the manufacture, distribution, or dispensing of controlled substances. If the registrant commences business or the registered activity with no controlled substances on hand, the initial inventory shall record that fact.

10.35(3) *Annual inventory.* After the initial inventory is taken, a registrant shall take a new inventory of all stocks of controlled substances on hand at least annually. The annual inventory may be taken on any date that is within one year or seven days after the date of the previous annual inventory.

10.35(4) *Change of ownership.* Both the current owner and the prospective owner shall be responsible for ensuring that an inventory of all controlled substances is timely completed whenever there is a change of ownership of any pharmacy or drug wholesaler licensed pursuant to Iowa Code section 155A.13 or 155A.17, respectively. The inventory shall be taken following the close of business the last day under terminating ownership and prior to opening for business the first day under the new ownership. The inventory shall serve as the ending inventory for the terminating owner as well as a record of beginning inventory for the new owner.

10.35(5) *Change of pharmacist in charge (PIC).* An inventory of all controlled substances shall be completed whenever there is a change of PIC. The inventory shall be taken following the close of business the last day of the terminating PIC's employment and prior to opening for business the first day of the new PIC's employment. A single inventory shall be sufficient if there is no lapse between employment of the terminating PIC and the new PIC.

10.35(6) *Change of registered location.* A registrant shall take an inventory of all controlled substances whenever there is a change of registered location. The inventory shall be taken following the close of business the last day at the location being vacated. This inventory shall serve as the ending inventory for the location being vacated as well as a record of beginning inventory for the new location.

10.35(7) *Discontinuing registered activity.* A registrant shall take an inventory of controlled substances at the close of business the last day the registrant is engaged in registered activities. If the registrant is selling or transferring the remaining controlled substances to another registrant, this inventory shall serve as the ending inventory for the registrant discontinuing business as well as a record of additional or starting inventory for the registrant to whom the substances are transferred.

10.35(8) *Newly controlled substances.* On the effective date of the addition of a previously noncontrolled substance to any schedule of controlled substances, any registrant who possesses the newly controlled substance shall take an inventory of all stocks of the substance on hand. That initial inventory record shall be maintained with the most recent controlled substances inventory record. Thereafter, the newly controlled substance shall be included in each inventory made by the registrant.

[ARC 1575C, IAB 8/20/14, effective 9/24/14]

657—10.36(124) Samples and other complimentary packages—records. Complimentary packages and samples of controlled substances may be distributed to practitioners pursuant to federal and state law only if the person distributing the items leaves with the practitioner a specific written list of the items delivered.

10.36(1) *Distribution record.* The record form for the distribution of complimentary packages of controlled substances shall contain the following information:

- a. The name, address, and DEA registration number of the supplier;
- b. The name, address, and DEA registration number of the practitioner;
- c. The name, strength, and quantity of the specific controlled substances delivered; and
- d. The date of delivery.

10.36(2) *Reports to the board.* Any person who distributes controlled substances pursuant to this rule shall report all such distributions to the board. Reports shall:

a. Include the information identified in subrule 10.36(1). Reports may consist of copies of those distribution records or may be computer-generated listings identifying those distributions.

b. Be submitted as soon as practicable after distribution to the practitioner but no less often than once each calendar quarter.

10.36(3) Practitioner records. A practitioner who regularly administers or dispenses controlled substances shall keep records of the receipt and disbursement of such drugs, including complimentary packages and samples. Records shall be filed in a readily retrievable manner in accordance with federal requirements and shall be made available for inspection and copying by agents of the board or other authorized individuals for at least two years from the date of the record.

657—10.37(124,126) Revision of controlled substances schedules.

10.37(1) Application for exception. Any person seeking to have any compound, mixture, or preparation containing any depressant or stimulant substance listed in any of the schedules in Iowa Code chapter 124 excepted from the application of all or any part of that chapter may apply to the board for such exception.

a. An application for an exception under this rule shall provide evidence that an exception has been granted under the federal Controlled Substances Act.

b. The board shall permit any interested person to file written comments on or objections to the proposal for exception and shall designate the time during which such filings may be made. After consideration of the application and any comments on or objections to the proposal for exception, the board shall issue its findings on the application.

10.37(2) Designation of new controlled substance. The board may designate any new substance as a controlled substance to be included in any of the schedules in Iowa Code chapter 124 no sooner than 30 days following publication in the Federal Register of a final order so designating the substance under federal law. Designation of a new controlled substance under this subrule shall be temporary as provided in Iowa Code section 124.201, subsection 4.

10.37(3) Objection to designation of a new controlled substance. The board may object to the designation of any new substance as a controlled substance within 30 days following publication in the Federal Register of a final order so designating the substance under federal law. The board shall file objection to the designation of a substance as controlled, shall afford all interested parties an opportunity to be heard, and shall issue the board's decision on the new designation as provided in Iowa Code section 124.201, subsection 4.

657—10.38(124) Temporary designation of controlled substances.

10.38(1) Amend Iowa Code section 124.204 by adding the following new subsection 9:

9. Temporary listing of substances subject to Schedule I. Any material, compound, mixture, or preparation which contains any quantity of the following substances:

a. (1-pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: UR-144, 1-pentyl-3-(2,2,3,3-tetramethylcyclopropyl)indole.

b. [1-(5-fluoro-pentyl)-1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: 5-fluoro-UR-144, 5-F-UR-144, XLR11, 1-(5-fluoro-pentyl)-3-(2,2,3,3-tetramethylcyclopropyl)indole.

c. N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: APINACA, AKB48.

10.38(2) Amend Iowa Code subsection 124.204(4) by adding the following new paragraphs:

al. 4-methyl-N-ethylcathinone, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: 4-MEC, 2-(ethylamino)-1-(4-methylphenyl)propan-1-one.

am. 4-methyl-alpha-pyrrolidinopropiophenone, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: 4-MePPP, MePPP, 4-methyl-[alpha]-pyrrolidinopropiophenone, 1-(4-methylphenyl)-2-(pyrrolidin-1-yl)propan-1-one.

an. Alpha-pyrrolidinopentiophenone, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: [alpha]-PVP, [alpha]-pyrrolidinovalerophenone, 1-phenyl-2-(pyrrolidin-1-yl)pentan-1-one.

ao. Butylone, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: bk-MBDB, 1-(1,3-benzodioxol-5-yl)-2-(methylamino)butan-1-one.

ap. Pentedrone, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: [alpha]-methylaminovalerophenone, 2-(methylamino)-1-phenylpentan-1-one.

aq. Pentylone, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: bk-MBDP, 1-(1,3-benzodioxol-5-yl)-2-(methylamino)pentan-1-one.

ar. 4-fluoro-N-methylcathinone, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: 4-FMC, flephedrone, 1-(4-fluorophenyl)-2-(methylamino)propan-1-one.

as. 3-fluoro-N-methylcathinone, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: 3-FMC, 1-(3-fluorophenyl)-2-(methylamino)propan-1-one.

at. Naphyrone, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: naphthylpyrovalerone, 1-(naphthalen-2-yl)-2-(pyrrolidin-1-yl)pentan-1-one.

au. Alpha-pyrrolidinobutiophenone, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: [alpha]-PBP, 1-phenyl-2-(pyrrolidin-1-yl)butan-1-one.

10.38(3) Amend Iowa Code subsection 124.204(9) by adding the following new paragraphs:

g. Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: PB-22, QUPIC.

h. Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: 5-fluoro-PB-22, 5F-PB-22.

i. N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts and salts of isomers. Other name: AB-FUBINACA.

j. N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts and salts of isomers. Other name: ADB-PINACA.

[ARC 7906B, IAB 7/1/09, effective 6/22/09; ARC 8411B, IAB 12/30/09, effective 12/1/09; ARC 8989B, IAB 8/11/10, effective 7/21/10; ARC 9091B, IAB 9/22/10, effective 8/30/10; ARC 0893C, IAB 8/7/13, effective 7/9/13; ARC 1408C, IAB 4/2/14, effective 3/13/14]

657—10.39(124,126) Excluded substances. The Iowa board of pharmacy hereby excludes from all schedules the current list of “Excluded Nonnarcotic Products” identified in Title 21, CFR Part 1308, Section 22. Copies of the list of excluded products may be obtained by written request to the board office at 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688.

657—10.40(124,126) Anabolic steroid defined. Anabolic steroid, as defined in Iowa Code section 126.2, paragraph 2, includes any substance identified as such in Iowa Code section 124.208, paragraph 6, or in Iowa Code section 126.2, paragraph 2.

657—10.41(124A) Designation of imitation controlled substances.

10.41(1) Synthetic cannabinoids. The following synthetic cannabinoids, including products by whatever trade name that are treated, sprayed, or saturated with these synthetic cannabinoids, are designated imitation controlled substances subject to the provisions of Iowa Code chapter 124A:

a. Dexanabinol, (6aS, 10aS)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a, 7, 10, 10a-tetrahydrobenzo[c]chromen-1-ol, also known as HU-211.

b. 1-butyl-3(1-naphthoyl) indole, also known as JWH-073.

c. 1-pentyl-3-(1-naphthoyl) indole, also known as JWH-018.

d. Phenol, CP 47, 497 and homologues, or 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol, where side chain n=5, and homologues where side chain n=4, 6, or 7.

10.41(2) Product examples. Some currently marketed products containing the imitation controlled substances identified in subrule 10.41(1) include K2, Red Dragon Smoke, Spice, K2 Spice, Mojo, Smoke, Skunk, K2 Summit, and Pandora Potpourri.

[ARC 9000B, IAB 8/11/10, effective 7/22/10]

These rules are intended to implement Iowa Code sections 124.201, 124.301 to 124.308, 124.402, 124.403, 124.501, 126.2, 126.11, 147.88, 155A.13, 155A.17, 155A.26, 155A.37, and 205.3.

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◊ Two or more ARCs

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