

## **PHARMACY BOARD [657]**

### **Notice of Intended Action**

The Board of Pharmacy hereby proposes to rescind Chapter 17, “Wholesale Drug Licenses,” and adopt new Chapter 17, “Wholesale Distributor Licenses,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

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

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 124.301 through 124.308, 126.3, 126.9 through 126.12, 155A.3, 155A.4, 155A.17, as amended by Senate File 2298 during the 87<sup>th</sup> General Assembly, 155A.19, 155A.21, 155A.23, 155A.40, and the federal Drug Supply Chain Security Act.

#### *Purpose and Summary*

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

#### *Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

*Public Comment*

Any interested person may submit comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on \_\_\_\_\_, 2018. Comments should be directed to: Sue Mears, RPh, Compliance Officer, Iowa Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309; or via e-mail to [sue.mears@iowa.gov](mailto:sue.mears@iowa.gov).

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows: \_\_\_\_\_, 2018 at the Iowa Board of Pharmacy office, 400 S.W. Eighth Street, Suite E, Des Moines, IA 50309.

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

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

*Review by Administrative Rules Review Committee*

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

The following rule-making action is proposed:

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

CHAPTER 17

WHOLESALE DISTRIBUTOR LICENSES

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

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

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

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

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

“*Returns processor*” means a person who owns or operates an establishment that dispositions or otherwise processes saleable or nonsaleable product received from a purchaser, manufacturer, or seller who purchased or received such product at wholesale, such that the product may be processed for credit to the purchaser, manufacturer, or seller, or disposed of for no further distribution.

“*Wholesale distribution*” means the distribution of a drug to a person other than a consumer or patient, or the receipt of a drug by a person other than a consumer or patient, but does not include transactions identified in Iowa Code 155A.3, subsection 48, Code 2018 and DSCSA.

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

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

**17.3(1) Application.** The applicant shall complete an application which requires demographic information about the wholesale distributor, ownership information, information about the wholesale distributor’s registered agent located in Iowa, information about the wholesale distributor’s licensure with other state and federal regulatory authorities, criminal and disciplinary history information, information regarding the facility manager, a detailed

description of the services to be provided in this state, and other necessary information as determined by the board. An application for a wholesale distributor license, including an application for registration pursuant to 657—Chapter 10, if applicable, will become null and void if the applicant fails to complete the licensure process, including opening for business, within six months of receipt by the board of the required applications. The following shall also be submitted by the applicant for the application to be considered complete:

- a. Criminal history record check. Upon receipt of a licensure application, the board shall provide a fingerprint packet to the applicant's facility manager who shall submit the completed fingerprint packet and a signed waiver form to facilitate a national criminal history background check of the facility manager. The cost of the evaluation of the fingerprint packet and the Iowa division of criminal investigation and the United States federal bureau of investigation criminal history background checks will be assessed to the applicant.
- b. Surety bond or equivalent security. The applicant shall file a \$100,000 surety bond with the board, or evidence that the wholesale distributor possesses the required bond in another state where the wholesale distribution facility does business. If a wholesale distributor's annual gross receipts from the previous tax year were \$10 million or less, the wholesale distributor need only file a \$25,000 surety bond. In lieu of a surety bond, the applicant may submit an irrevocable standby letter of credit in the amount of \$100,000 or \$25,000 as applicable. A government-owned wholesale distributor is exempt from the surety bond requirement.
- c. Evidence of current Verified-Accredited Wholesale Distributors (VAWD) accreditation by the National Association of Boards of Pharmacy. This requirement does not apply to

new applicants located in Iowa which must undergo an opening inspection by a board compliance officer or agent of the board prior to issuance of an initial license. Wholesale distributors located in Iowa shall provide evidence of VAWD accreditation on or before license renewal.

- d. Facility manager. Attestation that the facility manager has adequate experience in prescription drug distribution; is actively involved in the daily operation of the wholesale distribution facility; maintains a functional understanding of federal and state laws, rules, and regulations pertaining to wholesale drug distribution; and has no felony convictions or convictions related to prescription drug distribution, including distribution of controlled substances.

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

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

*b. Delinquent license reactivation beyond grace period.* If a wholesale drug license has not been renewed prior to the expiration of the one month grace period identified in paragraph “a”, the wholesale distributor may not operate or do business in Iowa. A wholesale

distributor who continues to do business in Iowa without a current license may be subject to disciplinary sanctions pursuant to the provisions of 657—subrule 36.6(22). A wholesale distributor without a current license may apply for reactivation by submitting a license application for reactivation and a nonrefundable \$2,000 reactivation fee. As part of the reactivation application, the wholesale distributor shall disclose the services, if any, that were provided in this state while the license was delinquent.

**17.3(3) License changes.** When a licensed wholesale distributor changes its name, ownership, facility manager, or location, a wholesale drug license application with a nonrefundable application fee as provided in 17.3(1) shall be submitted to the board. A change of ownership occurs when the owner listed on the wholesale distributor's most recent application changes or when there is a change affecting the majority ownership interest of the owner listed on the wholesale distributor's most recent application. A change of wholesale distributor location within Iowa, if the new location was not a licensed wholesale distributor immediately prior to the relocation, shall require an on-site inspection of the new location as provided in rule 657—17.4(155A). A wholesale distributor who has submitted a license change application may continue to service Iowa customers while its license change is pending final approval.

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

*b.* Locations outside of Iowa. Applications for license changes shall be submitted to the board within 10 days of the wholesale distributor receiving an updated license from the home state regulatory authority.

**17.3(4) License cancellation.** A licensee intending to discontinue wholesale distribution into, out of, or within this state shall notify the board in writing of its intent as far in advance as

possible of the discontinuation of services and shall request that the license be administratively cancelled. Such notification shall include the name and license number of the wholesale distributor, the anticipated date of discontinuation of service, and the identification of the wholesale distributor to which drugs and records will be transferred. To the extent possible to avoid unnecessary delays in obtaining product for patients, a wholesale distributor that intends to discontinue services in this state should provide advanced notice to its customers of the date that the wholesale distributor intends to cease distribution in this state.

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

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

9. Any other factors or qualifications the board considers relevant to and consistent with public health and safety.

**657—17.5 and 17.6 Reserved**

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

1. A licensed wholesale distributor shall meet the requirements set forth in section 582 of the Drug Supply Chain Security Act, 21 U.S.C. § 360eee-1, relating to product tracing, product identifiers, authorized trading partners, suspect products, and illegitimate products, 21 U.S.C. § 360eee-2, relating to national standards for drug wholesale distributors, and any regulations promulgated thereunder.
2. A licensed wholesale distributor shall permit agents of the board to enter and inspect the facility for compliance with federal and state laws. A licensed wholesale distributor shall cooperate with other regulatory or law enforcement officials with jurisdiction over the facility.

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

**17.8(1) *Oldest stock distributed first.*** A procedure whereby the oldest approved stock of a prescription drug product is distributed first. The procedure may permit deviation from this requirement if such deviation is temporary and appropriate. The requirement of this subrule shall not apply to a returns processor.

**17.8(2) *Recalls and market withdrawals.*** The requirement of this subrule shall not apply to a returns processor. A procedure to be followed for handling recalls and withdrawals of prescription drugs. Such procedure shall be adequate to deal with recalls and withdrawals due to:

*a.* Any action initiated at the request of the Food and Drug Administration or other federal, state, or local law enforcement agency or other government agency, including the board;

*b.* Any voluntary action by the manufacturer to remove defective or potentially defective drugs from the market; or

*c.* Any action undertaken to promote public health and safety by replacing existing merchandise with an improved product or new package design.

**17.8(3) *Emergency and disaster plan.*** A procedure to ensure that wholesale distributors prepare for, protect against, and handle any crisis that affects security or operation of any facility in the event of strike, fire, flood, or other natural disaster, or other situations of local, state, or national emergency.

**17.8(4) *Outdated drugs.*** A procedure to ensure that any outdated prescription drugs shall be segregated from other drugs and either returned to the manufacturer or destroyed. This procedure shall provide for written documentation of the disposition of outdated prescription drugs. The requirement of this subrule shall not apply to a returns processor.

**17.8(5) *Security and storage.*** A procedure to ensure the adequate security in accordance with rule 657—17.10(155A) and proper storage conditions in accordance with rule 657—

17.11(155A). The requirement for proper storage conditions shall not apply to a returns processor.

**17.8(6) *Drugs supplied to salesperson/representative.*** If supplying drugs to wholesale distributor salespersons, a procedure directing that the security, storage, and record-keeping requirements contained in these rules shall be maintained by those salespersons.

**17.8(7) *Personnel.*** A procedure to ensure the wholesale distributor employs personnel with the education and experience appropriate to the responsibilities of the position held by the individual. Licensed wholesale distributors shall establish and maintain lists of officers, directors, managers, and other persons in charge of wholesale drug distribution, storage, and handling, including a description of their duties and a summary of their qualifications.

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

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

**657—17.10(124,155A) Security.**

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

*a.* Access from outside the premises shall be kept to a minimum and be well controlled.

*b.* The outside perimeter of the premises shall be well lighted.

*c.* Entry into areas where prescription drugs are held shall be limited to authorized personnel.

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

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

**657—17.11(155A) *Storage.*** All prescription drugs shall be stored at appropriate temperatures and under appropriate conditions in accordance with requirements, if any, in the labeling of such drugs or with requirements in the current edition of the United States Pharmacopoeia. Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices, or logs shall be utilized to document proper storage of prescription drugs. The requirements of this rule do not apply to returns processors.

**657—17.12 to 17.16** Reserved

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

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

1. Any violation of the federal Food, Drug, and Cosmetic Act or federal regulation promulgated under the Act. A warning letter issued by the United States food and drug administration shall be conclusive evidence of a violation.
2. Any conviction of a crime related to the distribution of prescription drugs committed by the wholesale distributor, its owners, or facility manager.
3. Refusing access to the wholesale distribution facility or records to an agent of the board for the purpose of conducting an inspection or investigation.
4. Failure to maintain registration pursuant to 657—Chapter 10 when distributing controlled substances into, out of, or within this state.

5. Any act of unethical or unprofessional conduct by an employee of the wholesale distributor.
6. Any violation of Iowa Code chapters 124, 126, 155A, 205, or rule of the board, including the disciplinary grounds set forth in 657—Chapter 36.

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