



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

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

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

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)“a”]; agricultural credit corporation maximum loan rates [535.12]; and regional banking—notice of application and hearing [524.1905(2)].

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

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CITATION of Administrative Rules

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

- 441 IAC 79 (Chapter)
- 441 IAC 79.1(249A) (Rule)
- 441 IAC 79.1(1) (Subrule)
- 441 IAC 79.1(1)“a” (Paragraph)
- 441 IAC 79.1(1)“a”(1) (Subparagraph)

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

Schedule for Rule Making 2004

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Jan. 2 '04	Jan. 21 '04	Feb. 10 '04	Feb. 25 '04	Feb. 27 '04	Mar. 17 '04	Apr. 21 '04	July 19 '04
Jan. 16	Feb. 4	Feb. 24	Mar. 10	Mar. 12	Mar. 31	May 5	Aug. 2
Jan. 30	Feb. 18	Mar. 9	Mar. 24	Mar. 26	Apr. 14	May 19	Aug. 16
Feb. 13	Mar. 3	Mar. 23	Apr. 7	Apr. 9	Apr. 28	June 2	Aug. 30
Feb. 27	Mar. 17	Apr. 6	Apr. 21	Apr. 23	May 12	June 16	Sept. 13
Mar. 12	Mar. 31	Apr. 20	May 5	May 7	May 26	June 30	Sept. 27
Mar. 26	Apr. 14	May 4	May 19	May 21	June 9	July 14	Oct. 11
Apr. 9	Apr. 28	May 18	June 2	June 4	June 23	July 28	Oct. 25
Apr. 23	May 12	June 1	June 16	June 18	July 7	Aug. 11	Nov. 8
May 7	May 26	June 15	June 30	July 2	July 21	Aug. 25	Nov. 22
May 21	June 9	June 29	July 14	July 16	Aug. 4	Sept. 8	Dec. 6
June 4	June 23	July 13	July 28	July 30	Aug. 18	Sept. 22	Dec. 20
June 18	July 7	July 27	Aug. 11	Aug. 13	Sept. 1	Oct. 6	Jan. 3 '05
July 2	July 21	Aug. 10	Aug. 25	Aug. 27	Sept. 15	Oct. 20	Jan. 17 '05
July 16	Aug. 4	Aug. 24	Sept. 8	Sept. 10	Sept. 29	Nov. 3	Jan. 31 '05
July 30	Aug. 18	Sept. 7	Sept. 22	Sept. 24	Oct. 13	Nov. 17	Feb. 14 '05
Aug. 13	Sept. 1	Sept. 21	Oct. 6	Oct. 8	Oct. 27	Dec. 1	Feb. 28 '05
Aug. 27	Sept. 15	Oct. 5	Oct. 20	Oct. 22	Nov. 10	Dec. 15	Mar. 14 '05
Sept. 10	Sept. 29	Oct. 19	Nov. 3	Nov. 5	Nov. 24	Dec. 29	Mar. 28 '05
Sept. 24	Oct. 13	Nov. 2	Nov. 17	***Nov. 17***	Dec. 8	Jan. 12 '05	Apr. 11 '05
Oct. 8	Oct. 27	Nov. 16	Dec. 1	Dec. 3	Dec. 22	Jan. 26 '05	Apr. 25 '05
Oct. 22	Nov. 10	Nov. 30	Dec. 15	***Dec. 15***	Jan. 5 '05	Feb. 9 '05	May 9 '05
Nov. 5	Nov. 24	Dec. 14	Dec. 29	Dec. 31	Jan. 19 '05	Feb. 23 '05	May 23 '05
Nov. 17	Dec. 8	Dec. 28	Jan. 12 '05	Jan. 14 '05	Feb. 2 '05	Mar. 9 '05	June 6 '05
Dec. 3	Dec. 22	Jan. 11 '05	Jan. 26 '05	Jan. 28 '05	Feb. 16 '05	Mar. 23 '05	June 20 '05
Dec. 15	Jan. 5 '05	Jan. 25 '05	Feb. 9 '05	Feb. 11 '05	Mar. 2 '05	Apr. 6 '05	July 4 '05
Dec. 31	Jan. 19 '05	Feb. 8 '05	Feb. 23 '05	Feb. 25 '05	Mar. 16 '05	Apr. 20 '05	July 18 '05

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
13	Friday, December 3, 2004	December 22, 2004
14	Wednesday, December 15, 2004	January 5, 2005
15	Friday, December 31, 2004	January 19, 2005

PLEASE NOTE:

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

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

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

PUBLICATION PROCEDURES

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The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, December 14, 2004, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

ADMINISTRATIVE SERVICES DEPARTMENT[11]

- Selling of goods and services, 1.7, 66.2,
Notice ARC 3776B, also Filed Emergency ARC 3775B 11/10/04
 Cross references updated, amendments to chs 4 to 9, 25, 26, 40, 50 to 54, 59 to 61,
 63, 64, 71, 100, 106, 107, 114, 116, Filed ARC 3783B 11/10/04
 State contract for purchase of airline tickets, 41.5(3), Notice ARC 3784B 11/10/04

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

- Cottonseed product control, 41.12, Notice ARC 3822B 11/24/04
 Agricultural liming—egg shells, 43.40, Notice ARC 3823B 11/24/04

CREDIT UNION DIVISION[189]

COMMERCE DEPARTMENT[181]“umbrella”

- Investment and deposit activities, ch 17, Filed ARC 3821B 11/24/04

DENTAL EXAMINERS BOARD[650]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

- Dental hygienist licensure—second failure of clinical examination, 12.4(2), Notice ARC 3778B 11/10/04
 Discipline—mandatory reporting of acts or omissions, 30.4“24,” 31.14,
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- Emergency shelter grants program, 24.2, 24.6, 24.10(6), 24.12(3)“a,”
Filed Emergency After Notice ARC 3810B 11/10/04
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 29.11(3)“a,” Filed Emergency After Notice ARC 3809B 11/10/04

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- Cross reference correction, 11.37, Notice ARC 3770B 11/10/04
 Mathematics endorsement, 14.141(13), Filed ARC 3769B 11/10/04
 Driving instructor qualifications, 21.1(1), Notice ARC 3771B 11/10/04

ELDER AFFAIRS DEPARTMENT[321]

- Civil penalties; notice to certificate holders—compliance with statutory language, 26.3(2), 26.4(1),
Filed Emergency ARC 3808B 11/10/04

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- Controlling air pollution, 22.1(2)“b,” “j” and “u,” 22.3(3), 23.1(2) to 23.1(4),
 23.1(4)“ay,” “ce,” “cf,” “ci,” “ck,” “cm,” “co,” “cq,” “cy,” “da,”
 “de,” “df,” and “dh” to “dk,” 23.3(2)“b”(5), 25.1(5), 25.1(6),
 25.1(10), 25.1(11), Filed ARC 3806B 11/10/04
 Water quality standards, 61.3(1)“b”(4) to (11), 61.3(3)“b,” 61.3(3)“b”(6)“1” to “5,”
 61.3(3) tables 1, 2, and 3a, 61.3(5), 61.3(6), Filed ARC 3805B 11/10/04
 Manure management plan records—date and rate of application of commercial nitrogen and phosphorus,
 65.17(13)“e,” Notice ARC 3807B 11/10/04

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

- Board sales of goods and services, 1.7, Filed ARC 3786B 11/10/04
 Cross references updated, 4.11(2), 4.27(5), Filed ARC 3788B 11/10/04
 State party committees—disclosure of candidate ID numbers, 4.14(6), 4.15(5), Notice ARC 3791B 11/10/04
 Contributions by out-of-state committees, 4.32, Notice ARC 3790B 11/10/04
 Loans from executive branch lobbyists prohibited, 6.20, Notice ARC 3789B 11/10/04
 Executive branch lobbyist registration, 8.7(2), 8.7(3), Filed ARC 3785B 11/10/04
 Retention and availability of filed forms, 8.20, Filed ARC 3787B 11/10/04
 Whistle-blower protection, 9.6, Notice ARC 3793B 11/10/04
 Waiver of civil penalty for late-filed report, 15.2, Notice ARC 3792B 11/10/04

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]

PUBLIC DEFENSE DEPARTMENT[601]“umbrella”

- Iowa comprehensive plan, ch 9, Filed ARC 3817B 11/24/04

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Excess medical expense deduction, 65.8(7), <u>Filed</u> ARC 3768B	11/10/04
Medicaid premium increase for employed persons with disabilities coverage group, 75.1(39)“b”(1), <u>Filed</u> ARC 3766B	11/10/04
HAWK-I program—selection of plan, 86.6, 86.6(2), <u>Filed</u> Emergency After Notice ARC 3773B	11/10/04
Offset against federal income tax refunds and federal nontax payments to recover delinquent child support, 95.7(1), 95.7(2), <u>Filed</u> ARC 3765B	11/10/04

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COMMERCE DEPARTMENT[181]“umbrella”

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IOWA PUBLIC EMPLOYEES’ RETIREMENT SYSTEM[495]

Service credit and purchases; refunds; interest on contributions; benefits; dividends; assignments; recognition of agents; mergers, rescind 581—ch 21; amend 495—4.3(9) to 4.3(12); adopt 495—chs 7 to 16, 20, 21, <u>Filed</u> ARC 3828B	11/24/04
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LABOR SERVICES DIVISION[875]

WORKFORCE DEVELOPMENT DEPARTMENT[871]“umbrella”

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Administration of influenza and pneumococcal vaccines, 8.33(1)“c,” <u>Filed</u> ARC 3795B	11/10/04
Controlled substances—reverse distributors added to list of entities required to register, 10.1, <u>Filed</u> ARC 3796B	11/10/04
Contracts for nonproduct pharmacy services provided by EMS programs, 11.2(1)“a,” <u>Notice</u> ARC 3799B	11/10/04
Computer-to-computer transmission of a prescription, 21.8, 21.8(3), <u>Filed</u> ARC 3797B	11/10/04

PROFESSIONAL LICENSURE DIVISION[645]

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- EMS provider education/training/certification, ch 131, Notice **ARC 3838B** 11/24/04
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- Cigarettes—tax, penalties, record keeping; motor fuel refund, 10.1(1), 10.5, 10.76 to 10.79, 68.8(8), 81.1, 81.3, 81.4, 82.6(5), Filed **ARC 3804B** 11/10/04
- Interest rate for calendar year 2005, 10.2(24), Notice **ARC 3820B** 11/24/04
- Individual income tax; corporation tax; fiduciary income tax; penalty and interest, 10.40 to 10.43, 10.50, 10.56 to 10.58, 10.66, 38.15“5,” 38.17(3), 39.1(1) to 39.1(3), 39.1(7), 39.2(2), 39.2(3), 39.5(2), 39.5(8), 39.5(9), 39.6(1), 39.6(2), 39.6(3)“a”(2), 40.2(1)“a,” 40.4, 40.10, 40.11, 40.25, 40.26, 40.33, 40.41, 41.5(2), 41.5(6), 41.13, 42.1, 42.2, 42.2(1) to 42.2(5), 42.6, 42.7(2), 42.9, 42.23, 43.3(13), 43.6, 43.7, ch 44, 46.5, ch 47, 49.1(1), 49.6(3), 51.2(2), 52.4(3), 52.5(1), 52.5(3), 52.6, 52.11(7) to 52.11(9), 52.11(11), 52.11(13), 53.8(1), 53.13, 55.3(4), 55.3(7), 57.2(2), 58.4(3), 58.5(1), 58.5(3), 58.6(7), 58.6(8), 58.6(10), 58.6(12), 58.6(14), 59.17, 60.3(4), 60.3(7), 89.4(7), 89.4(9)“h,” 89.5(3), 89.9, Filed **ARC 3819B** 11/24/04
- Contributions to endowment fund of Iowa educational savings plan trust; franchise tax—credits, allocation of revenues, computation of tax; property rehabilitation tax credit, 40.53(4), 40.58, 42.12, 42.15(3), 52.18(3), 53.21, 58.7, 59.21, 59.22, Filed **ARC 3803B** 11/10/04
- Sales and use tax—definitions, construction activities, exemptions of benefit to consumers, adopt chs 211, 219, 231, Notice **ARC 3818B** 11/24/04

SECRETARY OF STATE[721]

- Absentee ballots cast by voters whose registrations are inactive, 21.301, Filed Emergency **ARC 3763B** 11/10/04
- Counting votes, 26.14, 26.17, 26.19, 26.20, 26.20(3), 26.21 Filed Emergency **ARC 3762B** 11/10/04
- Help America Vote Act grants, adopt ch 27, Filed **ARC 3780B** 11/10/04

STATE PUBLIC DEFENDER[493]

- INSPECTIONS AND APPEALS DEPARTMENT[481]“umbrella”
- Appointment of counsel; claims for services, 7.1, 11.5(2), 11.5(6), 11.5(7), 11.7, 12.1(1), 12.1(2), 12.2(1)“a,” 12.2(1)“b”(2), 12.2(1)“e”(1), 12.2(1)“f,” 12.2(2), 12.2(3), 12.2(6), 12.2(9) to 12.2(12), 12.3(1), 12.3(3), 12.4(4), 12.5, 12.5(3), 12.5(4), 12.6, 12.7(1), 12.7(3), 12.8(1), 12.8(1)“h” and “i,” 12.9(1), 12.9(1)“a,” 12.9(2)“a,” “d” and “f,” 12.9(3), 12.10, adopt ch 13, Filed **ARC 3813B** 11/24/04

WORKERS’ COMPENSATION DIVISION[876]

- WORKFORCE DEVELOPMENT DEPARTMENT[871]“umbrella”
- Contested cases, 4.19(3)“a,” 4.25, 4.27, 4.28, Filed **ARC 3782B** 11/10/04

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

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

EDITOR'S NOTE: Terms ending April 30, 2007.

Senator Michael Connolly
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Dubuque, Iowa 52002

Senator John P. Kibbie
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Emmetsburg, Iowa 50536

Senator Mary Lundby
P.O. Box 648
Marion, Iowa 52302-0648

Senator Paul McKinley
21884 483rd Lane
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Representative Marcella R. Frevert
P.O. Box 324
Emmetsburg, Iowa 50536

Representative David Heaton
510 East Washington
Mt. Pleasant, Iowa 52641

Representative Geri Huser
213 Seventh Street NW
Altoona, Iowa 50009

Gary Dickey Jr.
Administrative Rules Coordinator
Governor's Ex Officio Representative
Capitol, Room 11
Des Moines, Iowa 50319

To All Agencies:

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

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
ADMINISTRATIVE SERVICES DEPARTMENT[11]		
Purchase of airline tickets, 41.5(3) IAB 11/10/04 ARC 3784B	Conference Room 4, Level A Hoover State Office Bldg. Des Moines, Iowa	November 30, 2004 10:30 a.m.
DENTAL EXAMINERS BOARD[650]		
Dental hygiene examinees— completion of education or experience prior to third examination attempt, 12.4(2) IAB 11/10/04 ARC 3778B	Board Conference Room, Suite D 400 SW Eighth St. Des Moines, Iowa	November 30, 2004 2 p.m.
Mandatory reporting, 30.4, 31.14 IAB 11/10/04 ARC 3779B (See also ARC 3777B)	Board Conference Room, Suite D 400 SW Eighth St. Des Moines, Iowa	January 13, 2005 10 a.m.
EDUCATIONAL EXAMINERS BOARD[282]		
Correction of cross reference, 11.37 IAB 11/10/04 ARC 3770B	Room 3 North, Third Floor Grimes State Office Bldg. Des Moines, Iowa	November 30, 2004 1 p.m.
Driving record qualification for behind-the-wheel driving instructor authorization, 21.1(1) IAB 11/10/04 ARC 3771B	Room 3 North, Third Floor Grimes State Office Bldg. Des Moines, Iowa	November 30, 2004 1:30 p.m.
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Maintenance of manure management plan records, 65.17(13) IAB 11/10/04 ARC 3807B	Fifth Floor Conference Rooms Wallace State Office Bldg. Des Moines, Iowa	December 3, 2004 1:30 p.m.
INSURANCE DIVISION[191]		
Life and health self-funded plans, 35.20 IAB 11/10/04 ARC 3802B	330 Maple St. Des Moines, Iowa	December 1, 2004 10 a.m.
MANAGEMENT DEPARTMENT[541]		
Retention of and access to public records, 1.5, 1.7, 1.8, 8.1 to 8.3, 8.12 to 8.14 IAB 11/24/04 ARC 3811B	Room G14 State Capitol Bldg. Des Moines, Iowa	December 16, 2004 10 a.m.

MEDICAL EXAMINERS BOARD[653]

USMLE licensure examination, 9.4(2) IAB 11/24/04 ARC 3824B	Suite C 400 SW Eighth St. Des Moines, Iowa	December 14, 2004 3 p.m.
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PROFESSIONAL LICENSURE DIVISION[645]

Cosmetology, amendments to chs 60 to 62, 65 IAB 11/24/04 ARC 3815B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	December 15, 2004 10 to 11 a.m.
Physician assistants—supervision requirements, 326.8(4) IAB 11/10/04 ARC 3774B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	November 30, 2004 9 to 9:30 a.m.
Athletic trainers, amendments to chs 351, 352, 354 IAB 11/24/04 ARC 3814B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	December 15, 2004 9 to 10 a.m.

PUBLIC HEALTH DEPARTMENT[641]

Quarantine and isolation, 1.12 IAB 11/24/04 ARC 3839B (ICN Network)	State Library Miller State Office Building Des Moines, Iowa	December 14, 2004 10 to 11 a.m.
	Public Library 507 Poplar Atlantic, Iowa	December 14, 2004 10 to 11 a.m.
	Mount Mercy College 1330 Elmhurst Dr. NE Cedar Rapids, Iowa	December 14, 2004 10 to 11 a.m.
	Mason City High School 1700 Fourth SE Mason City, Iowa	December 14, 2004 10 to 11 a.m.
	Ottumwa Regional Hospital 1001 E. Pennsylvania Ottumwa, Iowa	December 14, 2004 10 to 11 a.m.
	Buena Vista University 610 W. Fourth St. Storm Lake, Iowa	December 14, 2004 10 to 11 a.m.
Emergency medical services provider education/training/certification, ch 131 IAB 11/24/04 ARC 3838B (ICN Network)	Sixth Floor ICN Room Lucas State Office Bldg. Des Moines, Iowa	December 14, 2004 10 a.m. to 12 noon
	Public Library 440 E. Main St. Belmond, Iowa	December 14, 2004 10 a.m. to 12 noon
	National Guard Armory 1712 Le Clark Rd. Carroll, Iowa	December 14, 2004 10 a.m. to 12 noon

PUBLIC HEALTH DEPARTMENT[641] (Cont'd)
(ICN Network)

	Dubuque Senior High School 1800 Clarke Dr. Dubuque, Iowa	December 14, 2004 10 a.m. to 12 noon
	Public Library 123 S. Linn St. Iowa City, Iowa	December 14, 2004 10 a.m. to 12 noon
	National Guard Armory 11 E. 23rd St. Spencer, Iowa	December 14, 2004 10 a.m. to 12 noon
Emergency medical services—service program authorization, amendments to ch 132 IAB 11/24/04 ARC 3837B (ICN Network)	Sixth Floor ICN Room Lucas State Office Bldg. Des Moines, Iowa	December 14, 2004 10 a.m. to 12 noon
	Public Library 440 E. Main St. Belmond, Iowa	December 14, 2004 10 a.m. to 12 noon
	National Guard Armory 1712 Le Clark Rd. Carroll, Iowa	December 14, 2004 10 a.m. to 12 noon
	Dubuque Senior High School 1800 Clarke Dr. Dubuque, Iowa	December 14, 2004 10 a.m. to 12 noon
	Public Library 123 S. Linn St. Iowa City, Iowa	December 14, 2004 10 a.m. to 12 noon
	National Guard Armory 11 E. 23rd St. Spencer, Iowa	December 14, 2004 10 a.m. to 12 noon
White flashing light authorization, 133.1, 133.4(3) IAB 11/24/04 ARC 3836B (ICN Network)	Sixth Floor ICN Room Lucas State Office Bldg. Des Moines, Iowa	December 14, 2004 10 a.m. to 12 noon
	Public Library 440 E. Main St. Belmond, Iowa	December 14, 2004 10 a.m. to 12 noon
	National Guard Armory 1712 Le Clark Rd. Carroll, Iowa	December 14, 2004 10 a.m. to 12 noon
	Dubuque Senior High School 1800 Clarke Dr. Dubuque, Iowa	December 14, 2004 10 a.m. to 12 noon
	Public Library 123 S. Linn St. Iowa City, Iowa	December 14, 2004 10 a.m. to 12 noon
	National Guard Armory 11 E. 23rd St. Spencer, Iowa	December 14, 2004 10 a.m. to 12 noon

PUBLIC HEALTH DEPARTMENT[641] (Cont'd)**(ICN Network)**

Trauma care facility categorization and verification, 134.1, 134.2 IAB 11/24/04 ARC 3835B (ICN Network)	Sixth Floor ICN Room Lucas State Office Bldg. Des Moines, Iowa	December 14, 2004 10 a.m. to 12 noon
	Public Library 440 E. Main St. Belmond, Iowa	December 14, 2004 10 a.m. to 12 noon
	National Guard Armory 1712 Le Clark Rd. Carroll, Iowa	December 14, 2004 10 a.m. to 12 noon
	Dubuque Senior High School 1800 Clarke Dr. Dubuque, Iowa	December 14, 2004 10 a.m. to 12 noon
	Public Library 123 S. Linn St. Iowa City, Iowa	December 14, 2004 10 a.m. to 12 noon
	National Guard Armory 11 E. 23rd St. Spencer, Iowa	December 14, 2004 10 a.m. to 12 noon
Trauma triage and transfer protocols, 135.1, 135.2(1) IAB 11/24/04 ARC 3834B (ICN Network)	Sixth Floor ICN Room Lucas State Office Bldg. Des Moines, Iowa	December 14, 2004 10 a.m. to 12 noon
	Public Library 440 E. Main St. Belmond, Iowa	December 14, 2004 10 a.m. to 12 noon
	National Guard Armory 1712 Le Clark Rd. Carroll, Iowa	December 14, 2004 10 a.m. to 12 noon
	Dubuque Senior High School 1800 Clarke Dr. Dubuque, Iowa	December 14, 2004 10 a.m. to 12 noon
	Public Library 123 S. Linn St. Iowa City, Iowa	December 14, 2004 10 a.m. to 12 noon
	National Guard Armory 11 E. 23rd St. Spencer, Iowa	December 14, 2004 10 a.m. to 12 noon
Trauma registry, 136.1, 136.2 IAB 11/24/04 ARC 3833B (ICN Network)	Sixth Floor ICN Room Lucas State Office Bldg. Des Moines, Iowa	December 14, 2004 10 a.m. to 12 noon
	Public Library 440 E. Main St. Belmond, Iowa	December 14, 2004 10 a.m. to 12 noon

PUBLIC HEALTH DEPARTMENT[641] (Cont'd)
(ICN Network)

	National Guard Armory 1712 Le Clark Rd. Carroll, Iowa	December 14, 2004 10 a.m. to 12 noon
	Dubuque Senior High School 1800 Clarke Dr. Dubuque, Iowa	December 14, 2004 10 a.m. to 12 noon
	Public Library 123 S. Linn St. Iowa City, Iowa	December 14, 2004 10 a.m. to 12 noon
	National Guard Armory 11 E. 23rd St. Spencer, Iowa	December 14, 2004 10 a.m. to 12 noon
Trauma education and training, 137.1 to 137.3 IAB 11/24/04 ARC 3832B	Sixth Floor ICN Room Lucas State Office Bldg. Des Moines, Iowa	December 14, 2004 10 a.m. to 12 noon
	Public Library 440 E. Main St. Belmond, Iowa	December 14, 2004 10 a.m. to 12 noon
	National Guard Armory 1712 Le Clark Rd. Carroll, Iowa	December 14, 2004 10 a.m. to 12 noon
	Dubuque Senior High School 1800 Clarke Dr. Dubuque, Iowa	December 14, 2004 10 a.m. to 12 noon
	Public Library 123 S. Linn St. Iowa City, Iowa	December 14, 2004 10 a.m. to 12 noon
	National Guard Armory 11 E. 23rd St. Spencer, Iowa	December 14, 2004 10 a.m. to 12 noon
Iowa law enforcement emergency care provider, 139.1, 139.3, 139.5, 139.6 IAB 11/24/04 ARC 3830B (ICN Network)	Sixth Floor ICN Room Lucas State Office Bldg. Des Moines, Iowa	December 14, 2004 10 a.m. to 12 noon
	Public Library 440 E. Main St. Belmond, Iowa	December 14, 2004 10 a.m. to 12 noon
	National Guard Armory 1712 Le Clark Rd. Carroll, Iowa	December 14, 2004 10 a.m. to 12 noon
	Dubuque Senior High School 1800 Clarke Dr. Dubuque, Iowa	December 14, 2004 10 a.m. to 12 noon
	Public Library 123 S. Linn St. Iowa City, Iowa	December 14, 2004 10 a.m. to 12 noon

PUBLIC HEALTH DEPARTMENT[641] (Cont'd)
(ICN Network)

	National Guard Armory 11 E. 23rd St. Spencer, Iowa	December 14, 2004 10 a.m. to 12 noon
Emergency medical services system development grants fund, 140.1, 140.4 to 140.6 IAB 11/24/04 ARC 3829B (ICN Network)	Sixth Floor ICN Room Lucas State Office Bldg. Des Moines, Iowa	December 14, 2004 10 a.m. to 12 noon
	Public Library 440 E. Main St. Belmond, Iowa	December 14, 2004 10 a.m. to 12 noon
	National Guard Armory 1712 Le Clark Rd. Carroll, Iowa	December 14, 2004 10 a.m. to 12 noon
	Dubuque Senior High School 1800 Clarke Dr. Dubuque, Iowa	December 14, 2004 10 a.m. to 12 noon
	Public Library 123 S. Linn St. Iowa City, Iowa	December 14, 2004 10 a.m. to 12 noon
	National Guard Armory 11 E. 23rd St. Spencer, Iowa	December 14, 2004 10 a.m. to 12 noon

Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

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

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

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

The following list will be updated as changes occur:

ADMINISTRATIVE SERVICES DEPARTMENT[11]
 AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
 Agricultural Development Authority[25]
 Soil Conservation Division[27]
 ATTORNEY GENERAL[61]
 AUDITOR OF STATE[81]
 BEEF INDUSTRY COUNCIL, IOWA[101]
 BLIND, DEPARTMENT FOR THE[111]
 CAPITAL INVESTMENT BOARD, IOWA[123]
 CITIZENS’ AIDE[141]
 CIVIL RIGHTS COMMISSION[161]
 COMMERCE DEPARTMENT[181]
 Alcoholic Beverages Division[185]
 Banking Division[187]
 Credit Union Division[189]
 Insurance Division[191]
 Professional Licensing and Regulation Division[193]
 Accountancy Examining Board[193A]
 Architectural Examining Board[193B]
 Engineering and Land Surveying Examining Board[193C]
 Landscape Architectural Examining Board[193D]
 Real Estate Commission[193E]
 Real Estate Appraiser Examining Board[193F]
 Savings and Loan Division[197]
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 CORRECTIONS DEPARTMENT[201]
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 CULTURAL AFFAIRS DEPARTMENT[221]
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 Grow Iowa Values Board[264]
 Iowa Finance Authority[265]
 EDUCATION DEPARTMENT[281]
 Educational Examiners Board[282]
 College Student Aid Commission[283]
 Higher Education Loan Authority[284]
 Iowa Advance Funding Authority[285]
 Libraries and Information Services Division[286]
 Public Broadcasting Division[288]
 School Budget Review Committee[289]
 EGG COUNCIL, IOWA[301]
 ELDER AFFAIRS DEPARTMENT[321]
 EMPOWERMENT BOARD, IOWA[349]
 ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]
 EXECUTIVE COUNCIL[361]
 FAIR BOARD[371]
 GENERAL SERVICES DEPARTMENT[401]
 HUMAN INVESTMENT COUNCIL[417]
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 Community Action Agencies Division[427]
 Criminal and Juvenile Justice Planning Division[428]
 Deaf Services Division[429]
 Persons With Disabilities Division[431]
 Latino Affairs Division[433]
 Status of African-Americans, Division on the[434]
 Status of Women Division[435]

HUMAN SERVICES DEPARTMENT[441]
INFORMATION TECHNOLOGY DEPARTMENT[471]
INSPECTIONS AND APPEALS DEPARTMENT[481]
 Employment Appeal Board[486]
 Foster Care Review Board[489]
 Racing and Gaming Commission[491]
 State Public Defender[493]
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]
LAW ENFORCEMENT ACADEMY[501]
LIVESTOCK HEALTH ADVISORY COUNCIL[521]
LOTTERY AUTHORITY, IOWA[531]
MANAGEMENT DEPARTMENT[541]
 Appeal Board, State[543]
 City Finance Committee[545]
 County Finance Committee[547]
NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]
VOLUNTEER SERVICE, IOWA COMMISSION ON[555]
NATURAL RESOURCES DEPARTMENT[561]
 Energy and Geological Resources Division[565]
 Environmental Protection Commission[567]
 Natural Resource Commission[571]
 Preserves, State Advisory Board for[575]
PERSONNEL DEPARTMENT[581]
PETROLEUM UNDERGROUND STORAGE TANK FUND
 BOARD, IOWA COMPREHENSIVE[591]
PREVENTION OF DISABILITIES POLICY COUNCIL[597]
PUBLIC DEFENSE DEPARTMENT[601]
 Homeland Security and Emergency Management Division[605]
 Military Division[611]
PUBLIC EMPLOYMENT RELATIONS BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
 Substance Abuse Commission[643]
 Professional Licensure Division[645]
 Dental Examiners Board[650]
 Medical Examiners Board[653]
 Nursing Board[655]
 Pharmacy Examiners Board[657]
PUBLIC SAFETY DEPARTMENT[661]
RECORDS COMMISSION[671]
REGENTS BOARD[681]
 Archaeologist[685]
REVENUE DEPARTMENT[701]
SECRETARY OF STATE[721]
SEED CAPITAL CORPORATION, IOWA[727]
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]
TRANSPORTATION DEPARTMENT[761]
 Railway Finance Authority[765]
TREASURER OF STATE[781]
TURKEY MARKETING COUNCIL, IOWA[787]
UNIFORM STATE LAWS COMMISSION[791]
VETERANS AFFAIRS COMMISSION[801]
VETERINARY MEDICINE BOARD[811]
VOTER REGISTRATION COMMISSION[821]
WORKFORCE DEVELOPMENT DEPARTMENT[871]
 Labor Services Division[875]
 Workers' Compensation Division[876]
 Workforce Development Board and
 Workforce Development Center Administration Division[877]

ARC 3822B

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 159.5 and 198.10(1) as amended by 2004 Iowa Acts, Senate File 2208, section 10, the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 41, “Commercial Feed,” Iowa Administrative Code.

The rules in Chapter 41 describe the regulations and labeling requirements for commercial feed products. This amendment adds a new rule establishing a requirement that a laboratory analysis for aflatoxin B1 accompany shipments of whole cottonseed being sold in Iowa for animal feed use. This amendment does not contain a waiver, but is subject to the Department’s general waiver.

Any interested person may make written suggestions or comments on this proposed amendment on or before December 14, 2004. Such written materials should be directed to Terry Jensen, Bureau Chief, Feed and Fertilizer Bureau, Wallace State Office Building, 502 E. 9th St., Des Moines, Iowa 50319; or faxed to (515)281-4185. E-mail comments may be sent to terry.jensen@idals.state.ia.us.

This amendment is intended to implement Iowa Code chapter 198 and 2004 Iowa Acts, Senate File 2208.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendment is proposed.

Amend 21—Chapter 41 by adopting the following **new** rule:

21—41.12(198) Cottonseed product control. As a condition of entry into Iowa, all shipments of whole cottonseed being sold for animal feed use shall be accompanied by a laboratory analysis for aflatoxin B1. The distributor shall provide the laboratory analysis with the bill of lading or invoice to the first purchaser of the whole cottonseed being sold for animal feed use. The first purchaser shall provide a copy of the laboratory analysis to each subsequent purchaser. The whole cottonseed being sold for animal feed use must meet all livestock feeding guidelines established by the Food and Drug Administration regarding aflatoxin B1. Whole cottonseed sold for animal feed use which does not meet the guidelines established by the Food and Drug Administration will be considered adulterated under the provisions of Iowa Code section 198.7.

This rule is intended to implement Iowa Code chapter 198 as amended by 2004 Iowa Acts, Senate File 2208.

ARC 3823B

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 159.5 and 201A.8, the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 43, “Fertilizers and Agricultural Lime,” Iowa Administrative Code.

The rules in Chapter 43 concern the regulation, certification and storage of fertilizers and agricultural liming products. This amendment adds a new rule pertaining to the prevention of soil contamination that occurs after agricultural liming material that consists primarily of egg shells is exposed to precipitation. This amendment does not contain a waiver, but is subject to the Department’s general waiver. The Department of Natural Resources will require permits relating to solid waste handling if a rule is not enacted.

Any interested person may make written suggestions or comments on this proposed amendment on or before December 14, 2004. Such written materials should be directed to Terry Jensen, Bureau Chief, Feed and Fertilizer Bureau, Wallace State Office Building, 502 E. 9th St., Des Moines, Iowa 50319; or faxed to (515)281-4185. E-mail comments may be sent to terry.jensen@idals.state.ia.us.

This amendment is intended to implement Iowa Code section 201A.8.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendment is proposed.

Amend 21—Chapter 43 by adopting the following **new** rule:

21—43.40(201A) Egg shells. The following shall apply to any agricultural liming material that consists primarily of egg shells:

1. With the exception of paragraph “2,” the material shall be stored in a structure that prevents precipitation from contacting the stored material.

2. The material may be stored in a manner not meeting the requirements of paragraph “1” for a period of not more than 14 days in the field where the material will be land-applied.

ARC 3811B MANAGEMENT DEPARTMENT[541]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 8.6, the Department of Management hereby gives Notice of Intended Action to amend Chapter 1, "Organization and Operation," and Chapter 8, "Public Records and Fair Information Practices," Iowa Administrative Code.

The proposed amendments rescind rules 541—1.7(8), "Access to official records and information," and 541—1.8(8), "Access to data in the personnel management information system," and address all access to records and data through amendments to Chapter 8. The proposed amendments to Chapter 8 implement the Department's public records policy and clarify specifics. Amendments are as follows: expand definitions to clarify terminology; describe Department policy; detail the record retention requirements of the Department; describe the records that may be accessed and those to be withheld; specify record request procedures, requirements, and duties of both the Department and requester; establish fees and detail when such fees will apply; and strike obsolete references to subrules that have been rescinded or are no longer valid.

Any interested person may make written suggestions or comments on the proposed amendments on or before December 16, 2004. Such written materials should be sent to the Public Records Coordinator, Iowa Department of Management, State Capitol Building, Des Moines, Iowa 50319, by facsimile to (515)281-4001, or by electronic mail to steve.ford@iowa.gov.

A public hearing will be held on December 16, 2004, at 10 a.m. in Room G14, State Capitol Building, at which time comments may be submitted orally or in writing. Any persons who intend to attend the public hearing and have special requirements such as those related to hearing or mobility impairments should contact Stephen Ford at (515)281-3705 to advise of any specific needs.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

These amendments are intended to implement Iowa Code chapter 8.

The following amendments are proposed.

ITEM 1. Amend rule **541—1.5(8)** by rescinding the definitions of "nonproprietary records" and "proprietary records."

ITEM 2. Rescind rules **541—1.7(8)** and **541—1.8(8)**.

ITEM 3. Amend rule **541—8.1(17A,22)** by adopting the following **new** definitions in alphabetical order:

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

able for examination by members of the public and records or information contained in records that are specified as confidential by Iowa Code section 22.7 or Chapter 8 or another provision of law.

"Nonincidental retrieval or supervisory service" means services provided by the department's staff (or staff from the department of administrative services) to persons requesting access to public documents, which exceed 20 hours in duration.

"Nonproprietary records" means those records which are in the possession of the department but which are generated for the purposes of other units of government.

"Open record" means a record other than a confidential record.

"Public record" means a record as defined in Iowa Code section 22.1. A public record includes both "confidential" and "open" records.

ITEM 4. Adopt the following **new** rule:

541—8.2(17A,22) Public record retention and access.

8.2(1) Record policy. The department of management is committed to ensuring that the workings of the department are open to public inspection. To that end, a public record in the custody of the department will be maintained and archived through a standard record retention policy, with public access to be given in full compliance with applicable provisions of law.

The record retention program will provide economy and efficiency in the creation, organization, administrative use, maintenance, security, availability, and disposition of public records to ensure that a needless record will not be created or retained, and a valuable record will be preserved, as provided under Iowa law. The department will preserve the integrity of public records, and reply to all open records requests in a timely, responsive, and efficient manner in full compliance with applicable provisions of law.

8.2(2) Record retention requirements. Every record made or received under the authority of, or coming into the custody, control, or possession of, department of management personnel, in connection with the transaction of official business of state government, and that has sufficient legal, fiscal, administrative, or historical value shall be retained in accordance with Iowa law. The director of the department of management shall designate a records retention officer to oversee the department's record retention program and to serve as the primary point of contact with the state archives.

The department will follow the records retention protocol that is established by the Iowa records retention commission. The department of management records officer shall select retention mechanisms that are designed to implement the commission protocol and arrange for training for the department's personnel on each selected mechanism.

8.2(3) Confidential records. Confidential records may be withheld, and confidential information within an otherwise open record may be redacted prior to a record's release for public examination and copying. If a confidential record is withheld from examination and copying, or confidential information within an otherwise open record is redacted, the department of management will identify the document(s) and cite the applicable provision of law that supports the decision to withhold the confidential information from public examination.

ITEM 5. Rescind subrules 8.3(1) and 8.3(2) and adopt the following **new** subrules in lieu thereof:

8.3(1) Open records. Open records will be available to the public during customary office hours, which are 8 a.m. to

MANAGEMENT DEPARTMENT[541](cont'd)

4:30 p.m., Monday through Friday (except holidays). Immediate access to records may be affected by a good faith effort to verify the scope of the records requested and to determine whether any of the records or information contained therein is confidential in nature.

In the event circumstances prolong a timely response, the department will notify the requester at once and attempt an alternate arrangement to provide the response in a manner satisfactory to the requester. For nonproprietary records, the department is only a repository and is not the "lawful custodian" of the records under the meaning of Iowa Code chapter 22. Nonproprietary records shall be provided only to the unit of state government which is the lawful custodian of such records under Iowa Code chapter 22.

8.3(2) Requesting records. Requests for access to a public record may be made by mail, electronically, by telephone or in person. A request for access to a public record should be made to the director, who shall be responsible for implementing the requirements of public records laws inside the department.

a. A person who submits a request for public records shall provide the person's name, address, and telephone number in order to facilitate effective communication with the department regarding the request.

b. Mail requests shall be addressed to: Director, Department of Management, State Capitol, Des Moines, Iowa 50319.

c. Electronic requests shall include the term "Public Records Request" in the subject field, and should be sent to the director's E-mail address as found on the department's Web site at www.dom.state.ia.us.

d. Telephone requests should be made to (515)281-5192.

e. A person who submits a request orally will receive a verification letter or electronic communication, whichever is preferred by the requester, from the department verifying the specific scope of the search requested. The verification letter or electronic communication will be transmitted before the request for documents is processed.

In the event that a request cannot be fulfilled within a reasonable time, the requester will be so notified and an estimated completion date will be provided.

ITEM 6. Adopt **new** subrules 8.3(3) to 8.3(5) as follows:

8.3(3) Record identification. Requests for access to a public record shall identify the particular public record to which access is requested by name or description in order to identify efficiently the desired record.

a. The requester's description should specify:

(1) The particular type of record sought.

(2) The particular time period to be searched by a start and end date.

(3) The author or recipient, or both, of the record requested, to the extent possible.

(4) To the extent possible, the particular records medium to be searched (i.e., letters, memoranda, reports, recordings).

(5) Any other pertinent information that will assist the department in locating the record requested.

b. The requester shall specify if the request applies to a record stored in an electronic form and shall list the search terms to be used.

8.3(4) Record search. Department of management personnel should direct public records requests to the director for docketing and processing. Before a search is conducted, the director may contact the requester if there are questions concerning the scope of the record request. The department of management shall employ a staff member who is proficient in conducting electronic records searches within the department. This individual will be responsible for conducting all searches for electronic records that are accessible inside the department of management.

a. Upon receipt of a request for access to a public record, the department will promptly take all reasonable steps to preserve a public record while the request is pending.

b. Every public record that is gathered pursuant to a records request will be examined to determine whether the record is confidential and for completeness in response to the request.

c. Every record that is presented to the public for review shall be attached to a transmittal letter that specifies the manner in which the records search was performed.

d. Questions by the public regarding the scope of a records search or requests for an expanded search should be submitted to the director in writing.

8.3(5) Fees. A fee for time spent retrieving an open record or supervising the public examination of an open record, or both, may be charged to the requester of the record in an amount equal to the actual cost of time spent providing non-incident retrieval or supervisory services, or both, as provided under applicable law. Whenever possible, an estimate of fees will be provided to the requester before a search is initiated.

a. The actual cost for nonincident retrieval or supervisory services, or both, may vary according to the nature of the search that is specified by the requester. However, the fees for nonincident retrieval or supervisory services, or both, performed by department of management staff pursuant to a request for records that are accessible inside the department of management will ordinarily be set at \$15 per hour. Fees for department of management records that are accessible only with the assistance of department of administrative services or state archives personnel will be based on the fee structure that is established by those agencies. Requesters are generally billed for fees after their request has been processed. However, if total fees are expected to exceed \$250, the department of management may require payment in advance of processing.

b. Photocopies of open records located in the department office will be provided at no charge for the first 25 pages, and \$0.20 cents per page for each additional page.

ITEM 7. Rescind subrule **8.3(7)**.

ITEM 8. Amend subrule 8.12(1), introductory paragraph, as follows:

~~**8.12(1)** The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 8.6(17A,22). However, the~~ *The* agency need not release the following records to the subject:

ITEM 9. Amend subrule 8.13(3) as follows:

8.13(3) Authority to release confidential records. The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law.

MANAGEMENT DEPARTMENT[541](cont'd)

~~Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 8.4(17A,22). If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 8.4(3).~~

ITEM 10. Rescind and reserve rule **541—8.14(17A,22)**.

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MEDICAL EXAMINERS BOARD[653]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3 and chapter 148, the Board of Medical Examiners hereby gives Notice of Intended Action to amend Chapter 9, "Permanent Physician Licensure," Iowa Administrative Code.

The Board approved the proposed amendment to Chapter 9 during a regularly scheduled meeting held on October 28, 2004.

The Board has consistently granted waivers of the seven-year requirement for taking the USMLE licensure examination when a physician holds specialty board certification from the American Board of Medical Specialties or the American Osteopathic Association. The Board is proposing an amendment so that applicants who meet the alternative no longer must file an application for a waiver.

Any interested person may present written comments on the proposed amendment not later than 4:30 p.m. on December 14, 2004. Such written materials should be sent to Ann E. Mowery, Executive Director, Board of Medical Examiners, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa 50309-4686, or by E-mail to ann.mowery@iowa.gov.

There will be a public hearing on December 14, 2004, at 3 p.m. in the Board office, at which time persons may present their views either orally or in writing. The Board of Medical Examiners office is located at 400 S.W. Eighth Street, Suite C, Des Moines, Iowa.

This amendment is intended to implement Iowa Code section 148.3(2).

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend paragraph **9.4(2)"e"** as follows:

e. The following conditions shall apply to applicants for licensure in Iowa who utilize USMLE as the licensure examination.

(1) Passing Steps 1, 2, and 3 is required within a seven-year period beginning with the date of passing either Step 1 or Step 2, whichever occurred first. Those who have been

delayed in taking Step 1, 2, or 3 because of enrollment in a joint M.D./Ph.D. or D.O./Ph.D. program shall pass Steps 1, 2, and 3 as prescribed in these rules within a ten-year period. *Board certification by the ABMS or AOA is required if the applicant was not able to pass Steps 1, 2, and 3 within the required time as specified in this paragraph.*

(2) Step 3 may be taken and passed only after Steps 1 and 2 are passed.

(3) A score of 75 or better on each step shall constitute a passing score on that step.

(4) Each USMLE step must be passed individually and individual step scores shall not be averaged to compute an overall score.

(5) A failure of any USMLE step, regardless of the jurisdiction for which it was taken, shall be considered a failure of that step for the purposes of Iowa licensure.

(6) Successful completion of a progressive three-year resident training program is required if the applicant passes the examination after more than six attempts on Step 1 or six attempts on Step 2 or three attempts on Step 3.

ARC 3815B

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Cosmetology Arts and Sciences Examiners hereby gives Notice of Intended Action to amend Chapter 60, "Licensure of Cosmetologists, Electrologists, Estheticians, Manicurists, Nail Technologists, and Instructors for Cosmetology Arts and Sciences," Chapter 61, "Licensure of Salons and Schools of Cosmetology Arts and Sciences," Chapter 62, "Fees," Chapter 65, "Discipline for Cosmetology Arts and Sciences Licensees, Instructors, Salons, and Schools," Iowa Administrative Code.

These proposed amendments eliminate references to a specific testing vendor, modify licensure by endorsement, add specific training requirements and other changes as required by legislative changes in 2004, add fees for certification of specific procedures and add civil penalty language regarding unlicensed persons who practice cosmetology arts and sciences.

Any interested person may make written comments on the proposed amendments no later than December 15, 2004, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail pwilson@idph.state.ia.us.

A public hearing will be held on December 15, 2004, from 10 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

These amendments are intended to implement Iowa Code chapters 21, 147, 157 and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Rescind rule 645—60.1(157) and adopt the following **new** rule in lieu thereof:

645—60.1(157) Definitions. For purposes of these rules, the following definitions shall apply:

“Board” means the board of cosmetology arts and sciences examiners.

“Certified laser product” means a product which is certified by a manufacturer pursuant to the requirements of 21 Code of Federal Regulations (C.F.R.) Part 1040.

“Chemical exfoliation” means the removal of surface epidermal cells of the skin by using only non-medical-strength cosmetic preparations consistent with labeled instructions and as specified by rule.

“Core curriculum” means the basic core life sciences curriculum that is required for completion of any course of study of the cosmetology arts and sciences except for manicuring.

“Cosmetology arts and sciences” means any or all of the following disciplines performed with or without compensation by a licensee: cosmetology, electrolysis, esthetics, nail technology and manicuring.

“Depilatory” means an agent used for the temporary removal of superfluous hair by dissolving it at the epidermal surface.

“Exfoliation” means the process whereby the superficial epidermal cells are removed from the skin.

“Lapsed license” means a license that a person has failed to renew as required, or the license of a person who has failed to meet stated obligations for renewal within 30 days of the renewal date.

“Laser” means light amplification by the stimulated emission of radiation.

“Licensee” means any person or entity licensed to practice pursuant to Iowa Code chapter 157 and 645—Chapters 60 to 65, Iowa Administrative Code.

“Licensure by endorsement” means the issuance of an Iowa license to practice cosmetology to an applicant who has held a license in another state.

“Mechanical exfoliation” means the physical removal of surface epidermal cells by means that include but are not limited to brushing machines, granulated scrubs, peel-off masks, peeling creams or drying preparations that are rubbed off, and microdermabrasion.

“Mentor” means a licensee providing guidance in a mentoring program.

“Mentoring” means a program allowing students to experience cosmetology arts and sciences in a licensed salon under the guidance of a mentor.

“Microdermabrasion” means mechanical exfoliation using an abrasive material or apparatus to remove surface epidermal cells with a machine which is specified by rule.

“Minor” means an unmarried person who is under the age of 18 years.

“Practice discipline” means the practice of electrolysis, esthetics, nail technology, manicuring or cosmetology as recognized by the board of cosmetology arts and sciences examiners.

“Reciprocal license” means the issuance of an Iowa license to practice cosmetology to an applicant who is current-

ly licensed in another state and which state has a mutual agreement to license persons who have the same or similar qualifications to those required in Iowa.

“Testing service” means a national testing service selected by the board.

“Trainee” means any person who completes the requirements listed in Iowa Code section 157.3 for licensure in the cosmetology arts and sciences, except for the examination, and who has a temporary permit.

ITEM 2. Amend subrule **60.2(1)**, paragraph “a,” as follows:

a. Complete a board-approved application form. Application forms may be obtained directly from ~~Exterior Testing Service, 1360 Energy Park Drive, Saint Paul, Minnesota 55108-5252~~ the board-approved testing service. The name and address of the testing service may be obtained from the board's Web site at www.idph.state.ia.us/licensure or by contacting the board office in the Iowa department of public health, professional licensure division. All applications shall be sent to ~~Exterior Assessment at the above address~~ the testing service.

ITEM 3. Amend subrule **60.2(3)**, paragraph “a,” as follows:

a. Candidates eligible for testing may contact ~~Exterior Testing Service, 1360 Energy Park Drive, Saint Paul, Minnesota 55108-5252 or www.exterioronline.com~~ (in the subject area specify “IA Cos”) the board-approved testing service to arrange a testing time.

ITEM 4. Renumber rules **645—60.4(157)** through **645—60.13(272C)** as **645—60.7(157)** through **645—60.16(272C)** and adopt **new** rules 645—60.4(149) through 645—60.6(157) as follows:

645—60.4(157) Practice-specific training requirements.

60.4(1) A licensed esthetician who holds a permanent license in good standing may administer microdermabrasion or a certified laser product after the esthetician has submitted to the board office an attestation as described in 60.4(4) on a form approved by the board and the appropriate fees as specified in 645—Chapter 62 and has received board approval.

60.4(2) A licensed cosmetologist who holds a permanent license in good standing may administer chemical peels or utilize microdermabrasion or a certified laser product after the cosmetologist has submitted to the board office an attestation as described in 60.4(4) on a form approved by the board and the appropriate fees as specified in 645—Chapter 62 and has received board approval. A cosmetologist who received an initial license in Iowa after July 1, 2005, shall not provide chemical peels, practice microdermabrasion procedures or use certified laser products.

60.4(3) A licensed electrologist who holds a permanent license in good standing may utilize a certified laser product for the purpose of hair removal after the electrologist has submitted to the board office an attestation as described in 60.4(4) on a form approved by the board and the appropriate fees as specified in 645—Chapter 62 and has received board approval.

60.4(4) The attestation required in subrules 60.4(1), 60.4(2) and 60.4(3) shall include evidence of training and certification specific to each procedure or device to be used. A licensee who includes utilization of a certified laser product in the attestation shall provide evidence that the licensee's laser product training included a safety training component which provided a thorough understanding of the procedures being performed. The training program shall address fundamentals of nonbeam hazards, management and employee re-

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

sponsibilities relating to control measures, and regulatory requirements.

60.4(5) The board shall approve a licensee to provide services or utilize a certified laser product as specified in the attestation and application required by this rule upon board determination that a licensee has submitted a completed application as required by subrule 60.4(1), 60.4(2) or 60.4(3), provided appropriate evidence supporting the licensee's training and certification in the attestation, and submitted applicable fees. The applicant shall receive a certification card following board approval. The certification card and the license to practice cosmetology arts and sciences shall be displayed together in a conspicuous public place at the licensee's primary site of practice.

60.4(6) A licensee who has an attestation on file with the board and who continues to utilize the procedure or device specified in the attestation shall meet the requirements of 645—Chapter 64 at the time of license renewal. A minimum of one hour of continuing education in the area of each procedure or device for which the licensee has received board certification shall be required beginning with the renewal cycle of April 1, 2006, to March 31, 2008. Continuing education credit in the area of the procedure or device is in addition to the eight hours of continuing education required for renewal of the license.

60.4(7) A licensed cosmetologist, esthetician, or electrologist who provides services related to the use of a certified laser product, chemical peel, or microdermabrasion shall submit a report to the board within 30 days of any incident in which provision of such services resulted in physical injury requiring medical attention. Failure to comply with this requirement shall result in disciplinary action by the board.

The report shall include the following:

- a. Description of procedures;
- b. Description of the physical condition of client;
- c. Description of the adverse occurrence, including:
 - (1) Symptoms of any complications including, but not limited to, onset and type of symptoms;
 - (2) Description of the services provided that caused the situation;
 - (3) Description of the procedure that was followed by the licensee;
 - d. Description of the client's condition on termination of any procedures undertaken;
 - e. If a client is referred to a physician, a statement providing where and to whom if known;
 - f. Copy of consent form.

60.4(8) Failure to report. Failure to comply with subrule 60.4(7) when the adverse occurrence is related to the use of any procedure or device noted in the attestation may result in the licensee's loss of authorization to administer the procedure or device noted in the attestation or may result in other sanctions provided by law.

60.4(9) Failure to comply with this rule is grounds for discipline.

645—60.5(157) Licensure restrictions relating to practice.

60.5(1) A certified laser product shall only be used on surface epidermal layers of the skin except for hair removal.

60.5(2) A laser hair removal product shall not be used on a minor unless the minor is accompanied by a parent or guardian and then shall be used only under general supervision of a physician.

60.5(3) Persons licensed under Iowa Code chapter 157 shall not administer any practice of removing skin by means of a razor-edged instrument.

60.5(4) With the exception of hair removal, manicuring, and nail technology services, persons licensed under Iowa Code chapter 157 shall not administer any procedure in which human tissue is cut, shaped, vaporized, or otherwise structurally altered. Manicurists and nail technologists may only cut the cuticle.

645—60.6(157) Consent and reporting requirements. A licensed esthetician, cosmetologist, or electrologist prior to providing services relating to a certified laser product, chemical peel, or microdermabrasion shall obtain from a client a consent form that:

1. Specifies in general terms the nature and purpose of the procedure(s);
2. Lists known risks associated with the procedure(s) if reasonably determinable;
3. States an acknowledgment that disclosure of information has been made and that questions asked about the procedure(s) have been satisfactorily answered;
4. Includes a signature of either the client for whom the procedure is performed or, if that client for any reason lacks legal capacity to consent, includes the signature of a person who has legal authority to consent on behalf of that client in those circumstances.

ITEM 5. Amend renumbered rule **645—60.7(157)**, numbered paragraph "**3**," as follows:

3. Submits a ~~notarized~~ copy of the passing score on the examinations of ~~Exporior Testing Service~~ *the board-approved testing service* or NIC (National Interstate Council), or passes the current Iowa theory examination ~~recognized by the board~~; and

ITEM 6. Amend renumbered subrule **60.11(2)**, paragraph "**d**," as follows:

- d. Persons licensed to practice as cosmetology arts and sciences licensees shall keep their renewal licenses *and certifications* displayed in a conspicuous public place at the primary site of practice. *The licensee's current wallet card shall be in the licensee's immediate possession.*

ITEM 7. Amend subrule 61.13(1), catchwords and last unnumbered paragraph, as follows:

- 61.13(1)** Requirements for *clock* hours.
Clock hours may be converted to credit hours using a ~~standard, recognized~~ *the method of conversion promulgated by the U.S. Department of Education.*

ITEM 8. Adopt **new** subrules 62.1(21) and 62.1(22) as follows:

62.1(21) Initial fee for certification to administer microdermabrasion or utilize a certified laser product shall be \$25 for each type of procedure or a certified laser product.

62.1(22) Initial fee for certification of cosmetologists to administer chemical peels shall be \$25.

ITEM 9. Adopt **new** rule 645—65.5(157) as follows:

645—65.5(157) Civil penalties against nonlicensees. The board may impose civil penalties by order against a person who is not licensed by the board based on the unlawful practices specified in 2004 Iowa Acts, House File 2358, section 12. In addition to the procedures set forth in 2004 Iowa Acts, House File 2358, this chapter shall apply.

65.5(1) Unlawful practices. Practices by an unlicensed person or establishment which are subject to civil penalties include, but are not limited to:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

a. Acts or practices by unlicensed persons which require licensure to practice cosmetology arts and sciences under Iowa Code chapter 157.

b. Acts or practices by unlicensed establishments which require licensure as a salon or school of cosmetology arts and sciences under Iowa Code chapter 157.

c. Use or attempted use of a licensee's certificate or use or attempted use of an expired, suspended, revoked, or non-existent certificate.

d. Falsely impersonating a person licensed under Iowa Code chapter 157.

e. Providing false or forged evidence of any kind to the board in obtaining or attempting to obtain a license.

f. Other violations of Iowa Code chapter 157.

g. Knowingly aiding or abetting an unlicensed person or establishment in any activity identified in this rule.

65.5(2) Investigations. The board is authorized by Iowa Code subsection 17A.13(1) and 2004 Iowa Acts, House File 2358, to conduct such investigations as are needed to determine whether grounds exist to impose civil penalties against a nonlicensee. Complaint and investigatory files concerning nonlicensees are not confidential except as may be provided in Iowa Code chapter 22.

65.5(3) Subpoenas. Pursuant to Iowa Code section 17A.13(1) and 2004 Iowa Acts, House File 2358, the board is authorized in connection with an investigation of an unlicensed person or establishment to issue subpoenas to compel persons to testify and to compel persons to produce books, papers, records and any other real evidence, whether or not privileged or confidential under law, which the board deems necessary as evidence in connection with the civil penalty proceeding or relevant to the decision of whether to initiate a civil penalty proceeding. Board procedures concerning investigative subpoenas are set forth in 645—9.5(17A,272C).

65.5(4) Notice of intent to impose civil penalties. The notice of the board's intent to issue an order to require compliance with Iowa Code chapter 157 and to impose a civil penalty shall be served upon the nonlicensee by restricted certified mail, return receipt requested, or by personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the nonlicensee may accept service personally or through authorized counsel. The notice shall include the following:

a. A statement of the legal authority and jurisdiction under which the proposed civil penalty would be imposed.

b. Reference to the particular sections of the statutes and rules involved.

c. A short, plain statement of the alleged unlawful practices.

d. The dollar amount of the proposed civil penalty and the nature of the intended order to require compliance with Iowa Code chapter 157.

e. Notice of the nonlicensee's right to a hearing and the time frame in which the hearing must be requested.

f. The address to which written request for hearing must be made.

65.5(5) Requests for hearings.

a. Nonlicensees must request a hearing within 30 days of the date the notice is received if served through restricted certified mail, or within 30 days of the date of service if service is accepted or made in accordance with Iowa Rule of Civil Procedure 1.305. A request for hearing must be in writing and is deemed made on the date of the nonmetered United States Postal Service postmark or the date of personal service.

b. If a request for hearing is not timely made, the board chair or the chair's designee may issue an order imposing the

civil penalty and requiring compliance with Iowa Code chapter 157, as described in the notice. The order may be mailed by regular first-class mail or served in the same manner as the notice of intent to impose a civil penalty.

c. If a request for hearing is timely made, the board shall issue a notice of hearing and conduct a hearing in the same manner as applicable to disciplinary cases against licensees.

d. A nonlicensee may waive the right to hearing and all attendant rights and enter into a consent order imposing a civil penalty and requiring compliance with Iowa Code chapter 157 at any stage of the proceeding upon mutual consent of the board.

e. The notice of intent to issue an order and the order are public records available for inspection and copying in accordance with Iowa Code chapter 22. Copies may be published. Hearings shall be open to the public.

65.5(6) Factors for board consideration. The board may consider the following when determining the amount of civil penalty to impose, if any:

a. Whether the amount imposed will be a substantial economic deterrent to the violation.

b. The circumstances leading to or resulting in the violation.

c. The severity of the violation and the risk of harm to the public.

d. The economic benefits gained by the violator as a result of noncompliance.

e. The welfare or best interest of the public.

65.5(7) Enforcement options. In addition, or as an alternative, to the administrative process described in these rules, the board may seek an injunction in district court, refer the matter for criminal prosecution, or enter into a consent agreement as provided in 2004 Iowa Acts, House File 2358.

65.5(8) Judicial review.

a. A person aggrieved by the imposition of a civil penalty under this rule may seek judicial review in accordance with Iowa Code section 17A.19.

b. The board shall notify the attorney general of the failure to pay a civil penalty within 30 days after entry of an order or within 10 days following final judgment in favor of the board if an order has been stayed pending appeal.

c. The attorney general may commence an action to recover the amount of the penalty, including reasonable attorney fees and costs.

d. An action to enforce an order under this rule may be joined with an action for an injunction pursuant to Iowa Code section 147.83.

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**PROFESSIONAL LICENSURE
DIVISION[645]**

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Athletic Training Examiners hereby gives Notice of Intended Action to amend Chapter 351, “Licensure of Athletic Trainers,” Chapter 352, “Continuing Education for Ath-

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

letic Trainers,” and Chapter 354, “Fees,” Iowa Administrative Code.

These amendments propose changes to administrative rules as a result of legislative changes relating to definitions, mandatory licensure and the ability to obtain a temporary license to practice for a transition period between July 1, 2004, and July 1, 2007. In addition, the rules are changed to update language relating to the national certification association and service standards.

Any interested person may make written comments on the proposed amendments no later than December 15, 2004, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail pwilson@idph.state.ia.us.

A public hearing will be held on December 15, 2004, from 9 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 152D and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule 645—351.1(152D) as follows:

645—351.1(152D) Definitions. For purposes of these rules, the following definitions shall apply:

“Active engagement” or “actively engaged” in the practice of athletic training, for the purposes of Iowa Code sections 152D.3(2) and 152D.3(3), means that a person is either:

1. Currently certified by the National Athletic Trainers Association Board of Certification; or
2. Practicing athletic training as verified by notarized signatures from:
 - The athletic director or administrator of the institution, facility, or agency for which the person is currently providing services; and
 - The supervising physician for the institution, facility, or agency for which the person is currently providing services.

“Athlete” means a person who participates in a sanctioned amateur or professional sport or other recreational sports activity.

“Athletic injury” means any of the following:

1. An injury or illness sustained by an athlete as a result of the athlete’s participation in sports, games, or recreational sports activities.
2. An injury or illness that impedes or prevents an athlete from participating in sports, games, or recreational sports activities.

“Athletic trainer” means a person licensed under this chapter to practice athletic training under the direction of a licensed physician.

“Athletic training” means the practice of prevention, recognition, assessment, physical evaluation, management, treatment, disposition, and physical reconditioning of athletic injuries that are within the professional preparation and education of a licensed athletic trainer and under the direction of a licensed physician. The term “athletic training” includes the organization and administration of educational

programs and athletic facilities, and the education and counseling of the public on matters relating to athletic training.

“Board” means the board of examiners for athletic training examiners created under Iowa Code chapter 147.

“Lapsed license” means a license that a person has failed to renew as required or the license of a person who failed to meet stated obligations for renewal within a stated time.

“Licensee” means any person licensed to practice as an athletic trainer in the state of Iowa.

“License expiration date” means February 28 of each odd-numbered year.

~~“Licensure by endorsement” means the issuance of an Iowa license to practice athletic training to an applicant who is currently licensed in another state.~~

~~“NATA” means the National Athletic Trainers Association.~~

~~“NATABOC” “BOC” means the National Athletic Trainers Association Board of Certification or its successor organization.~~

“Physical reconditioning” means the part of the practice of athletic training which combines physical treatment, rehabilitation and exercise and is carried out under the orders of a physician or physician assistant. Physical treatment is part of a service plan which includes but is not limited to the continued use of any of the following: cryotherapy, thermotherapy, hydrotherapy, electrotherapy, or the use of mechanical devices.

“Physician” means a person licensed to practice medicine and surgery, osteopathic medicine and surgery, osteopathy, chiropractic, or podiatry under the laws of this state.

~~“Practice of athletic training” means the prevention, physical evaluation, emergency care, and physical reconditioning relating to injuries and illnesses incurred through sports-induced trauma, which occurs during the preparation for or participation in a sports competition or during a physical training program, either of which is sponsored by an educational institution, amateur or professional athletic group, or other recognized sponsoring organization, by a person who uses the title of licensed athletic trainer.~~

“Reciprocal license” means the issuance of an Iowa license to practice athletic training to an applicant who is currently licensed in another state which has a mutual agreement with the Iowa board of examiners for athletic training examiners to license persons who have the same or similar qualifications to those required in Iowa.

“Supervising Directing physician” means a physician who supervises the athletic training services provided by a licensed athletic trainer.

~~“Supervision Direction” means that a supervising physician directs the performance of a licensed athletic trainer in the development, implementation, and evaluation of an athletic training service plan as set out in 645—351.6(152D). Supervision Direction shall not be construed as requiring the personal presence of a supervising that physician at each activity of the licensed athletic trainer. It is the responsibility of the licensed athletic trainer to ensure that the practice of athletic training is carried out only under the supervision direction of a licensed physician.~~

ITEM 2. Amend subrule 351.2(5) as follows:

351.2(5) The applicant shall successfully complete the National Athletic Trainers Association Board of Certification (NATABOC) BOC examination. It is the responsibility of the applicant to make arrangements to take the examination and have the official results submitted to the Iowa board of examiners for athletic training examiners.

ITEM 3. Adopt the following new subrules:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

351.2(8) An applicant for licensure who has not successfully completed the BOC examination by July 1, 2004, but who complies with subrules 351.2(1) through 351.2(4) shall be issued a temporary license to practice athletic training for a period not to extend beyond July 1, 2007, provided that the applicant satisfies all of the following requirements:

- a. Submits to the board a letter of recommendation from the applicant's most recent employer;
- b. Submits to the board a letter of recommendation from two licensed physicians attesting to the competency of the applicant;
- c. Submits to the board satisfactory evidence of current cardiopulmonary resuscitation and first-aid certification;
- d. Official academic transcripts sent directly from the school are received by the board showing applicant possesses a baccalaureate degree from an accredited college or university.

351.2(9) An applicant issued a temporary license must successfully complete the BOC examination by July 1, 2007, and satisfy licensure requirements specified in Chapter 351 in order to maintain licensure. The licensee will be issued an initial license following submission of proof of successful completion of the examination received directly from the BOC and satisfying licensure requirements. No fee will be assessed for this initial license. Once the initial license is issued, the licensee will be eligible for license renewal in the next biennial renewal period and shall be subject to requirements specified in 645—351.9(147), except as noted in 351.2(10).

351.2(10) A licensee who obtain an initial license following a temporary license as specified in subrule 351.2(8) is not eligible for the exception in 351.9(2), paragraph "b," and must pay the license renewal fee specified in 645—subrule 354.1(2) for the biennial license renewal.

351.2(11) As with licensed athletic trainers, applicants issued temporary licenses are accountable for meeting the criteria in Iowa Code chapters 147 and 152D and 645—Chapters 350 through 354, with the exception of 351.2(8), 351.2(9) and 351.2(10).

ITEM 4. Amend subrule 351.3(1) as follows:

351.3(1) A new applicant for licensure to practice as an athletic trainer shall possess a baccalaureate degree or post-baccalaureate degree from a U.S. regionally accredited college or university, with proof of completion of the following courses:

- a. Advanced athletic training;
- b. Basic athletic training;
- c. Health;
- d. Human anatomy;
- e. Human physiology;
- f. Kinesiology; and
- g. Physiology of exercise.

ITEM 5. Amend subrule **351.3(2)** by adopting **new** paragraph "**d**" as follows:

d. Pass the BOC examination. Official results are to be submitted directly to the board from the BOC.

ITEM 6. Amend subrules 351.4(1) and 351.4(2) as follows:

351.4(1) The examination required by the board shall be the National Athletic Trainers Association Board of Certification (NATABOC) BOC examination. Application and information may be obtained from the NATABOC BOC Offices, 4223 S. 143rd Circle, Omaha, NE 68137, telephone (402)559-0091, Web site www.nataboc.org www.bocatc.org.

351.4(2) The applicant has responsibility for:

- a. Making arrangements to take the national examination; and
- b. Arranging to have the examination scores sent directly to the board from NATABOC BOC.

ITEM 7. Amend rule 645—351.5(152D) as follows:

645—351.5(152D) Documentation of physician supervision direction. Each licensee must maintain documentation of physician supervision direction. It is the responsibility of the licensee to ensure that documentation of physician supervision direction is obtained and maintained, including the following:

1. to 5. No change.

ITEM 8. Amend rule 645—351.6(152D), introductory paragraph, as follows:

645—351.6(152D) Athletic training service plans plan for direct service. Athletic training service plans shall be composed of the following components as taken from the NATA Board of Certification 2000 Standards of Athletic Training for Direct Service and for Service Programs *or standards from its successor as determined by the board of examiners for athletic training.*

ITEM 9. Amend subrule **351.6(1)**, paragraphs "**a**" and "**g**," as follows:

a. Standard 1—direction. The athletic trainer renders service or treatment under the direction of a physician ~~or dentist~~.

g. Standard 7—program discontinuation. The athletic trainer, with the collaboration of the physician ~~or dentist~~, shall recommend discontinuation of the athletic training service when the athlete has received optimal benefit of the program. The athletic trainer, at the time of discontinuation, shall note the final assessment of the athlete's status.

ITEM 10. Rescind and reserve subrule **351.6(2)**.

ITEM 11. Amend rule **645—351.7(152D)**, numbered paragraph "**6**," as follows:

6. Submits evidence:
 - From NATABOC BOC of current certification status sent directly from NATABOC BOC to the board, or
 - Of a passing score on the examination of the NATABOC BOC sent directly from NATABOC BOC to the board.

ITEM 12. Amend subrules **351.10(6)** and **351.13(6)** by inserting "BOC" in lieu of "NATABOC."

ITEM 13. Amend rule **645—352.1(272C)** as follows: Rescind the definitions of "NATA" and "NATABOC."

Amend the definition of "board" as follows: "Board" means the board of examiners for athletic trainers training created under Iowa Code chapter 147.

Add the following **new** definition in alphabetical order: "BOC" means the Board of Certification or its successor organization.

ITEM 14. Amend subrule 352.2(2) as follows:

352.2(2) Requirements for new licensees. Those persons licensed for the first time *or being licensed for the first time after a temporary license* shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used. The new licensee will be required to complete a

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

minimum of 50 hours of continuing education per biennium for each subsequent license renewal.

ITEM 15. Amend subrule **352.3(2)**, paragraph “a,” as follows:

a. Participating in a course provided by a ~~NATABOC-approved~~ *BOC-approved* provider of continuing education; or

ITEM 16. Amend subrule **352.5(1)**, paragraph “f,” as follows:

f. Proof of *NATA BOC* continuing education certification.

ITEM 17. Amend rule **645—352.6(152D)**, numbered paragraph “6,” as follows:

6. Provides evidence of:

- Satisfactory completion of board-approved continuing education requirements during the period since the license lapsed. The total number of continuing education hours required for license reinstatement is computed by multiplying 50 by the number of bienniums since the license lapsed, not to exceed 200 hours; or

- Good standing with ~~NATABOC~~ *BOC* for the preceding two bienniums.

ITEM 18. Amend subrule **352.10(5)**, paragraph “a,” as follows:

a. Good standing with ~~NATABOC~~ *BOC* for the preceding two bienniums; or

ITEM 19. Renumber subrules **354.1(2)** to **354.1(9)** as **354.1(3)** to **354.1(10)** and adopt the following new subrule:

354.1(2) Temporary licensure fee for license to practice athletic training is \$100.

Also, there will be a public hearing, at which time persons may present their views either orally or in writing, on December 14, 2004, from 10 to 11 a.m. at the following Iowa Communications Network (ICN) sites:

State Library
Miller State Office Building
East 12th and Grand Avenue
Des Moines

Atlantic Public Library
507 Poplar
Atlantic

Mount Mercy College
1330 Elmhurst Dr. NE
Cedar Rapids

Mason City High School
1700 Fourth SE
Mason City

Ottumwa Regional Hospital
1001 East Pennsylvania
Ottumwa

Buena Vista University
610 West 4th Street
Storm Lake

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rule.

This amendment is intended to implement Iowa Code section 139A.4.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendment is proposed.

Amend 641—Chapter 1 by adding the following new rule:

641—1.12(135,137,139A) Quarantine and isolation—model rule for local boards.

1.12(1) Applicability. The provisions of rule 1.12(135, 137,139A) are applicable in jurisdictions in which a local board has adopted this rule by reference in accordance with Iowa Code section 137.6. This rule shall not be construed to require a local board to adopt this model rule.

1.12(2) Definitions.

“Board” means [insert the name of the city, county, or district board of health].

“Department” means the Iowa department of public health.

“Isolation” means the separation of persons or animals presumably or actually infected with a communicable disease, or that are disease carriers, for the usual period of communicability of that disease. Isolation shall be in such places, marked by placards if necessary, and under such conditions to prevent the direct or indirect conveyance of the infectious agent or contagion to susceptible individuals.

“Quarantinable disease” means any communicable disease which presents a risk of serious harm to public health and which may require isolation or quarantine to prevent its spread. “Quarantinable disease” includes but is not limited to cholera; diphtheria; infectious tuberculosis; plague; smallpox; yellow fever; viral hemorrhagic fevers, including Lassa, Marburg, Ebola, Crimean-Congo, South American, and oth-

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PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 139A.4, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 1, “Notification and Surveillance of Reportable Communicable and Infectious Diseases, Poisonings and Conditions,” Iowa Administrative Code.

This amendment provides a model rule for quarantine and isolation that may be adopted by local boards of health. The amendment is a result of multiple requests from local public health agencies. The Department will make the model rule available to local boards of health.

Any interested person may make written suggestions or comments on this proposed amendment on or before December 14, 2004. Such written materials should be directed to Mary Jones, Director, Acute Disease Prevention and Emergency Response Division, Department of Public Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0075; fax (515)281-4355.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ers not yet isolated or named; and severe acute respiratory syndrome (SARS).

“Quarantine” means the limitation of freedom of movement of persons or animals that have been exposed to a communicable disease, within specified limits marked by placards, for a period of time equal to the longest usual incubation period of the disease. The limitation of movement shall be in such manner as to prevent the spread of a communicable disease.

1.12(3) General provisions.

a. Voluntary confinement. Prior to instituting mandatory isolation or quarantine pursuant to this rule, the board may request that an individual or group of individuals voluntarily confine themselves to a private home or other facility.

b. Quarantine and isolation. The board is authorized to impose and enforce quarantine and isolation restrictions. Quarantine and isolation shall rarely be imposed by the board. If a quarantinable disease occurs in Iowa, individuals with a suspected or active quarantinable disease and contacts to the case may be quarantined or isolated as the particular situation requires. Any quarantine or isolation imposed by the board shall be established and enforced in accordance with this rule.

1.12(4) Conditions and principles. The board shall adhere to all of the following conditions and principles when isolating or quarantining individuals or a group of individuals:

a. The isolation or quarantine shall be by the least restrictive means necessary to prevent the spread of a communicable or possibly communicable disease to others and may include, but is not limited to, confinement to private homes, other private premises, or public premises.

b. Isolated individuals shall be confined separately from quarantined individuals.

c. The health status of isolated or quarantined individuals shall be monitored regularly to determine if the individuals require further or continued isolation or quarantine.

d. If a quarantined individual subsequently becomes infected or is reasonably believed to have become infected with a communicable or possibly communicable disease, the individual shall be promptly removed to isolation.

e. Isolated or quarantined individuals shall be immediately released when the board determines that the individuals pose no substantial risk of transmitting a communicable or possibly communicable disease.

f. The needs of isolated or quarantined individuals shall be addressed in a systemic and competent fashion including, but not limited to, providing adequate food; clothing; shelter; means of communicating with those in and outside of isolation or quarantine; medication; and competent medical care.

g. The premises used for isolation or quarantine shall be maintained in a safe and hygienic manner and shall be designed to minimize the likelihood of further transmission of infection or other harm to isolated or quarantined individuals.

h. To the extent possible, cultural and religious beliefs shall be considered in addressing the needs of individuals in isolation and quarantine premises and in establishing and maintaining the premises.

1.12(5) Isolation or quarantine premises.

a. Sites of isolation or quarantine shall be prominently placarded with isolation or quarantine signs prescribed and furnished by the department and posted on all sides of the building wherever access is possible.

b. An individual subject to isolation or quarantine shall obey the rules and orders of the board and shall not go beyond the isolation or quarantine premises.

c. The department or the board may authorize physicians, health care workers, or others access to individuals in isolation or quarantine as necessary to meet the needs of isolated or quarantined individuals.

d. No individual, other than an individual authorized by the department or the board, shall enter isolation or quarantine premises. If the department has requested the assistance of law enforcement in enforcing the isolation or quarantine, the department shall provide law enforcement personnel with a list of individuals authorized to enter the isolation or quarantine premises.

e. Any individual entering an isolation or quarantine premises with or without authorization of the department or the board may be isolated or quarantined pursuant to this rule.

1.12(6) Isolation and quarantine.

a. Authority. The board may:

(1) Isolate individuals who are presumably or actually infected with a quarantinable disease;

(2) Quarantine individuals who have been exposed to a quarantinable disease;

(3) Establish and maintain places of isolation and quarantine; and

(4) Adopt emergency rules and issue orders as necessary to establish, maintain, and enforce isolation or quarantine.

b. Isolation and quarantine undertaken by the board shall be accomplished in accordance with this rule.

c. Temporary isolation and quarantine without notice. The board may temporarily isolate or quarantine an individual or groups of individuals through an oral order, without notice, only if delay in imposing the isolation or quarantine would significantly jeopardize the board's ability to prevent or limit the transmission of a communicable or possibly communicable disease to others. If the board imposes temporary isolation or quarantine of an individual or groups of individuals through an oral order, the board shall issue a written order as soon as is reasonably possible and in all cases within 24 hours of issuance of the oral order if continued isolation or quarantine is necessary to prevent or limit the transmission of a communicable or possibly communicable disease.

d. Written order. The board may isolate or quarantine an individual or groups of individuals through a written order issued pursuant to this rule.

(1) The written order shall include all of the following:

1. The identity of the individual, individuals, or groups of individuals subject to isolation or quarantine.

2. The premises subject to isolation or quarantine.

3. The date and time at which isolation or quarantine commences.

4. The suspected communicable disease.

5. A description of the less restrictive alternatives that were attempted and were unsuccessful, or the less restrictive alternatives that were considered and rejected, and the reasons such alternatives were rejected.

6. A statement of compliance with the conditions and principles for isolation and quarantine specified in subrule 1.12(4).

7. The legal authority under which the order is requested.

8. The medical basis upon which isolation or quarantine is justified.

9. A statement advising the individual, individuals, or groups of individuals of the right to appeal the written order pursuant to subrule 1.12(7) and the rights of individuals and groups of individuals subject to quarantine and isolation as listed in subrule 1.12(8).

PUBLIC HEALTH DEPARTMENT[641](cont'd)

10. A copy of this rule and the relevant definitions.

(2) A copy of the written order shall be provided to the individual to be isolated or quarantined within 24 hours of issuance of the order in accordance with any applicable process authorized by the Iowa Rules of Civil Procedure. If the order applies to a group or groups of individuals and it is impractical to provide individual copies, the order may be posted in a conspicuous place in the isolation or quarantine premises.

1.12(7) Appeal from order imposing isolation or quarantine.

a. Appeal. The subject of a board order imposing isolation or quarantine may appeal a written order by submitting a written appeal within ten days of receipt of the written order. The appeal shall be addressed to [insert name of board and board address]. Unless stayed by order of the board or a district court, the written order for quarantine or isolation shall remain in force and effect until the appeal is finally determined and disposed of upon its merits.

b. Proceeding. The appeal proceeding shall be conducted in accordance with this rule [or insert specific board rule governing appeal proceedings]. The proceeding shall be held as soon as is practicable, and in no case later than ten days from the date of receipt of the appeal. The hearing may be held by telephonic or other electronic means if necessary to prevent additional exposure to the communicable or possibly communicable disease. In extraordinary circumstances and for good cause shown, the board may continue the proceeding date for up to ten days, giving due regard to the rights of the affected individuals, the protection of the public's health, and the availability of necessary witnesses and evidence. At the appeal proceeding, the subject of the appeal shall have the right to introduce evidence on all issues relevant to the order. The board, by majority vote, may modify, withdraw, or order compliance with the order under appeal.

c. Judicial review. The aggrieved party to the final decision of the board may petition for judicial review of that action by filing an action in the appropriate district court. Petitions for judicial review shall be filed within 30 days after the decision becomes final.

d. Immediate judicial review of board order. The board acknowledges that in certain circumstances the subject or subjects of a board order may desire immediate judicial review of a board order in lieu of proceeding with the board's appeal process. The board may consent to immediate jurisdiction of the district court when requested by the subject or subjects of a board order and justice so requires. Unless stayed by order of the board or a district court, the written order for quarantine or isolation shall remain in force and effect until the judicial review is finally determined and disposed of upon its merits.

1.12(8) Rights of individuals and groups of individuals subject to isolation or quarantine. Any individual or group of individuals subject to isolation or quarantine shall have the following rights:

- a. The right to be represented by legal counsel.
- b. The right to be provided with prior notice of the date, time, and location of any hearing.
- c. The right to participate in any hearing. The hearing may be held by telephonic or other electronic means if necessary to prevent additional exposure to the communicable or possibly communicable disease.
- d. The right to respond and present evidence and argument on the individual's own behalf in any hearing.
- e. The right to cross-examine witnesses who testify against the individual.

f. The right to view and copy all records in the possession of the board which relate to the subject of the written order.

1.12(9) Consolidation of claims. In any proceeding brought pursuant to this rule, to promote the fair and efficient operation of justice and having given due regard to the rights of the affected individuals, the protection of the public's health, and the availability of necessary witnesses and evidence, the board or a court may order the consolidation of individual claims into group claims, if all of the following conditions exist:

a. The number of individuals involved or to be affected is so large that individual participation is impractical.

b. There are questions of law or fact common to the individual claims or rights to be determined.

c. The group claims or rights to be determined are typical of the affected individuals' claims or rights.

d. The entire group will be adequately represented in the consolidation.

1.12(10) Implementation and enforcement of isolation and quarantine.

a. Jurisdictional issues. The department has primary jurisdiction to isolate or quarantine individuals or groups of individuals if the communicable disease outbreak has affected more than one county or has multicounty, statewide, or interstate public health implications. If isolation or quarantine is imposed by the department, the board may not alter, amend, modify, or rescind the isolation or quarantine order.

b. Assistance of local boards of health and local health departments. If isolation or quarantine is imposed by the department, the local boards of health and the local health departments in the affected areas shall assist in the implementation of the isolation or quarantine order.

c. Penalty. Pursuant to Iowa Code sections 137.21 and 139A.25(1), any individual who violates a lawful board order for isolation or quarantine, whether written or oral, shall be guilty of a simple misdemeanor. The court-ordered sentence may include a fine of up to \$500 and imprisonment not to exceed 30 days.

d. Enforcement action. The board, through the office of the county attorney, may file a civil action in the appropriate district court to enforce a board order for isolation or quarantine. Such action shall be filed in accordance with Iowa Rules of Civil Procedure.

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PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147A.4, the Department of Public Health hereby gives Notice of Intended Action to rescind Chapter 131, "Emergency Medical Services Provider Education/Training/Certification," Iowa Administrative Code, and adopt a new Chapter 131 with the same title.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

The rules in Chapter 131 describe the standards for the education, training, and certification of emergency medical care providers and establish a standard of conduct for training programs, students, and providers. This chapter standardizes and updates references to documents and definition language in 641—Chapters 131 through 141.

The major changes from existing Chapter 131 are as follows:

1. Allow out-of-state students to participate in clinical and field experience in the state of Iowa.
2. Lengthen time period for testing to two years following training classes.
3. Increase certification fees for endorsements and for paramedic specialists.
4. With extensive clarifications, bring discipline in line with other professions.

Any interested person may make written comments or suggestions on the proposed amendment on or before December 14, 2004. Such written comments should be directed to Ray Jones, Bureau of EMS, Department of Public Health, 401 SW 7th Street, Suite D, Des Moines, Iowa 50309. E-mail may be sent to rjones@idph.state.ia.us.

A public hearing will be held over the Iowa Communications Network (ICN) on December 14, 2004, from 10 a.m. to 12 noon in the Lucas State Office Building, 6th Floor ICN Room, Des Moines, Iowa. Additional ICN sites for the hearing are scheduled for the following locations:

Belmond Public Library
440 East Main Street
Belmond

Carroll National Guard Armory
1712 Le Clark Road
Carroll

Dubuque Senior High School
1800 Clarke Drive
Dubuque

Iowa City Public Library
123 South Linn Street
Iowa City

Spencer National Guard Armory
11 East 23rd Street
Spencer

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment. Any person who plans to attend the public hearing and who may require special accommodations, such as those for hearing or mobility impairments, should contact the Department and advise of specific needs.

These rules are intended to implement Iowa Code chapter 147A.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/LAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Rescind 641—Chapter 131 and adopt the following **new** chapter in lieu thereof:

CHAPTER 131
EMERGENCY MEDICAL SERVICES PROVIDER
EDUCATION/TRAINING/CERTIFICATION

641—131.1(147A) Definitions. For the purpose of these rules, the following definitions shall apply:

“Automated external defibrillator” or “AED” means an external semiautomatic device that determines whether defibrillation is required.

“Basic care” means treatment interventions, appropriate to certification level, that provide minimum care to the patient including, but not limited to, CPR, bandaging, splinting, oxygen administration, spinal immobilization, oral airway insertion and suctioning, antishock garment, vital sign assessment and administration of over-the-counter drugs.

“Candidate” means an individual who has successfully completed a course of study as a first-responder, EMT-basic, EMT-intermediate, EMT-paramedic, paramedic specialist or other level certified by the department and who has been recommended by a training program for a state-approved certification examination.

“CEH” means “continuing education hour” which is based upon a minimum of 50 minutes of training per hour.

“Certification period” means the length of time an EMS provider certificate is valid. The certification period shall be for two years from initial issuance or from renewal, unless otherwise specified on the certificate or unless sooner suspended or revoked.

“Certification status” means a condition placed on an individual certificate for identification as active, deceased, denied, dropped, endorsement, expired, failed, hold, idle, inactive, incomplete, pending, probation, retired, revoked, surrendered, suspended, or temporary.

“Continuing education” means training approved by the department which is obtained by a certified emergency medical care provider to maintain, improve, or expand relevant skills and knowledge and to satisfy renewal of certification requirements.

“Course completion date” means the date of the final classroom session of an emergency medical care provider course.

“Course coordinator” means an individual who has been assigned by the training program to coordinate the activities of an emergency medical care provider course.

“CPR” means training and successful course completion in cardiopulmonary resuscitation, AED, and obstructed airway procedures for all age groups according to recognized national standards.

“Critical care paramedic (CCP)” means a currently certified paramedic specialist who has successfully completed a critical care course of instruction approved by the department and has received endorsement from the department as a critical care paramedic.

“Current course completion” means written recognition given for training and successful course completion of CPR with an expiration date or a recommended renewal date that exceeds the current date.

“Department” means the Iowa department of public health.

“Director” means the director of the Iowa department of public health.

“DOT” means the United States Department of Transportation.

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“Emergency medical care” means such medical procedures as:

1. Administration of intravenous solutions.
2. Intubation.
3. Performance of cardiac defibrillation and synchronized cardioversion.
4. Administration of emergency drugs as provided by protocol.
5. Any medical procedure authorized by 131.3(3).

“Emergency medical care provider” means an individual who has been trained to provide emergency and non-emergency medical care at the first-responder, EMT-basic, EMT-intermediate, EMT-paramedic, paramedic specialist or other certification levels recognized by the department before 1984 and who has been issued a certificate by the department.

“Emergency medical services” or “EMS” means an integrated medical care delivery system to provide emergency and non-emergency medical care at the scene or during out-of-hospital patient transportation in an ambulance.

“Emergency medical technician-ambulance (EMT-A)” means an individual who has successfully completed the 1984 United States Department of Transportation’s Emergency Medical Technician-Ambulance curriculum, passed the department’s approved written and practical examinations, and is currently certified by the department as an EMT-A.

“Emergency medical technician-basic (EMT-B)” means an individual who has successfully completed the current United States Department of Transportation’s Emergency Medical Technician-Basic curriculum and department enhancements, passed the department’s approved written and practical examinations, and is currently certified by the department as an EMT-B.

“Emergency medical technician-defibrillation (EMT-D)” means an individual who has successfully completed an approved program which specifically addresses manual or automated defibrillation, passed the department’s approved written and practical examinations, and is currently certified by the department as an EMT-D.

“Emergency medical technician-intermediate (EMT-I)” means an individual who has successfully completed an EMT-intermediate curriculum approved by the department, passed the department’s approved written and practical examinations, and is currently certified by the department as an EMT-I.

“Emergency medical technician-paramedic (EMT-P)” means an individual who has successfully completed the current United States Department of Transportation’s EMT-Intermediate curriculum or the 1985 or earlier DOT EMT-P curriculum, passed the department’s approved written and practical examinations, and is currently certified by the department as an EMT-P.

“Emergency rescue technician (ERT)” means an emergency medical care provider trained in various rescue techniques including, but not limited to, extrication from vehicles and agricultural rescue, and who has successfully completed a curriculum approved by the department in cooperation with the department of public safety.

“EMS advisory council” means a council appointed by the director, pursuant to Iowa Code chapter 147A, to advise the director and develop policy recommendations concerning regulation, administration, and coordination of emergency medical services in the state.

“EMS evaluator (EMS-E)” means an individual who has successfully completed an EMS evaluator curriculum ap-

proved by the department and is currently endorsed by the department as an EMS-E.

“EMS instructor (EMS-I)” means an individual who has successfully completed an EMS instructor curriculum approved by the department and is currently endorsed by the department as an EMS-I.

“Endorsement” means providing approval in an area related to emergency medical care including, but not limited to, emergency rescue technician and emergency medical services-instructor.

“First responder (FR)” means an individual who has successfully completed the current United States Department of Transportation’s first responder curriculum and department enhancements, passed the department’s approved written and practical examinations, and is currently certified by the department as an FR.

“First responder-defibrillation (FR-D)” means an individual who has successfully completed an approved program that specifically addresses defibrillation, passed the department’s approved written and practical examinations, and is currently certified by the department as an FR-D.

“Good standing” means a student or candidate in compliance with these rules and training program requirements.

“Idle” means the status of a lower certification level when a higher level is held.

“Inactive” means the status of a certification level when an individual moves from a higher certification level to a lower certification level that was previously idle or requests inactive status.

“Intermediate” means an emergency medical technician-intermediate.

“NCA” means North Central Association of Colleges and Schools.

“Out-of-state student” means any individual enrolled in an approved out-of-state training program and participating in clinical or field experience portions.

“Out-of-state training program” means an EMS program located outside the state of Iowa that is approved by the authorizing agency of the program’s home state to conduct initial EMS training for first-responder, EMT-basic, EMT-intermediate, EMT-paramedic, paramedic specialist or other level certified by the department.

“Outreach course coordinator” means an individual who has been assigned by the training program to coordinate the activities of an emergency medical care provider course held outside the training program facilities.

“Paramedic (EMT-P)” means an emergency medical technician-paramedic.

“Paramedic specialist (PS)” means an individual who has successfully completed the current United States Department of Transportation’s EMT-Paramedic curriculum or equivalent, passed the department’s approved written and practical examinations, and is currently certified by the department as a paramedic specialist.

“Patient” means an individual who is sick, injured, or otherwise incapacitated.

“Physician” means an individual licensed under Iowa Code chapter 148, 150, or 150A.

“Physician assistant (PA)” means an individual licensed pursuant to Iowa Code chapter 148C.

“Physician designee” means a registered nurse licensed under Iowa Code chapter 152, or any physician assistant licensed under Iowa Code chapter 148C and approved by the board of physician assistant examiners. The physician designee acts as an intermediary for a supervising physician in ac-

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cordance with written policies and protocols in directing the care provided by emergency medical care providers.

“Preceptor” means an individual who has been assigned by the training program, clinical facility or service program to supervise students while the students are completing their clinical or field experience. A preceptor must be an emergency medical care provider certified at the level at which the preceptor is providing supervision or a higher level, or must be licensed as a registered nurse, physician assistant or physician.

“Primary instructor” means an individual who is responsible for teaching the majority of an emergency medical care provider course.

“Protocols” means written directions and orders, consistent with the department’s standard of care, that are to be followed by an emergency medical care provider in emergency and nonemergency situations. Protocols must be approved by the service program’s medical director and address the care of both adult and pediatrics patients.

“Registered nurse (RN)” means an individual licensed pursuant to Iowa Code chapter 152.

“Service program” or “service” means any medical care ambulance service or nontransport service that has received authorization by the department.

“Service program area” means the geographic area of responsibility served by any given ambulance or nontransport service program.

“Student” means any individual enrolled in a training program and participating in the didactic, clinical, or field experience portions.

“Training program” means an NCA-approved Iowa college, the Iowa law enforcement academy or an Iowa hospital approved by the department to conduct emergency medical care training.

“Training program director” means an appropriate health care professional (full-time educator or practitioner of emergency or critical care) assigned by the training program to direct the operation of the training program.

“Training program medical director” means a physician licensed under Iowa Code chapter 148, 150, or 150A who is responsible for directing an emergency medical care training program.

641—131.2(147A) Emergency medical care providers—requirements for enrollment in training programs. To be enrolled in an EMS training program course leading to certification by the department, an applicant shall:

1. Be at least 17 years of age at the time of enrollment.
2. Have a high school diploma or its equivalent if enrolling in an EMT-I, EMT-P, or PS course.
3. Be able to speak, write and read English.
4. Hold a current course completion card in CPR if enrolling in an EMT-B, EMT-I, EMT-P, or PS course.
5. Be currently certified, as a minimum, as an EMT-B, if enrolling in an EMT-I, EMT-P, or PS course. If currently certified in another state as an EMT-B, the applicant must submit an endorsement application to the department within two weeks of the course start date.
6. Be a current EMS provider, RN, PA, or physician and submit a recommendation in writing from an approved EMS training program if enrolling in an EMS instructor course.
7. Be currently certified as a PS if enrolling in a CCP course.

641—131.3(147A) Emergency medical care providers—EMS provider authority.

131.3(1) Authority of emergency medical care personnel. An emergency medical care provider who holds an active certification issued by the department may:

a. Render, via on-line medical direction, emergency and nonemergency medical care in those areas for which the emergency medical care provider is certified as part of an authorized service program:

- (1) At the scene of an emergency;
- (2) During transportation to a hospital;
- (3) While in the hospital emergency department;
- (4) Until patient care is directly assumed by a physician or by authorized hospital personnel; and
- (5) During transfer from one medical care facility to another or to a private home.

b. Function in any hospital or any other entity in which health care is ordinarily provided only when under the direct supervision of a physician when:

(1) Enrolled as a student in, and approved by, a training program;

(2) Fulfilling continuing education requirements;

(3) Employed by or assigned to a hospital or other entity in which health care is ordinarily provided only when under the direct supervision of a physician as a member of an authorized service program, or in an individual capacity, by rendering lifesaving services in the facility in which employed or assigned pursuant to the emergency medical care provider’s certification and under direct supervision of a physician, physician assistant, or registered nurse. An emergency medical care provider shall not routinely function without the direct supervision of a physician, physician assistant, or registered nurse. However, when the physician, physician assistant, or registered nurse cannot directly assume emergency care of the patient, the emergency medical care personnel may perform, without direct supervision, emergency medical care procedures for which certified, if the life of the patient is in immediate danger and such care is required to preserve the patient’s life;

(4) Employed by or assigned to a hospital or other entity in which health care is ordinarily provided only under the direct supervision of a physician, as a member of an authorized service program, or in an individual capacity, to perform non-lifesaving procedures for which certified and designated in a written job description. Such procedures may be performed after the patient is observed by and when the emergency medical care provider is under the supervision of the physician, physician assistant, or registered nurse, including when the registered nurse is not acting in the capacity of a physician designee, and where the procedure may be immediately abandoned without risk to the patient.

131.3(2) When emergency medical care personnel are functioning in a capacity identified in subrule 131.3(1), paragraph “a,” they may perform emergency and nonemergency medical care without contacting a supervising physician or physician designee if written protocols have been approved by the service program medical director which clearly identify when the protocols may be used in lieu of voice contact.

131.3(3) Scope of practice.

a. Emergency medical care providers shall provide only those services and procedures as are authorized within the scope of practice for which they are certified.

b. Scope of Practice for Iowa EMS Providers (November 2004) is incorporated and adopted by reference for EMS providers. For any differences that may occur between the adopted references and these administrative rules, the administrative rules shall prevail.

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c. The department may grant a variance for changes to the Scope of Practice that have not yet been adopted by these rules. A variance to these rules may be granted by the department pursuant to 641—subrule 132.14(1).

d. Scope of Practice for Iowa EMS Providers is available through the Iowa Department of Public Health, Bureau of EMS, Lucas State Office Building, Des Moines, Iowa 50319-0075, or the bureau of EMS Web site (www.idph.state.ia.us/ems).

131.3(4) The department may approve other emergency medical pilot project(s) on a limited basis. Requests for a pilot project application shall be made to the department.

131.3(5) An emergency medical care provider who has knowledge of an emergency medical care provider, service program or training program that has violated Iowa Code chapter 147A or these rules shall report such information to the department within 30 days.

641—131.4(147A) Emergency medical care providers—certification, renewal standards, procedures, continuing education, and fees.

131.4(1) Student application and candidate examination.

a. Applicants shall complete an EMS Student Registration form at the beginning of the course. EMS Student Registration forms are provided by the department.

b. EMS Student Registration forms shall be forwarded to the department by the training program no later than two weeks after the beginning of the course. Courses that are completed within two weeks are exempt from this requirement.

c. Upon satisfactory completion of the course and all training program requirements, including payment of appropriate fees, the candidate shall be recommended by the training program to take the state-approved certification examinations. A candidate recommended for state certification is not eligible to continue functioning as a student in the clinical and field setting. State certification must be obtained to perform appropriate skills.

d. The practical examination shall be administered using the standards and forms provided by the department. The training program shall notify the department at least four weeks prior to the administration of a practical examination.

e. To be eligible to take the written examination, the candidate shall first pass the practical examination.

f. Candidates eligible to take the state written examination shall submit an EMS Certification Application form to the department. EMS Certification Application forms are provided by the department.

g. When a student's EMS Student Registration or a candidate's EMS Certification Application is referred to the department for investigation, the student shall not be eligible for clinical or field experience, and the candidate shall not be eligible for certification testing until approved by the department.

h. The certifying written examinations shall be administered at times and places determined by the department.

i. No oral certification examinations shall be permitted; however, candidates may be eligible for appropriate accommodations. The candidate should contact the Iowa Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075 at least four weeks prior to the test date.

j. Certifying examination fees shall be approved by the department.

k. The fee for processing each FR, EMT-B, EMT-I, EMT-P, and paramedic specialist written examination is \$20, payable to the Iowa Department of Public Health.

l. A candidate who fails the practical certification examination shall be required to repeat only those stations that were failed and shall have two additional opportunities to attain a passing score. A candidate failing the practical certification examination on three full attempts must repeat the entire EMS training program to be eligible for certification.

(1) An FR or EMT-B candidate will test three practical stations and have three opportunities to pass those three stations. The candidate's first attempt at all three stations will constitute the first full attempt. Each retest of failed stations will constitute an additional full attempt.

(2) A full attempt for an EMT-I, EMT-P or PS candidate will consist of completing all skills and two retesting opportunities, if eligible. The candidate must provide documentation of remediation before taking a second or third full attempt.

m. The practical examination remains valid for a 12-month period from the date it was successfully completed. Required passing practical scores for FR, EMT-B, EMT-I, EMT-P, and PS shall be based on criteria established by the department.

n. A candidate who fails to attain the appropriate overall score on the written certification examination shall have two additional opportunities to complete the entire examination and attain a passing score. Required passing written scores for FR, EMT-B, EMT-I, EMT-P, and PS shall be based on criteria established by the department.

o. A candidate who fails to pass the written certification examination on the third attempt and who wishes to pursue certification must submit, at a minimum, written verification from an approved training program of successful completion of an appropriate refresher course or equivalent. Candidates failing the examination on six attempts must repeat the entire EMT training program to be eligible for certification.

p. All examination attempts shall be completed within two years of the initial course completion date. If an individual is unable to complete the testing within two years due to medical reasons or military obligation, an extension may be granted upon submission of a signed statement from an appropriate medical/military authority and approval by the department.

q. Examination scores shall be confidential except that they may be released to the training program that provided the training or to other appropriate state agencies, or released in a manner which does not permit the identification of an individual.

r. To be eligible to take the practical examination, FR candidates shall have a current course completion card in CPR.

s. Applicants for EMS-I endorsement shall successfully complete an EMS-Instructor curriculum approved by the department.

t. Applicants for ERT endorsement shall successfully complete an ERT curriculum approved by the department in cooperation with the department of public safety.

u. Payment of all appropriate certification/examination fees shall be made prior to the candidate's receiving certification.

131.4(2) Multiple certificates and renewal.

a. The department shall consider the highest level of certification attained to be active. Any lower levels of certification shall be considered idle.

b. A lower level certificate may be issued if the individual fails to renew the higher level of certification or voluntarily chooses to move from a higher level to a lower level. To be issued a certificate in these instances, an individual shall:

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(1) Complete all applicable continuing education requirements for the lower level during the certification period and submit a written request for the lower level.

(2) Complete and submit to the department an EMS Affirmative Renewal of Certification Application and the applicable fee.

(3) Complete the reinstatement process in 131.4(3)“f” if renewal of the higher level is requested later.

c. A citation and warning, denial, probation, suspension or revocation imposed upon an individual certificate holder by the department shall be considered applicable to all certificates issued to that individual by the department.

131.4(3) Renewal of certification.

a. A certificate shall be valid for two years from issuance unless specified otherwise on the certificate or unless sooner suspended or revoked.

b. All continuing education requirements shall be completed during the certification period prior to the certificate's expiration date. Failure to complete the continuing education requirements prior to the expiration date shall result in an expired certification.

c. The EMS Affirmative Renewal of Certification Application shall be submitted to the department within 90 days prior to the expiration date. Failure to submit a renewal application to the department within 90 days prior to the expiration date (based upon the postmark date) shall cause the current certification to expire.

d. Emergency medical care providers shall not function on an expired certification.

e. An individual who completes the required continuing education during the certification period, but fails to submit the EMS Affirmative Renewal of Certification Application within 90 days prior to the expiration date, shall be required to submit a late fee of \$30 (in addition to the renewal fee) and complete the audit process pursuant to 131.4(4)“i” to obtain renewal of certification.

f. An individual who has not completed the required continuing education during the certification period or who is seeking to reinstate an expired, inactive, or retired certificate shall:

(1) Complete a refresher course or equivalent approved by the department.

(2) Meet all applicable eligibility requirements.

(3) Submit an EMS Reinstatement Application and the applicable fees to the department.

(4) Pass the appropriate practical and written certification examinations.

g. If an individual is unable to complete the required continuing education during the certification period due to medical reasons or military obligation, an extension of certification may be issued upon submission of a signed statement from an appropriate medical/military authority and approval by the department.

h. An individual may request an inactive or retired status for a certificate. The request must be made to the department in writing. A certification card reflecting the inactive or retired status may be issued to the individual for a fee of \$30. Reinstatement of an inactive or retired certificate shall be made pursuant to 131.4(3)“f.” A request for inactive or retired status, when accepted in connection with a disciplinary investigation or proceeding, has the same effect as an order of revocation.

131.4(4) Continuing education renewal standards. To be eligible for renewal through continuing education, the following standards shall apply:

a. The applicant shall sign and submit an Affirmative Renewal of Certification Application provided by the department, and submit the applicable fee within 90 days prior to the certificate's expiration date.

b. The applicant shall complete the continuing education requirements, including current course completion in CPR, during the certification period for the following EMS provider levels:

(1) FR, FR-D—12 hours of approved continuing education.

(2) EMT-A, EMT-B, EMT-D—24 hours of approved continuing education.

(3) EMT-I—36 hours of approved continuing education.

(4) EMT-P—48 hours of approved continuing education.

(5) PS—60 hours of approved continuing education.

(6) EMS-I—Attend at least one EMS-I workshop sponsored by the department.

(7) CCP—8 hours of approved CCP core curriculum topics.

c. At least 50 percent of the required hours for renewal shall be formal continuing education including, but not limited to, refresher programs, seminars, lecture programs, scenario-based programs, and conferences. The content shall be based upon the appropriate department curricula for EMS providers and shall include, as a minimum, topics within three or more of the following core curriculum areas:

(1) Airway.

(2) Patient assessment.

(3) Trauma/medical/behavioral emergencies.

(4) Obstetrics/gynecology.

(5) Infants and children.

(6) Patient care record documentation.

(7) Department-sponsored EMS programs.

d. Up to 50 percent of the required continuing education hours may be made up of any of the following:

(1) Nationally recognized EMS-related courses;

(2) EMS self-study courses;

(3) Medical director or designee case reviews;

(4) Clinical rounds with medical team (grand rounds);

(5) Teaching EMS courses, initial or continuing education;

(6) Working with students as an EMS field preceptor;

(7) Hospital or nursing home clinical performance;

(8) Skills workshops/maintenance;

(9) Community public information education projects;

(10) Emergency driver training;

(11) EMS course audits;

(12) Injury prevention or wellness initiatives;

(13) EMS service operations, e.g., management programs, continuous quality improvement;

(14) EMS system development meetings to include county, regional and state;

(15) Disaster preparedness;

(16) Emergency runs/responses as a volunteer member of an authorized EMS service program (primary attendant).

e. Additional hours may be allowed for any of the following (maximum):

(1) CPR—2 hours;

(2) Disaster drill—4 hours;

(3) Rescue—4 hours;

(4) Hazardous materials—8 hours;

(5) Practical examination evaluator—4 hours;

(6) Topics outside the provider's core curriculum—8 hours.

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f. With training program approval, persons who are not enrolled in an emergency medical care provider course may audit those courses for CEHs.

g. Certificate holders must notify the department of a change in address.

h. The certificate holder shall maintain a file containing documentation of continuing education hours accrued during each certification period for four years from the end of each certification period.

i. A group of individual certificate holders will be audited for each certification period. Certificate holders to be audited will be chosen in a random manner or at the discretion of the bureau of EMS. Falsifying reports or failure to comply with the audit request may result in formal disciplinary action. Certificate holders who are audited will be required to submit verification of continuing education compliance within 45 days of the request. If audited, the certificate holder must provide the following information:

- (1) Date of program.
- (2) Program sponsor number.
- (3) Title of program.
- (4) Number of approved hours.
- (5) Appropriate supervisor signatures if clinical or practical evaluator hours are claimed.

131.4(5) Renewal by testing. To be eligible for renewal by testing, candidates shall meet the following standards:

a. Submit a request to renew by testing to the department six months prior to the certificate's expiration date. Any testing fees will be in addition to renewal fees.

b. Complete a Renewal by Testing Application provided by the department and schedule a test date with an EMS training program.

c. Successfully complete the practical and written examinations.

d. Candidates who are unsuccessful by testing may renew under the continuing education standards in subrule 131.4(4); however, renewal must be completed prior to the certificate's expiration date.

e. Candidates who are unsuccessful by testing or who do not complete the continuing education requirements prior to the expiration date shall reinstate an expired certificate pursuant to 131.4(3)"f" if active certification is sought.

131.4(6) Continuing education approval. The following standards shall be applied when approving continuing education:

a. Required CEHs identified in 131.4(4)"c" shall be approved by an authorized EMS training program or the department using a sponsor number assignment system approved by the department.

b. Optional CEHs identified in 131.4(4)"d" and 131.4(4)"e" require no formal sponsor number; however, CEHs awarded shall be verified by an authorized EMS training program, a national EMS continuing education accreditation entity, a service program medical director, an appropriate community sponsor, or the department. Documentation of CEHs awarded shall include program or event, date and title, number of hours approved, and applicable signatures.

131.4(7) Out-of-state continuing education. Out-of-state continuing education courses will be accepted for CEHs if they meet the criteria in subrule 131.4(4) and have been approved for emergency medical care personnel in the state in which the courses were held. A copy of course completion certificates (or other verifying documentation) shall, upon request, be submitted to the department with the EMS Affirmative Renewal of Certification Application.

131.4(8) Fees. The following fees shall be collected by the department and shall be nonrefundable:

a. FR, EMT-B, EMT-I, EMT-P, and PS written examination/certification fee—\$20.

b. Certification renewal fees:

(1) FR and EMT-B—no fee.

(2) Renewal of EMT-I certification fee—\$10.

(3) Renewal of EMT-P and PS certification fee—\$25.

This fee is refundable if the applicant's certification renewal status is not posted on the bureau of EMS Web site in the certification database within ten working days from the date the department receives the completed renewal application.

c. Endorsement certification fee—\$50.

d. Reinstatement fee—\$30.

e. Late fee—\$30.

f. Inactive or retired certificate—\$30.

g. Duplicate/replacement card—\$10.

h. Returned check—\$20.

131.4(9) Certification through endorsement. An individual currently certified by another state or a registrant of the National Registry of EMTs must also possess a current Iowa certificate to be considered certified in this state. The department shall contact the state of certification or the National Registry of EMTs to verify certification or registry and good standing.

a. To receive Iowa certification, the individual shall:

(1) Complete and submit the EMS Endorsement Application available from the department.

(2) Provide verification of current certification in another state or registration with the National Registry of EMTs.

(3) Provide verification of current course completion in CPR.

(4) Pass the appropriate Iowa practical and written certification examinations in accordance with subrule 131.4(1) within one year of the department's approval of the endorsement candidate's application. Current National Registry endorsement candidates are exempt from testing.

(5) Meet all other applicable eligibility requirements necessary for Iowa certification pursuant to these rules.

(6) Submit all applicable fees to the department.

b. An individual certified through endorsement shall satisfy the renewal and continuing education requirements set forth in subrule 131.4(3) to renew Iowa certification.

131.4(10) Temporary certification through endorsement. Upon written request, the endorsement applicant may be issued a temporary FR or EMT-B certification by the department. Temporary certification shall not exceed 12 months per application.

641—131.5(147A) Training programs—standards, application, inspection and approval.

131.5(1) Curricula.

a. The training program shall use the following course curricula approved by the department for certification.

(1) EMS provider curricula and course length:

1. First responder—Current DOT FR curriculum plus department enhancements, 50 to 60 hours.

2. EMT-B—Current DOT EMT-B curriculum plus department enhancements, 120 to 130 hours, clinical time or field time or both as necessary to complete objectives.

3. EMT-I—Iowa curriculum, 54 to 60 didactic hours, clinical and field time as necessary to complete objectives.

4. EMT-P—Current DOT EMT-I curriculum, 280 to 310 didactic hours, clinical and field time as necessary to complete objectives.

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5. PS—Current DOT EMT-P curriculum, 600 to 660 didactic hours, clinical and field time as necessary to complete objectives.

6. Training programs that hold current accreditation by the Commission of Accreditation of Allied Health Education Programs for the EMT-P are exempt from the minimum and maximum didactic hours for the EMT-P and PS courses.

(2) Specialty curricula:

1. EMS-I—Current DOT curriculum plus department enhancements.

2. ERT—Iowa curriculum.

3. CCP—Iowa curriculum, 80 to 90 didactic hours, clinical and field time as necessary to complete objectives.

4. EMS-E—Iowa curriculum.

b. Curriculum enhancements are available from the Iowa Department of Public Health, Bureau of EMS, Lucas State Office Building, Des Moines, Iowa 50319-0075.

c. The training program may waive portions of the required EMS provider training for individuals certified or licensed in other health care professions including, but not limited to, nursing, physician assistant, respiratory therapist, dentistry, and military. The training program shall document equivalent training and what portions of the course have been waived for equivalency.

131.5(2) Clinical or field experience resources. If clinical or field experience resources are located outside the framework of the training program, written agreements for such resources shall be obtained by the training program.

131.5(3) Facilities.

a. There shall be adequate classroom, laboratory, and practice space to conduct the training program. A library with reference materials on emergency and critical care shall also be available.

b. Opportunities for the student to accomplish the appropriate skill competencies in the clinical environment shall be ensured. The following hospital units shall be available for clinical experience for each training program as required in approved curricula pursuant to subrule 131.5(1):

(1) Emergency department;

(2) Intensive care unit or coronary care unit or both;

(3) Operating room and recovery room;

(4) Intravenous or phlebotomy team, or other method to obtain IV experience;

(5) Pediatric unit;

(6) Labor and delivery suite, and newborn nursery; and

(7) Psychiatric unit.

c. Opportunities for the student to accomplish the appropriate skill competencies in the field environment shall be ensured. The training program shall use an appropriate emergency medical care service program to provide field experience as required in approved curricula pursuant to subrule 131.5(1).

d. The training program shall have liability insurance and shall offer liability insurance to students while they are enrolled in a training program.

131.5(4) Staff.

a. The training program medical director shall be a physician licensed under Iowa Code chapter 148, 150, or 150A. It is recommended that the training program medical director complete a medical director workshop sponsored by the department.

b. A training program director shall be appointed who is an appropriate health care professional. This individual shall be a full-time educator or a practitioner in emergency or criti-

cal care. Current EMS instructor endorsement is also recommended, but not mandatory.

c. Course coordinators, outreach course coordinators, and primary instructor(s) used by the training program shall be currently endorsed as EMS instructors.

d. The instructional staff shall be comprised of physicians, nurses, pharmacists, emergency medical care personnel, or other health care professionals who have appropriate education and experience in emergency and critical care. Current EMS instructor endorsement is also recommended, but not mandatory.

e. Preceptors shall be assigned in each of the clinical units in which emergency medical care students are obtaining clinical experience and field experience. The preceptors shall supervise student activities to ensure the quality and relevance of the experience. Student activity records shall be kept and reviewed by the immediate supervisor(s) and by the program director and course coordinator.

f. If a training program's medical director resigns, the training program director shall report this to the department and provide a curriculum vitae for the medical director's replacement. A new course shall not be started until a qualified medical director has been appointed.

g. The training program shall maintain records for each instructor used which include, as a minimum, the instructor's qualifications.

h. The training program is responsible for ensuring that each course instructor is experienced in the area being taught and adheres to the course curricula.

i. The training program shall ensure that each practical examination evaluator and mock patient is familiar with the practical examination requirements and procedures. Practical examination evaluators shall attend a workshop sponsored by the department.

131.5(5) Advisory committee. There shall be an advisory committee, which includes training program representatives, and other groups such as affiliated medical facilities, local medical establishments, and ambulance, rescue and first response service programs.

131.5(6) Student records. The training program shall maintain an individual record for each student. Training program policy and department requirements will determine contents. These requirements may include:

a. Application;

b. Current certifications and endorsements;

c. Student record or transcript of hours and performance (including examinations) in classroom, clinical, and field experience settings.

131.5(7) Selection of students. There may be a selection committee to select students using, as a minimum, the prerequisites outlined in rule 131.2(147A).

131.5(8) Students.

a. A student may perform any procedures and skills for which the student has received training, if the student is under the direct supervision of a physician or physician designee, or under the remote supervision of a physician or physician designee, with direct field supervision by an appropriately certified emergency medical care provider.

b. A student shall not be substituted for personnel of any affiliated medical facility or service program, but may be employed while enrolled in the training program.

c. A student is not eligible to continue functioning as a student of the training program in the clinical or field setting if the student is not in good standing with the training program, once the student has met the training program re-

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quirements, or once the student has been approved for certification testing.

131.5(9) Financing and administration.

a. There shall be sufficient funding available to the training program to ensure that each class started can be completed.

b. Tuition charged to students shall be accurately stated.

c. Advertising for training programs shall be appropriate.

d. The training program shall provide to each student, no later than the first session of the course, a guide that outlines, as a minimum:

- (1) Course objectives.
- (2) Required hours for completion.
- (3) Minimum acceptable scores on interim testing.
- (4) Attendance requirements.
- (5) Grievance procedure.
- (6) Disciplinary actions that may be invoked, the grounds for such actions, and the process provided.
- (7) Requirements for certification.

131.5(10) Training program application, inspection and approval.

a. An applicant seeking initial or renewal training program approval shall use the EMS Training Program Application provided by the department. The application shall include, as a minimum:

- (1) Appropriate officials of the applicant;
- (2) Evidence of availability of clinical resources;
- (3) Evidence of availability of physical facilities;
- (4) Evidence of qualified faculty;
- (5) Qualifications and major responsibilities of each faculty member;
- (6) Policies used for selection, promotion, and graduation of trainees;
- (7) Practices followed in safeguarding the health and well-being of trainees, and patients receiving emergency medical care within the scope of the training program; and
- (8) Level(s) of EMS certification to be offered.

b. New training programs shall submit a needs assessment which justifies the need for the training program.

c. Applications shall be reviewed in accordance with the current Essentials and Guidelines of an Accredited Educational Program for the Emergency Medical Technician-Paramedic, published by the Commission on Accreditation and Allied Health Education Programs.

d. An on-site inspection of the applicant's facilities and clinical resources will be performed. The purpose of the inspection is to examine educational objectives, patient care practices, facilities and administrative practices, and to prepare a written report for review and action by the department.

e. The department shall inspect each training program at least once every five years. The department without prior notification may make additional inspections at times, places and under such circumstances as it deems necessary to ensure compliance with Iowa Code chapter 147A and these rules.

f. No person shall interfere with the inspection activities of the department or its agents. Interference with or failure to allow an inspection may be cause for disciplinary action regarding training program approval.

g. Representatives of the applicant may be required by the department to meet with the department at the time the application and inspection report are discussed.

h. A written report of department action accompanied by the department inspection reports shall be sent to the applicant.

i. Training program approval shall not exceed five years.

j. The training program shall notify the department, in writing, of any change in ownership or control within 30 days.

k. Temporary variances. If during a period of authorization there is some occurrence that temporarily causes a training program to be in noncompliance with these rules, the department may grant a temporary variance. Temporary variances to these rules (not to exceed six months in length per any approved request) may be granted by the department to a currently authorized training program. Requests for temporary variances shall apply only to the training program requesting the variance and shall apply only to those requirements and standards for which the department is responsible. To request a variance, the training program shall:

(1) Notify the department verbally (as soon as possible) of the need to request a temporary variance. The program shall submit to the department, within ten days after having given verbal notification to the department, a written explanation for the temporary variance request. The address is Iowa Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075.

(2) Cite the rule from which the variance is requested.

(3) State why compliance with the rule cannot be maintained.

(4) Explain the alternative arrangements that have been or will be made regarding the variance request.

(5) Estimate the period of time for which the variance will be needed.

131.5(11) Out-of-state training program application and approval.

a. An out-of-state training program shall apply to the department for approval.

b. An applicant seeking department approval shall use the out-of-state training program application provided by the department. The application shall include, as a minimum:

(1) Verification of approval to conduct initial EMS training by the authorizing agency within the applicant's home state;

(2) Evidence of physician medical direction oversight;

(3) Evidence of qualified faculty;

(4) Evidence of curriculum utilized;

(5) Evidence of written contracts between the out-of-state training program and clinical or field sites being utilized within Iowa; and

(6) Description of practices followed in safeguarding the health and well-being of trainees, and patients receiving emergency medical care within the scope of the training program.

c. An out-of-state training program shall provide the department with a roster of students who will be participating in the clinical or field experience within the state of Iowa and, for each program, the sites where they will be participating.

d. An out-of-state training program shall not be authorized to provide initial EMS training within the state of Iowa.

e. An out-of-state training program shall be limited to utilization of clinical or field sites or both within Iowa.

f. Representatives of the applicant may be required by the department to meet with the department at the time the application is discussed.

g. An out-of-state training program approval shall not exceed five years.

h. The out-of-state training program shall notify the department, in writing, of any change in ownership, control, or

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approval status by the out-of-state training program's authorizing state agency within 30 days.

131.5(12) Out-of-state students.

a. An out-of-state student shall be a registered student in good standing of an approved out-of-state training program.

b. An out-of-state student may perform any procedure and skills that the student is training for provided that the skill is within the Iowa scope of practice policy of a comparable Iowa EMS provider. The student must be under the direct supervision of a physician or physician designee, or under the remote supervision of a physician or physician designee, with direct supervision by an appropriately certified emergency medical care provider.

c. An out-of-state student shall not be substituted for personnel of any affiliated medical facility or service program, but may be employed while enrolled in the training program.

d. An out-of-state student participating in the clinical or field setting within the state of Iowa shall provide documentation of liability insurance.

e. An out-of-state student is not eligible to continue functioning as a student of the approved out-of-state training program in the clinical or field setting if the student is not in good standing with the approved out-of-state training program, once the student has met the training program's requirements, or once the student has been approved for certification testing.

f. An out-of-state student shall not be eligible for Iowa EMS certification without meeting the requirements for certification through endorsement in 131.4(9).

641—131.6(147A) Continuing education providers—approval, record keeping and inspection.

131.6(1) Continuing education courses for emergency medical care personnel may be approved by the department, EMS training program or a national EMS continuing education accreditation entity.

131.6(2) A training program may conduct continuing education courses (utilizing appropriate instructors) pursuant to subrule 131.4(4).

a. Each training program shall assign a sponsor number to each appropriate continuing education course using an assignment system approved by the department.

b. Course approval shall be made prior to the course's being offered.

c. Each training program shall maintain a participant record that includes, as a minimum:

- (1) Name.
- (2) Address.
- (3) Certification number.
- (4) Course sponsor number.
- (5) Course instructor.
- (6) Date of course.
- (7) CEHs awarded.

d. Each training program shall submit to the department on a quarterly basis a completed Approved EMS Continuing Education form.

131.6(3) Record keeping and record inspection.

a. The department may request additional information or inspect the records of any continuing education provider who is currently approved or who is seeking approval to ensure compliance or to verify the validity of any training program application.

b. No person shall interfere with the inspection activities of the department or its agents. Interference with or failure to allow an inspection may be cause for disciplinary action regarding training program approval.

641—131.7(147A) Complaints and investigations—denial, citation and warning, probation, suspension, or revocation of emergency medical care personnel certificates or renewal.

131.7(1) This rule is not subject to waiver or variance pursuant to 641—Chapter 178 or any other provision of law.

131.7(2) The department may deny an application for issuance or renewal of an emergency medical care provider certificate, including specialty certifications, or place on probation, or issue a citation and warning, or suspend or revoke the certificate when it finds that the applicant or certificate holder has committed any of the following acts or offenses:

- a. Negligence in performing emergency medical care.
- b. Failure to follow the directions of supervising physicians or their designees.
- c. Rendering treatment not authorized under Iowa Code chapter 147A.
- d. Fraud in procuring certification or renewal including, but not limited to:

(1) An intentional perversion of the truth in making application for a certification to practice in this state;

(2) False representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a certification in this state; or

(3) Attempting to file or filing with the Iowa department of public health or training program any false or forged diploma or certificate or affidavit or identification or qualification in making an application for a certification in this state.

e. Professional incompetency. Professional incompetency includes, but is not limited to:

(1) A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice.

(2) A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other EMS providers in the state of Iowa acting in the same or similar circumstances.

(3) A failure to exercise the degree of care which is ordinarily exercised by the average EMS provider acting in the same or similar circumstances.

(4) Failure to conform to the minimal standard of acceptable and prevailing practice of certified EMS providers in this state.

f. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established. Acts which may constitute unethical conduct include, but are not limited to:

(1) Verbally or physically abusing a patient or coworker.

(2) Improper sexual contact with or making suggestive, lewd, lascivious or improper remarks or advances to a patient or coworker.

(3) Betrayal of a professional confidence.

(4) Engaging in a professional conflict of interest.

(5) Falsification of medical records.

g. Engaging in any conduct that subverts or attempts to subvert a department investigation.

h. Failure to comply with a subpoena issued by the department or failure to cooperate with an investigation of the department.

i. Failure to comply with the terms of a department order or the terms of a settlement agreement or consent order.

j. Failure to report another EMS provider to the department for any violations listed in these rules, pursuant to Iowa Code chapter 147A.

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k. Knowingly aiding, assisting or advising a person to unlawfully practice EMS.

l. Representing oneself as an EMS provider when one's certification has been suspended or revoked, or when one's certification is lapsed or has been placed on inactive status.

m. Permitting the use of a certification by a noncertified person for any purpose.

n. Mental or physical inability reasonably related to and adversely affecting the EMS provider's ability to practice in a safe and competent manner.

o. Being adjudged mentally incompetent by a court of competent jurisdiction.

p. An EMS provider shall not sexually harass a patient, student, or supervisee. Sexual harassment includes sexual advances, sexual solicitation, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

q. Habitual intoxication or addiction to drugs.

(1) The inability of an EMS provider to practice with reasonable skill and safety by reason of the excessive use of alcohol on a continuing basis.

(2) The excessive use of drugs which may impair an EMS provider's ability to practice with reasonable skill or safety.

(3) Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

r. Fraud in representation as to skill, ability or certification.

s. Willful or repeated violations of Iowa Code chapter 147A or these rules.

t. Violating a statute of this state, another state, or the United States, without regard to its designation as either a felony or misdemeanor, which relates to the provision of emergency medical care. A certified copy of the record of conviction or plea of guilty is conclusive evidence of the violation.

u. Having certification to practice emergency medical care suspended or revoked, or having other disciplinary action taken by a licensing or certifying authority of another state, territory or country. A certified copy of the record or order of suspension, revocation or disciplinary action is conclusive or prima facie evidence.

v. Falsifying certification renewal reports or failure to comply with the renewal audit request.

w. Acceptance of any fee by fraud or misrepresentation.

x. Repeated failure to comply with standard precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

y. Privacy and confidentiality. An EMS provider shall not disclose or be compelled to disclose patient information unless required or authorized by law.

z. Discrimination. An EMS provider shall not practice, condone, or facilitate discrimination against a patient, student, or supervisee on the basis of race, ethnicity, national origin, color, sex, sexual orientation, age, marital status, political belief, religion, mental or physical disability, diagnosis, or social or economic status.

641—131.8(147A) Complaints and investigations—denial, citation and warning, probation, suspension, or revocation of training program or continuing education provider approval or renewal.

131.8(1) This rule is not subject to waiver or variance pursuant to 641—Chapter 178 or any other provision of law.

131.8(2) The department may deny an application for approval or renewal, or issue a citation and warning, or place on probation, or suspend or revoke the approval or renewal when it finds that the applicant has failed to meet the applica-

ble provisions of these rules or has committed any of the following acts or offenses:

a. Fraud in procuring approval or renewal.

b. Falsification of training or continuing education records.

c. Suspension or revocation of approval to provide emergency medical care training or other disciplinary action taken pursuant to Iowa Code chapter 147A. A certified copy of the record or order of suspension, revocation or disciplinary action is conclusive or prima facie evidence.

d. Engaging in any conduct that subverts or attempts to subvert a department investigation.

e. Failure to respond within 30 days of receipt of communication from the department which was sent by registered or certified mail.

f. Failure to comply with a subpoena issued by the department or failure to cooperate with an investigation of the department.

g. Failure to comply with the terms of a department order or the terms of a settlement agreement or consent order.

h. Submission of a false report of continuing education or failure to submit the quarterly report of continuing education.

i. Knowingly aiding, assisting or advising a person to unlawfully practice EMS.

j. Representing itself as an approved training program or continuing education provider when approval has been suspended or revoked or when approval has lapsed or has been placed on inactive status.

k. Using an unqualified individual as an instructor or evaluator.

l. Allowing verbal or physical abuse of a student or co-worker.

m. A training program provider or continuing education provider shall not sexually harass a patient, student, or supervisee. Sexual harassment includes sexual advances, sexual solicitation, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

n. Betrayal of a professional confidence.

o. Engaging in a professional conflict of interest.

p. A training program or continuing education provider shall not practice, condone, or facilitate discrimination against a patient, student, or supervisee on the basis of race, ethnicity, national origin, color, sex, sexual orientation, age, marital status, political belief, religion, mental or physical disability, diagnosis, or social or economic status.

641—131.9(147A) Reinstatement of certification.

131.9(1) Any person whose certification to practice has been revoked or suspended may apply to the department for reinstatement in accordance with the terms and conditions of the order of revocation or suspension, unless the order of revocation provides that the certification is permanently revoked.

131.9(2) If the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur, or if the certification was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the order or the date of the voluntary surrender.

131.9(3) All proceedings for reinstatement shall be initiated by the respondent, who shall file with the department an application for reinstatement of the certification. Such application shall be docketed in the original case in which the certification was revoked, suspended, or relinquished. All proceedings upon the application for reinstatement shall be

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subject to the same rules of procedure as other cases before the department.

131.9(4) An application for reinstatement shall allege facts which, if established, will be sufficient to enable the department to determine that the basis for the revocation or suspension of the respondent's certification no longer exists and that it will be in the public interest for the certification to be reinstated. The burden of proof to establish such facts shall be on the respondent.

131.9(5) An order denying or granting reinstatement shall be based upon a decision which incorporates findings of facts and conclusions of law. The order shall be published as provided for in this chapter.

641—131.10(147A) Certification denial.

131.10(1) An applicant who has been denied certification by the department may appeal the denial and request a hearing on the issues related to the licensure denial by serving a notice of appeal and request for hearing upon the department not more than 20 days following the date of mailing of the notification of certification denial to the applicant. The request for hearing shall specifically delineate the facts to be contested at hearing.

131.10(2) All hearings held pursuant to this rule shall be held pursuant to the process outlined in this chapter.

641—131.11(147A) Emergency adjudicative proceedings. To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the Constitution and other provisions of law, the department may issue a written order in compliance with Iowa Code section 17A.18 to suspend a certificate in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the department by emergency adjudicative order.

131.11(1) Before issuing an emergency adjudicative order, the department shall consider factors including, but not limited to, the following:

- a. Whether there has been a sufficient factual investigation to ensure that the department is proceeding on the basis of reliable information;
- b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;
- c. Whether the individual required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;
- d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and
- e. Whether the specific action contemplated by the department is necessary to avoid the immediate danger.

131.11(2) Issuance of order.

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the department's decision to take immediate action. The order is a public record.

b. The written emergency adjudicative order shall be immediately delivered to the individual who is required to comply with the order by utilizing one or more of the following procedures:

- (1) Personal delivery.
- (2) Certified mail, return receipt requested, to the last address on file with the department.

(3) Fax. Fax may be used as the sole method of delivery if the service program required to comply with the order has filed a written request that agency orders be sent by fax and has provided a fax number for that purpose.

c. To the degree practicable, the department shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

d. Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the department shall make reasonable immediate efforts to contact by telephone the individual who is required to comply with the order.

e. After the issuance of an emergency adjudicative order, the department shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

f. Issuance of a written emergency adjudicative order shall include notification of the date on which department proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further department proceedings to a later date will be granted only in compelling circumstances upon application in writing unless the service program that is required to comply with the order is the party requesting the continuance.

641—131.12(147A) Complaints, investigations and appeals.

131.12(1) This rule is not subject to waiver or variance pursuant to 641—Chapter 178 or any other provision of law.

131.12(2) All complaints regarding emergency medical care personnel, training programs or continuing education providers, or those purporting to be or operating as the same, shall be reported to the department in writing. The address is Iowa Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075.

131.12(3) An emergency medical care provider who has knowledge of an emergency medical care provider or service program that has violated Iowa Code chapter 147A, 641—Chapter 132 or these rules shall report such information to the department.

131.12(4) Complaint investigations may result in the department's issuance of a notice of denial, citation and warning, probation, suspension or revocation.

131.12(5) A determination of mental incompetence by a court of competent jurisdiction automatically suspends a certificate for the duration of the certificate unless the department orders otherwise.

131.12(6) Notice of denial, issuance of a citation and warning, probation, suspension or revocation shall be effected in accordance with the requirements of Iowa Code section 17A.12. Notice to the alleged violator of denial, probation, suspension or revocation shall be served by certified mail, return receipt requested, or by personal service.

131.12(7) Any request for a hearing concerning the denial, citation and warning, probation, suspension or revocation shall be submitted by the aggrieved party in writing to the department by certified mail, return receipt requested, within 20 days of the receipt of the department's notice to take action. The address is Iowa Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075. If the request is made within the 20-day time period, the notice to take action shall be deemed to be suspended pending the hearing. Prior to or at the hearing, the department may rescind the notice upon satisfaction that the reason for the denial, citation and warning, probation, suspension or revoca-

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tion has been or will be removed. If no request for a hearing is received within the 20-day time period, the department's notice of denial, citation and warning, probation, suspension or revocation shall become the department's final agency action.

131.12(8) Upon receipt of a request for hearing, the request shall be forwarded within five working days to the department of inspections and appeals pursuant to the rules adopted by that agency regarding the transmission of contested cases. The information upon which the adverse action is based and any additional information which may be provided by the aggrieved party shall also be provided to the department of inspections and appeals.

131.12(9) The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10.

131.12(10) When the administrative law judge makes a proposed decision and order, it shall be served by certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken as provided in subrule 131.12(11).

131.12(11) Any appeal to the director for review of the proposed decision and order of the administrative law judge shall be filed in writing and mailed to the director by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the administrative law judge. Any request for an appeal shall state the reason for appeal.

131.12(12) Upon receipt of an appeal request, the administrative law judge shall prepare the record of the hearing for submission to the director. The record shall include the following:

- a. All pleadings, motions, and rules.
- b. All evidence received or considered and all other submissions by recording or transcript.
- c. A statement of all matters officially noticed.
- d. All questions and offers of proof, objections and rulings on them.
- e. All proposed findings and exceptions.
- f. The proposed decision and order of the administrative law judge.

131.12(13) The decision and order of the director becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by certified mail, return receipt requested, or by personal service.

131.12(14) It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final agency action of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.

131.12(15) Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or by personal service. The address is Iowa Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075.

131.12(16) The party who appeals a final agency action to the district court shall pay the cost of the preparation of a transcript of the contested case hearing for the district court.

131.12(17) Final decisions of the department relating to disciplinary proceedings may be transmitted to the appropriate professional associations, the news media or employer.

These rules are intended to implement Iowa Code chapter 147A.

ARC 3837B**PUBLIC HEALTH
DEPARTMENT[641]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147A.4, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 132, "Emergency Medical Services—Service Program Authorization," Iowa Administrative Code.

The rules in Chapter 132 provide regulatory oversight for emergency medical services care. These amendments update and standardize definitions and rule language in 641—Chapters 131 through 141, define scope of practice for providers, add paramedic specialist service level designation, and update references to documents.

Any interested person may make written comments or suggestions on the proposed amendments on or before December 14, 2004. Such written comments should be directed to Ray Jones, Bureau of EMS, Department of Public Health, 401 SW 7th Street, Suite D, Des Moines, Iowa 50309. E-mail may be sent to rjones@idph.state.ia.us.

A public hearing will be held over the Iowa Communications Network (ICN) on December 14, 2004, from 10 a.m. to 12 noon in the Lucas State Office Building, 6th Floor ICN Room, Des Moines, Iowa. Additional ICN sites for the hearing are scheduled for the following locations:

Belmond Public Library
440 East Main Street
Belmond

Carroll National Guard Armory
1712 Le Clark Road
Carroll

Dubuque Senior High School
1800 Clarke Drive
Dubuque

Iowa City Public Library
123 South Linn Street
Iowa City

Spencer National Guard Armory
11 East 23rd Street
Spencer

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to

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the subject of the amendments. Any person who plans to attend the public hearing and who may require special accommodations, such as those for hearing or mobility impairments, should contact the Department and advise of specific needs.

These amendments are intended to implement Iowa Code chapter 147A.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **641—132.1(147A)** as follows:

Amend the following definitions:

“Automated external defibrillator” or “AED” means an external automated defibrillator semiautomated device that determines whether defibrillation is required.

“Current course completion” means written recognition given for training and successful course completion of CPR or PAD with an expiration date or a recommended renewal date that exceeds the current date.

“Emergency medical care” means such medical procedures as:

1. Administration of intravenous solutions.
2. Intubation.
3. Performance of cardiac defibrillation and synchronized cardioversion.
4. Administration of emergency drugs as provided by ~~rule by the department~~ *protocol.*
5. ~~Any other medical procedure approved by the department, by rule, as appropriate to be performed by emergency medical care providers who have been trained in that procedure authorized by 131.3(3).~~

“Emergency medical care personnel” or “provider” means an individual who has been trained to provide emergency and nonemergency medical care at the first-responder, EMT-basic, EMT-intermediate, EMT-paramedic, paramedic specialist level or other certification levels recognized by the department before 1984 adopted by rule by the department and who has been issued a certificate by the department.

“EMS contingency plan” means a transport agreement or dispatching policy between two or more EMS ambulance service programs that addresses how and under what circumstances patient transportation will be provided in a given service area when coverage is not possible due to unforeseen circumstances.

“Paramedic (EMT-P)” means an emergency medical technician-paramedic.

“Patient care report (PCR)” means the out-of-hospital medical record documenting the evaluation and management of the patient a computerized or written report that documents the assessment and management of the patient by the emergency care provider in the out-of-hospital setting.

“Physician designee” means any registered nurse licensed under Iowa Code chapter 152, or any physician assistant licensed under Iowa Code chapter 148C and approved by the board of physician assistant examiners. The physician designee acts as an intermediary for a supervising physician in accordance with written policies and protocols in directing the actions of care provided by emergency medical care personnel providers providing emergency medical services.

“Protocols” means service program patient care written directions and orders, consistent with the department’s standard of care procedures, that are to be followed by an emergency medical care providers provider in emergency and

nonemergency situations. Protocols must be approved by the service program’s medical director and address the care of both adult and pediatric patients.

Rescind the following definitions: “emergency medical technician-ambulance (EMT-A)”; “emergency medical technician-defibrillation (EMT-D)”; “emergency rescue technician (ERT)”; “EMS”; “first responder-defibrillation (FR-D)”; “ILEECP”; “PAD liaison”; “PAD service program”; “public access defibrillation (PAD)”; and “public access defibrillation (PAD) provider.”

Adopt the following **new** definitions in alphabetical sequence:

“Deficiency” means noncompliance with Iowa Code chapter 147A or these rules.

“Emergency medical services” or “EMS” means an integrated medical care delivery system to provide emergency and nonemergency medical care at the scene or during out-of-hospital patient transportation in an ambulance.

“EMS system” is any specific arrangement of emergency medical personnel, equipment, and supplies designed to function in a coordinated fashion.

“Endorsement” means providing approval in an area related to emergency medical care including, but not limited to, CCP and emergency medical services.

“Iowa EMS Patient Registry Data Dictionary” means reportable data elements for all ambulance service responses and definitions determined by the department and adopted by reference.

“Service director” means an individual who is responsible for the operation and administration of a service program.

“Training program” means an NCA-approved Iowa college, the Iowa law enforcement academy or an Iowa hospital approved by the department to conduct emergency medical care training.

ITEM 2. Amend the catchwords of rule 641—132.2(147A) as follows:

641—132.2(147A) Authority of emergency medical care personnel provider.

ITEM 3. Amend subrule 132.2(2) as follows:

132.2(2) An emergency medical care provider who holds an active certification issued by the department may:

- a. No change.
- b. Function in any hospital or any other entity in which health care is ordinarily provided only when under the direct supervision of a physician when:

(1) Enrolled as a student or participating as a preceptor in and approved by a training program approved by the department;

(2) through (4) No change.

ITEM 4. Rescind subrule 132.2(4) and adopt the following **new** subrule in lieu thereof:

132.2(4) Scope of practice.

a. Emergency medical care providers shall provide only those services and procedures as are authorized within the scope of practice for which they are certified.

b. Scope of Practice for Iowa EMS Providers (November 2004) is incorporated and adopted by reference for EMS providers. For any differences that may occur between the adopted references and these administrative rules, the administrative rules shall prevail.

c. The department may grant a variance for changes to the Scope of Practice that have not yet been adopted by these rules. A variance to these rules may be granted by the department pursuant to 132.14(1).

PUBLIC HEALTH DEPARTMENT[641](cont'd)

d. Scope of Practice for Iowa EMS Providers is available through the Iowa Department of Public Health, Bureau of EMS, Lucas State Office Building, Des Moines, Iowa 50319-0075, or the bureau of EMS Web site (www.idph.state.ia.us/ems).

ITEM 5. Amend subrule 132.2(6) as follows:

132.2(6) An emergency medical care provider who has knowledge of an emergency medical care provider, service program or training program that has violated Iowa Code chapter 147A or these rules shall report such information to the department *within 30 days*.

ITEM 6. Amend subrule 132.7(1) as follows:

132.7(1) General requirements for authorization and renewal of authorization.

a. and b. No change.

c. Applications for authorization and renewal of authorization may be obtained upon request to: Iowa Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075 or the bureau of EMS Web site (www.idph.state.ia.us/ems).

d. and e. No change.

f. Service programs shall be fully operational upon the effective date and at the level specified on the certificate of authorization and shall meet all applicable requirements of Iowa Code chapter 147A and these rules. *Deficiencies that are identified shall be corrected within a time frame determined by the department.*

g. and h. No change.

i. Service programs that acquire and maintain current status with a nationally recognized EMS service program accreditation entity that meets or exceeds Iowa requirements may be exempted from the *service application/inspection* process. A copy of the *state service application and accreditation inspection* must be filed with the department for approval.

ITEM 7. Amend subrule **132.7(3)**, paragraph “b,” as follows:

b. Air ambulances shall not be subject to the requirements of Iowa Code chapter 147A and these rules except when utilizing *an* emergency medical care ~~personnel~~ *provider* to provide emergency medical care. In such instances, *an* emergency medical care ~~personnel~~ *provider* shall function at the appropriate level of care as identified in the scope of practice pursuant to subrule 132.2(4).

ITEM 8. Amend subrule 132.8(1) as follows:

132.8(1) A service program seeking ambulance authorization shall:

a. Apply for authorization at one of the following levels:

(1) ~~Basic care.~~

(2) ~~1~~ EMT-B.

(3) ~~2~~ EMT-I.

(4) ~~3~~ EMT-P.

(4) ~~PS.~~

b. No change.

c. Provide as a minimum, on each ambulance call, the following staff:

(1) One currently certified EMT-B.

(2) One currently licensed driver. The service shall document each driver’s training in *CPR (AED training not required)*, in emergency driving techniques and in the use of the service’s communications equipment.

d. through i. No change.

ITEM 9. Amend subrule 132.8(2) as follows:

132.8(2) A service program seeking nontransport authorization shall:

a. Apply for authorization at one of the following levels:

(1) Basic care.

(2) First responder.

(3) EMT-B.

(4) EMT-I.

(5) EMT-P.

(6) *PS.*

b. through d. No change.

ITEM 10. Amend subrule **132.8(3)** as follows:

Amend paragraph “a” as follows:

a. Complete and maintain a patient care report concerning the care provided to each patient. *Ambulance services shall provide, at a minimum, a PCR verbal report upon delivery of a patient to a receiving facility and shall provide a complete PCR within 24 hours to the receiving facility.*

Amend paragraph “h” as follows:

h. Notify the department in writing within seven days of any change in *service director* or ownership or control or of any reduction or discontinuance of operations.

Amend paragraph “i” as follows:

i. Not be authorized to utilize a manual defibrillator (except paramedic, *paramedic specialist*).

ITEM 11. Amend subrule **132.8(4)** by rescinding paragraph “g” and relettering paragraph “h” as “g.”

ITEM 12. Amend subrule **132.8(6)**, paragraph “a,” as follows:

a. Incidents of fire or other destructive or damaging occurrences ~~affecting the service program~~ or theft of a service program ambulance, equipment, or drugs shall be reported to the department within 48 hours following the occurrence of the incident.

ITEM 13. Amend subrule 132.8(7) as follows:

132.8(7) Adoption by reference. The Iowa EMS Service Program *Patient Registry Data Dictionary (January 2004)* is adopted and incorporated by reference for inclusion criteria and reportable patient data. For any differences which may occur between the adopted reference and this chapter, the administrative rules shall prevail.

a. The Iowa EMS Service Program *Patient Registry Data Dictionary (January 2004)* is available through the Iowa Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075 or the EMS bureau Web site (www.idph.state.ia.us/ems).

b. through e. No change.

f. ~~All EMS service programs shall comply with these rules prior to January 1, 2001.~~ The director, pursuant to Iowa Code section 147A.4, may grant a variance from the requirements of these rules for any service program, provided that the variance is related to undue hardships in complying with this chapter.

ITEM 14. Amend subrule 132.8(9) as follows:

132.8(9) Implementation. The director may grant exceptions and variances from the requirements of this chapter for any ambulance or nontransport service. Exceptions or variations shall be reasonably related to undue hardships which existing services experience in complying with this chapter. ~~No exception or variance may be granted unless the service has adopted a plan, approved by the department prior to July 1, 1996, to achieve compliance during a period not to exceed seven years.~~ Services requesting exceptions and variances

PUBLIC HEALTH DEPARTMENT[641](cont'd)

shall be subject to other applicable rules adopted pursuant to Iowa Code chapter 147A. Nothing in this chapter shall be construed to require any ~~ambulance~~ or nontransport service to provide a level of care beyond minimum basic care standards.

ITEM 15. Amend subrule **132.9(2)**, paragraph “**d**,” as follows:

d. Assessing the continuing education needs of the service and individual service program personnel and assisting them in ~~obtaining~~ the *planning* of appropriate continuing education programs.

ITEM 16. Amend subrule **132.9(6)**, paragraph “**b**,” subparagraph (1), as follows:

(1) Ensure that the supervising physicians or physician designees will be available to provide on-line medical direction via ~~radio-communications~~ *telecommunications* on a 24-hour-per-day basis.

ITEM 17. Amend subrule 132.10(2) as follows:

132.10(2) Complaints and the investigative process will be treated as confidential in accordance with Iowa Code ~~chapter 22~~ *section 22.7*.

ITEM 18. Amend subrule 132.10(3) as follows:

132.10(3) Service program authorization may be denied, issued a citation and warning, placed on probation, suspended or revoked by the department in accordance with Iowa Code subsection 147A.5(3) for any of the following reasons:

a. ~~Failure or repeated failure of the applicant or alleged violator to meet the requirements or standards established pursuant to Iowa Code chapter 147A or the rules adopted pursuant to that chapter.~~

b. ~~Obtaining or attempting to obtain or renew or retain service program authorization by fraudulent means, misrepresentation or by submitting false information.~~

a. *Knowingly allowing the falsifying of a patient care report (PCR).*

b. *Failure to submit required reports and documents.*

c. *Delegating professional responsibility to a person when the service program knows that the person is not qualified by training, education, experience or certification to perform the required duties.*

d. *Practicing, condoning, or facilitating discrimination against a patient, student or employee based on race, ethnicity, national origin, color, sex, sexual orientation, age, marital status, political belief, religion, mental or physical disability diagnosis, or social or economic status.*

e. *Knowingly allowing sexual harassment of a patient, student or employee. Sexual harassment includes sexual advances, sexual solicitations, requests for sexual favors, and other verbal or physical conduct of a sexual nature.*

f. *Failure or repeated failure of the applicant or alleged violator to meet the requirements or standards established pursuant to Iowa Code chapter 147A or the rules adopted pursuant to that chapter.*

g. *Obtaining or attempting to obtain or renew or retain service program authorization by fraudulent means or misrepresentation or by submitting false information.*

e h. *Engaging in conduct detrimental to the well-being or safety of the patients receiving or who may be receiving emergency medical care.*

i. *Failure to correct a deficiency within the time frame required by the department.*

ITEM 19. Adopt new subrule 132.10(17) as follows:

132.10(17) Emergency adjudicative proceedings.

a. Necessary emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the Constitution and other provisions of law, the department may issue a written order in compliance with Iowa Code section 17A.18 to suspend a certificate in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the department by emergency adjudicative order.

b. Before issuing an emergency adjudicative order, the department shall consider factors including, but not limited to, the following:

(1) Whether there has been a sufficient factual investigation to ensure that the department is proceeding on the basis of reliable information;

(2) Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

(3) Whether the program required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

(4) Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and

(5) Whether the specific action contemplated by the department is necessary to avoid the immediate danger.

c. Issuance of order.

(1) An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the department's decision to take immediate action. The order is a public record.

(2) The written emergency adjudicative order shall be immediately delivered to the service program that is required to comply with the order by utilizing one or more of the following procedures:

1. Personal delivery.

2. Certified mail, return receipt requested, to the last address on file with the department.

3. Fax. Fax may be used as the sole method of delivery if the service program required to comply with the order has filed a written request that agency orders be sent by fax and has provided a fax number for that purpose.

(3) To the degree practicable, the department shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

(4) Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the department shall make reasonable immediate efforts to contact by telephone the service program that is required to comply with the order.

(5) After the issuance of an emergency adjudicative order, the department shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

(6) Issuance of a written emergency adjudicative order shall include notification of the date on which department proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further department proceedings to a later date will be granted only in compelling circumstances upon application in writing unless the service program that is required to comply with the order is the party requesting the continuance.

ITEM 20. Amend subrule **132.14(2)** as follows:

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Amend paragraph “a” as follows:

a. Notify the department verbally (as soon as possible) of the need to request a temporary variance. *Submit to the department, within ten days after having given verbal notification to the department, a written explanation for the temporary variance request. The address and telephone number are Iowa Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075; (515)725-0326.*

Rescind paragraph “f.”

ITEM 21. Rescind and reserve rule **641—132.16(147A)**.

ARC 3836B**PUBLIC HEALTH
DEPARTMENT[641]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147A.4, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 133, “White Flashing Light Authorization,” Iowa Administrative Code.

The rules in Chapter 133 provide regulatory oversight of the use of the white light by emergency medical providers. These amendments standardize definition language in 641—Chapters 131 through 141.

Any interested person may make written comments or suggestions on the proposed amendments on or before December 14, 2004. Such written comments should be directed to Ray Jones, Bureau of EMS, Department of Public Health, 401 SW 7th Street, Suite D, Des Moines, Iowa 50309. E-mail may be sent to rjones@idph.state.ia.us.

A public hearing will be held over the Iowa Communications Network (ICN) on December 14, 2004, from 10 a.m. to 12 noon at the Lucas State Office Building, 6th Floor ICN Room, Des Moines, Iowa. Additional ICN sites for the hearing are scheduled for the following locations:

Belmond Public Library
440 East Main Street
Belmond

Carroll National Guard Armory
1712 Le Clark Road
Carroll

Dubuque Senior High School
1800 Clarke Drive
Dubuque

Iowa City Public Library
123 South Linn Street
Iowa City

Spencer National Guard Armory
11 East 23rd Street
Spencer

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to

the subject of the amendments. Any person who plans to attend the public hearing and who may require special accommodations, such as those for hearing or mobility impairments, should contact the Department and advise of specific needs.

These amendments are intended to implement Iowa Code chapter 147A.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **641—133.1(321)** as follows:

Amend the following definitions:

“Emergency medical care provider” means ~~any~~ *an* individual ~~currently certified by the department pursuant to Iowa Code section 147A.6 or other member of an ambulance or nontransport service who actively participates in the rendering of emergency medical care who has been trained to provide emergency and nonemergency medical care at the first responder, EMT-basic, EMT-intermediate, EMT-paramedic, paramedic specialist or other certification levels recognized by the department before 1984 and who has been issued a certificate by the department.~~

“Medical director” means any physician licensed under Iowa Code chapter 148, 150, or 150A who ~~is~~ *shall be* responsible for overall medical direction of the service program *and who has completed a medical director workshop, sponsored by the department, within one year of the physician’s assuming duties.*

“Service program” or “service” means any ~~emergency medical care ambulance service or nontransport service based in this state that has received authorization by the department.~~

ITEM 2. Amend subrule 133.4(3) as follows:

133.4(3) An emergency medical care provider or service director who has knowledge of any emergency medical care provider or service program that has violated Iowa Code chapter 147A, Iowa Administrative Code 641—Chapter 132 or these rules shall report, *within 30 days*, that information to the department.

ARC 3835B**PUBLIC HEALTH
DEPARTMENT[641]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147A.4, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 134, “Trauma Care Facility Categorization and Verification,” Iowa Administrative Code.

The rules in Chapter 134 provide guidelines for self-designation by trauma care facilities. These amendments standardize definition language in 641—Chapters 131

PUBLIC HEALTH DEPARTMENT[641](cont'd)

through 141 and update trauma care facility categorization level terminology.

Any interested person may make written comments or suggestions on the proposed amendments on or before December 14, 2004. Such written comments should be directed to Ray Jones, Bureau of EMS, Department of Public Health, 401 SW 7th Street, Suite D, Des Moines, Iowa 50309. E-mail may be sent to rjones@idph.state.ia.us.

A public hearing will be held over the Iowa Communications Network (ICN) on December 14, 2004, from 10 a.m. to 12 noon in the Lucas State Office Building, 6th Floor ICN Room, Des Moines, Iowa. Additional ICN sites for the hearing are scheduled for the following locations:

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123 South Linn Street
Iowa City

Spencer National Guard Armory
11 East 23rd Street
Spencer

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Any person who plans to attend the public hearing and who may require special accommodations, such as those for hearing or mobility impairments, should contact the Department and advise of specific needs.

These amendments are intended to implement Iowa Code chapter 147A.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **641—134.1(147A)** as follows:

Amend the following definitions:

“Hospital” means a ~~facility~~ *any hospital* licensed under Iowa Code chapter 135B, ~~or comparable emergency care facility located and licensed in another state.~~

“Trauma care facility” means a hospital or emergency care facility which provides trauma care and has been verified by the department as having *Resource (Level I), Regional (Level II), Area (Level III) or Community (Level IV)* care capabilities and has been issued a certificate of verification pursuant to Iowa Code section 147A.23, subsection 2, paragraph “c.”

“Verification” means a process by which the department certifies a hospital or emergency care facility's capacity to provide trauma care in accordance with criteria established for *Resource (Level I), Regional (Level II), Area (Level III) or Community (Level IV)* trauma care facilities and these rules.

Rescind the definition of “EMS provider.”

Adopt the following **new** definition:

“Emergency medical care provider” means an individual who has been trained to provide emergency and non-emergency medical care at the first responder, EMT-basic, EMT-intermediate, EMT-paramedic, paramedic specialist or other certification levels recognized by the department before 1984 and who has been issued a certificate by the department.

ITEM 2. Amend subrule **134.2(1)**, paragraph “b,” as follows:

b. Categorization applications shall be submitted by all hospitals ~~and emergency care facilities~~. New hospitals shall submit a categorization application no later than 90 days after licensing by the department of inspections and appeals, health ~~facility~~ *facilities* division. *Categorization applications may be submitted by emergency care facilities*. New emergency care facilities ~~shall~~ *may* submit a categorization application no later than 90 days after opening or reopening.

ITEM 3. Amend subrule 134.2(2) as follows:

134.2(2) Categorization levels for trauma care facilities shall be identified as:

- a. *Resource (Level I)*.
- b. *Regional (Level II)*.
- c. *Area (Level III)*.
- d. *Community (Level IV)*.

ITEM 4. Amend subrule 134.2(3) as follows:

134.2(3) Adoption by reference.

a. “Iowa Trauma System *Resource (Level I) & Regional (Level II) Hospital and Emergency Care Facility Categorization Criteria*” (November 2001) is incorporated and adopted by reference for *Resource (Level I) and Regional (Level II)* hospital and emergency care facility categorization criteria, and the “Iowa Trauma System *Area (Level III) & Community (Level IV) Hospital and Emergency Care Facility Categorization Criteria*” (November 2001) is incorporated by reference and adopted for *Area (Level III) and Community (Level IV)* hospital and emergency care facility categorization criteria. For any differences which may occur between the adopted references and these administrative rules, the administrative rules shall prevail.

b. “Iowa Trauma System ~~Level I Resource & II Regional~~ *Resource & II Regional* Hospital and Emergency Care Facility Categorization Criteria” (November 2001) and the “Iowa Trauma System ~~Level III Area & IV Community~~ *Area & IV Community* Hospital and Emergency Care Facility Categorization Criteria” (November 2001) are available through the Iowa Department of Public Health, Bureau of Emergency Medical Services, ~~401 SW Seventh Street, Suite D Lucas State Office Building~~, Des Moines, Iowa 50319-0075 ~~or the bureau of EMS Web site (www.idph.state.ia.us/ems)~~.

ITEM 5. Amend subrule 134.2(7) as follows:

134.2(7) The department shall conduct a verification survey for categorized hospitals or emergency care facilities.

a. to g. No change.

h. Trauma care facilities that are unable to maintain their categorization or verification, or both, shall notify the department ~~immediately~~ *within 48 hours*.

i. ~~All hospitals and emergency care facilities shall comply with these rules prior to January 1, 2001.~~ The director, pursuant to rule, may grant a variance from the requirements of rules adopted under this chapter for any hospital or emergency care facility provided that the variance is related to undue hardships in complying with this chapter or the rules adopted pursuant to this chapter.

j. No change.

ARC 3834B**PUBLIC HEALTH
DEPARTMENT[641]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147A.4, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 135, “Trauma Triage and Transfer Protocols,” Iowa Administrative Code.

The rules in Chapter 135 provide trauma protocol guidelines. These amendments standardize definition language in 641—Chapters 131 through 141 and update trauma care facility categorization level terminology and protocol terminology and references.

Any interested person may make written comments or suggestions on the proposed amendments on or before December 14, 2004. Such written comments should be directed to Ray Jones, Bureau of EMS, Department of Public Health, 401 SW 7th Street, Suite D, Des Moines, Iowa 50309. E-mail may be sent to rjones@idph.state.ia.us.

A public hearing will be held over the Iowa Communications Network (ICN) on December 14, 2004, from 10 a.m. to 12 noon in the Lucas State Office Building, 6th Floor ICN Room, Des Moines, Iowa. Additional ICN sites for the hearing are scheduled for the following locations:

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Iowa City

Spencer National Guard Armory
11 East 23rd Street
Spencer

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Any person who plans to attend the public hearing and who may require special accommodations, such as those for hearing or mobility impairments, should contact the Department and advise of specific needs.

These amendments are intended to implement Iowa Code chapter 147A.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **641—135.1(147A)** as follows:

Amend the following definitions:

“Service program” or “service” means any ~~24-hour emergency~~ medical care ambulance service or nontransport service program that has received authorization by the department.

“Trauma care facility” means a hospital or emergency care facility which provides trauma care and has been verified by the department as having *Resource* (Level I), *Regional* (Level II), *Area* (Level III) or *Community* (Level IV) care capabilities and has been issued a certificate of verification pursuant to Iowa Code section 147A.23, subsection 2, paragraph “c.”

Adopt the following **new** definitions in alphabetical sequence:

“Department” means the Iowa department of public health.

“Director” means the director of the Iowa department of public health.

ITEM 2. Amend subrule 135.2(1) as follows:

135.2(1) Trauma triage and transfer protocols, approved by the department, shall be utilized to assist personnel from each service program and trauma care facility. This requirement shall not preclude service programs or trauma care facilities from making emergency revisions of the approved triage and transfer protocols when an incident overburdens medical care resources causing unnecessary delay in patient care.

a. Adoption by reference. The “Out-of-Hospital Trauma Triage Destination Decision Protocol” (*Adult and Pediatric*, November 2001) and the “Inter-Trauma Care Facility Triage and Transfer Protocol” (August 1996) are incorporated by reference and adopted as the out-of-hospital trauma triage destination decision and the intertrauma care facility triage and transfer protocols. For any differences which may occur between the adopted references and these administrative rules, the administrative rules shall prevail.

b. The out-of-hospital trauma triage destination decision protocol (*Adult and Pediatric*) and the intertrauma care facility triage and transfer protocol are available through the Iowa Department of Public Health, Bureau of EMS, Lucas State Office Building, Des Moines, Iowa 50319-0075, or the bureau of EMS Web site (www.idph.state.ia.us/ems).

c. No change.

d. ~~All hospitals, emergency care facilities, and service programs shall comply with these rules prior to January 1, 2001.~~ The director, pursuant to rule, may grant a variance from the requirements of rules adopted under this chapter for any hospital, emergency care facility, or service program provided that the variance is related to undue hardships in complying with this chapter or the rules adopted pursuant to this chapter.

ARC 3833B**PUBLIC HEALTH
DEPARTMENT[641]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147A.4, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 136, “Trauma Registry,” Iowa Administrative Code.

The rules in Chapter 136 provide trauma registry guidelines for data reporting by trauma care facilities and ambulance services. These amendments standardize definition language in 641—Chapters 131 through 141 and update trauma care facility categorization level terminology, and trauma data references.

Any interested person may make written comments or suggestions on the proposed amendments on or before December 14, 2004. Such written comments should be directed to Ray Jones, Bureau of EMS, Department of Public Health, 401 SW 7th Street, Suite D, Des Moines, Iowa 50309. E-mail may be sent to rjones@idph.state.ia.us.

A public hearing will be held over the Iowa Communications Network (ICN) on December 14, 2004, from 10 a.m. to 12 noon in the Lucas State Office Building, 6th Floor ICN Room, Des Moines, Iowa. Additional ICN sites for the hearing are scheduled for the following locations:

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11 East 23rd Street
Spencer

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Any person who plans to attend the public hearing and who may require special accommodations, such as those for hearing or mobility impairments, should contact the Department and advise of specific needs.

These amendments are intended to implement Iowa Code chapter 147A.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or

at (515)281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **641—136.1(147A)** as follows:

Amend the following definitions:

“Service program” or “service” means any 24-hour emergency medical care ambulance service, or nontransport service program that has received authorization by the department.

“Trauma care facility” means a hospital or emergency care facility which provides trauma care and has been verified by the department as having *Resource* (Level I), *Regional* (Level II), *Area* (Level III) or *Community* (Level IV) care capabilities and has been issued a certificate of verification pursuant to Iowa Code section 147A.23, subsection 2, paragraph “c.”

Rescind the definition of “emergency care facility.”

Adopt the following **new** definition in alphabetical sequence:

“Director” means the director of the Iowa department of public health.

ITEM 2. Amend subrule 136.2(1) as follows:

136.2(1) Adoption by reference.

a. “Iowa Trauma Registry Patient Data Dictionary” (September 1996 April 2003) is incorporated by reference for inclusion criteria and reportable patient data to be reported to the trauma registry or reported to a trauma care facility. For any differences which may occur between the adopted reference and this chapter, the administrative rules shall prevail.

b. “Iowa Trauma Registry Patient Data Dictionary” is available through the Iowa Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075, or the bureau of EMS Web site (www.idph.state.ia.us/ems).

c. “Iowa EMS Patient Registry Data Dictionary” (January 2004) is incorporated by reference for inclusion criteria and reportable patient data to be reported to the department. For any differences which may occur between the adopted reference and this chapter, the administrative rules shall prevail.

d. “Iowa EMS Patient Registry Data Dictionary” is available through the Iowa Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075, or bureau of EMS Web site (www.idph.state.ia.us/ems).

ITEM 3. Rescind subrule **136.2(3)**, renumber subrule **136.2(2)** as **136.2(3)** and adopt a **new** subrule 136.2(2) as follows:

136.2(2) A verified trauma care facility shall:

a. Submit reportable patient data identified in 136.2(1) via electronic transfer or in writing. Data shall be submitted in a format approved by the department.

b. Submit reportable patient data identified in 136.2(1) to the department for each calendar quarter. Reportable patient data shall be submitted no later than 90 days after the end of the quarter.

c. Submit reportable patient data identified in 136.2(1) to the receiving trauma care facility upon delivery of the injured patient. Data shall be submitted in a format approved by the department.

ITEM 4. Amend subrule **136.2(5)**, paragraph “b,” subparagraph (3), as follows:

(3) The confidentiality of patients and trauma care facilities are is protected pursuant to Iowa Code section 22.7.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 5. Amend subrule **136.2(7)**, paragraph “c,” as follows:

c. ~~All hospitals, emergency care facilities, and service programs shall comply with these rules prior to January 1, 2004.~~ The director, pursuant to rule, may grant a variance from the requirements of rules adopted under this chapter for any hospital, emergency care facility, or service program provided that the variance is related to undue hardships in complying with this chapter or the rules adopted pursuant to this chapter.

ARC 3832B**PUBLIC HEALTH
DEPARTMENT[641]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147A.4, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 137, “Trauma Education and Training,” Iowa Administrative Code.

The rules in Chapter 137 provide trauma training and education requirements for trauma care facility and emergency medical personnel. These amendments standardize definition language in 641—Chapters 131 through 141 and update trauma care facility categorization levels and emergency medical personnel terminology and training requirements.

Any interested person may make written comments or suggestions on the proposed amendments on or before December 14, 2004. Such written comments should be directed to Ray Jones, Bureau of EMS, Department of Public Health, 401 SW 7th Street, Suite D, Des Moines, Iowa 50309. E-mail may be sent to rjones@idph.state.ia.us.

A public hearing will be held over the Iowa Communications Network (ICN) on December 14, 2004, from 10 a.m. to 12 noon in the Lucas State Office Building, 6th Floor ICN Room, Des Moines, Iowa. Additional ICN sites for the hearing are scheduled for the following locations:

Belmond Public Library
440 East Main Street
Belmond

Carroll National Guard Armory
1712 Le Clark Road
Carroll

Dubuque Senior High School
1800 Clarke Drive
Dubuque

Iowa City Public Library
123 South Linn Street
Iowa City

Spencer National Guard Armory
11 East 23rd Street
Spencer

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Any person who plans to attend the public hearing and who may require special accommodations, such as those for hearing or mobility impairments, should contact the Department and advise of specific needs.

These amendments are intended to implement Iowa Code chapter 147A.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **641—137.1(147A)** as follows:

Amend the following definitions:

“Emergency medical care provider” means an individual who has been trained to provide emergency and nonemergency medical care at the first responder, EMT-basic, EMT-intermediate, EMT-paramedic, *paramedic specialist* or other certification levels adopted by rule by the department recognized by the department before 1984 and who has been issued a certificate by the department.

“Service program” or “service” means any 24-hour emergency medical care ambulance service or nontransport service program that has received authorization by the department.

“Trauma care facility” means a hospital or emergency care facility which provides trauma care and has been verified by the department as having *Resource (Level I)*, *Regional (Level II)*, *Area (Level III)* or *Community (Level IV)* care capabilities and has been issued a certificate of verification pursuant to Iowa Code section 147A.23, subsection 2, paragraph “c.”

“Verification” means a process by which the department certifies a hospital or emergency care facility’s capacity to provide trauma care in accordance with criteria established for *Resource (Level I)*, *Regional (Level II)*, *Area (Level III)* and *Community (Level IV)* trauma care facilities and these rules.

Adopt the following **new** definition in alphabetical sequence:

“PS” means paramedic specialist.

ITEM 2. Amend subrule **137.2(1)**, paragraph “c,” as follows:

c. Trauma nursing course objectives are available from the Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075 or the bureau of EMS Web site (www.idph.state.ia.us/ems).

ITEM 3. Rescind and reserve subrule **137.2(2)**.

ITEM 4. Amend rule **641—137.3(147A)** by renumbering Table 3 as Table 2.

ITEM 5. Rescind subrule 137.3(3) and adopt the following **new** subrule in lieu thereof:

137.3(3) Continuing trauma education is required every two years of currently certified emergency medical care providers as follows:

- a. FR or FR-D: 2 continuing education hours.
- b. EMT-A, B, D: 4 continuing education hours.
- c. EMT-I: 4 continuing education hours.
- d. EMT-P: 6 continuing education hours.

ARC 3831B**PUBLIC HEALTH
DEPARTMENT[641]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147A.4, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 138, "Trauma System Evaluation Quality Improvement Committee," Iowa Administrative Code.

The rules in Chapter 138 establish the quality improvement committee for the trauma system. This amendment standardizes definition language in 641—Chapters 131 through 141.

Any interested person may make written comments or suggestions on the proposed amendment on or before December 14, 2004. Such written comments should be directed to Ray Jones, Bureau of EMS, Department of Public Health, 401 SW 7th Street, Suite D, Des Moines, Iowa 50309. E-mail may be sent to rjones@idph.state.ia.us.

This amendment is intended to implement Iowa Code chapter 147A.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend rule **641—138.1(147A)** as follows:

Rescind the definition of "EMS provider."

Adopt the following **new** definition:

"Emergency medical care provider" means an individual who has been trained to provide emergency and non-emergency medical care at the first-responder, EMT-basic, EMT-intermediate, EMT-paramedic, paramedic specialist or other certification levels recognized by the department before 1984 and who has been issued a certificate by the department.

ARC 3830B**PUBLIC HEALTH
DEPARTMENT[641]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147A.4, the Department of Public Health hereby gives Notice of Intended

Action to amend Chapter 139, "Iowa Law Enforcement Emergency Care Provider," Iowa Administrative Code.

The rules in Chapter 139 provide regulatory oversight for the Iowa law enforcement automated external defibrillator program. These amendments standardize definition language in 641—Chapters 131 through 141, update law enforcement training program references and eliminate any references to the public access defibrillation (PAD) program.

Any interested person may make written comments or suggestions on the proposed amendments on or before December 14, 2004. Such written comments should be directed to Ray Jones, Bureau of EMS, Department of Public Health, 401 SW 7th Street, Suite D, Des Moines, Iowa 50309. E-mail may be sent to rjones@idph.state.ia.us.

A public hearing will be held over the Iowa Communications Network (ICN) on December 14, 2004, from 10 a.m. to 12 noon in the Lucas State Office Building, 6th Floor ICN Room, Des Moines, Iowa. Additional ICN sites for the hearing are scheduled for the following locations:

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Iowa City Public Library
123 South Linn Street
Iowa City

Spencer National Guard Armory
11 East 23rd Street
Spencer

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Any person who plans to attend the public hearing and who may require special accommodations, such as those for hearing or mobility impairments, should contact the Department and advise of specific needs.

These amendments are intended to implement Iowa Code chapter 147A.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **641—139.1(147A)** as follows:

Amend the following definitions:

"CPR" means training and successful course completion in cardiopulmonary resuscitation and ~~obstructed airway procedures according to American Heart Association or American Red Cross standards. This includes one rescuer, two rescuer, and child/infant cardiopulmonary resuscitation and adult and child/infant obstructed airway procedures, AED and obstructed airway procedures for all age groups according to recognized national standards.~~

"Iowa law enforcement emergency care provider" or "**ILEECP**" means an individual who is certified by the Iowa law enforcement academy as an Iowa peace officer, and has

PUBLIC HEALTH DEPARTMENT[641](cont'd)

successfully completed an emergency care provider curriculum approved by the department, and who is currently certified by the department as an Iowa law enforcement emergency care provider.

“~~Training~~ Iowa law enforcement training program” means ~~an area community college, the law enforcement academy or hospital or a law enforcement training program approved by the department to conduct ILEECP emergency medical care training.~~

Rescind the definition of “EMS.”

Adopt the following new definition in alphabetical sequence:

“Emergency medical services” or “EMS” means an integrated medical care delivery system to provide emergency and nonemergency medical care at the scene or during out-of-hospital patient transportation in an ambulance.

ITEM 2. Amend rule 641—139.3(147A), introductory paragraph, as follows:

641—139.3(147A) Iowa law enforcement emergency care providers—requirements for enrollment in training programs. To be enrolled in a *an Iowa law enforcement training program*, an applicant shall:

ITEM 3. Amend the catchwords of rule 641—139.5(147A) as follows:

641—139.5(147A) Training Iowa law enforcement training programs.

ITEM 4. Amend subrule 139.6(2) as follows:

139.6(2) Iowa law enforcement AED service program—registration, guidelines, and standards. An Iowa law enforcement agency may register with the department to provide AED coverage. Iowa law enforcement AED service programs seeking registration with the department shall:

- a. Complete the department’s ~~PAD~~ AED service program registration form.
- b. Provide a ~~PAD~~ *an AED liaison* who shall be responsible for supervision of the ~~PAD~~ AED service program.
- c. No change.
- d. Ensure that the service program’s ~~PAD~~ AED providers maintain AED and CPR skill competency.
- e. and f. No change.

ARC 3829B

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147A.4, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 140, “Emergency Medical Services System Development Grants Fund,” Iowa Administrative Code.

The rules in Chapter 140 provide the guidelines for the emergency medical services system development grant funding. These amendments standardize definition language in

641—Chapters 131 through 141, add definitions that further clarify the funding and eliminate unnecessary rule language.

Any interested person may make written comments or suggestions on the proposed amendments on or before December 14, 2004. Such written comments should be directed to Ray Jones, Bureau of EMS, Department of Public Health, 401 SW 7th Street, Suite D, Des Moines, Iowa 50309. E-mail may be sent to rjones@idph.state.ia.us.

A public hearing will be held over the Iowa Communications Network (ICN) on December 14, 2004, from 10 a.m. to 12 noon in the Lucas State Office Building, 6th Floor ICN Room, Des Moines, Iowa. Additional ICN sites for the hearing are scheduled for the following locations:

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Carroll

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Dubuque

Iowa City Public Library
123 South Linn Street
Iowa City

Spencer National Guard Armory
11 East 23rd Street
Spencer

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Any person who plans to attend the public hearing and who may require special accommodations, such as those for hearing or mobility impairments, should contact the Department and advise of specific needs.

These amendments are intended to implement Iowa Code chapters 147A and 135.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **641—140.1(135)** as follows:
Amend the following definitions:

“Emergency medical services” or “EMS” means an integrated medical care delivery system to provide emergency and nonemergency medical care *at the scene or during out-of-hospital patient transportation in an ambulance.*

“EMS medical care provider” means *an individual who has been trained to provide emergency and nonemergency medical care personnel, other health care practitioners or members of the general public involved in the provision of emergency medical care at the first-responder, EMT-basic, EMT-intermediate, EMT-paramedic, paramedic specialist or other certification levels recognized by the department before 1984 and who has been issued a certificate by the department.*

“Training” means EMS-related courses designed and intended for EMS providers *and includes any item used in training including, but not limited to, slides, films, manne-*

PUBLIC HEALTH DEPARTMENT[641](cont'd)

quins, emergency care devices, books and other items pertinent and necessary for training purposes.

Rescind the definitions of “EMS” and “training aid.”

Adopt the following **new** definition in alphabetical sequence:

“Infrastructure” means those elements that make up an EMS system.

ITEM 2. Amend rule 641—140.4(135) as follows:

Amend the introductory paragraph as follows:

641—140.4(135) County EMS system development grants. Grants for EMS system development purposes *proposals* at the regional, county, and local level are available *through a competitive selection process* from the department for equipment, training, and support of infrastructure needs as identified in the countywide EMS strategic plan. Funds for training will be used to train members of a service program that provides service on a regular basis to residents of the county being funded. Funds for equipment require a \$1 match of regional, county, or local funds for each \$1 of EMS system development grant funds. ~~Infrastructure reimbursement for personnel services or office supplies/equipment, or both, for continuous funding of EMS system development projects may be approved using a yearly adjustment goal of 100 percent for years one and two, 75 percent for year three, 50 percent for year four, 25 percent for year five, and 0 percent thereafter. EMS system development grant funds may be used by an ambulance or nontransport service located in a neighboring county if service is provided on a regular basis to residents of the county receiving funding.~~

Rescind subrule **140.4(1)** and renumber subrules **140.4(2)** and **140.4(3)** as **140.4(1)** and **140.4(2)**.

Amend renumbered subrule 140.4(1) as follows:

140.4(1) Eligible costs. Costs which are eligible for EMS system development grant expenditures as defined in the request for proposal (RFP) include ~~items identified in the countywide EMS system development plan that are consistent with the following:~~

a. *Training:*

a. (1) Reimbursement for initial training tuition, fees and materials up to an amount that is the lowest fee charged by the training entity following successful completion of an EMS course. Practical and written examination fees may also be included.

b. (2) Payment of continuing education tuition, fees and materials. Education provided by an EMS service program for the general public is an allowable expense.

c. (3) Payment for EMS training aids.

d. ~~Defibrillators.~~

(4) *Other equipment as defined by the RFP.*

e. ~~Nondisposable essential ambulance equipment, as defined by prevailing standards and existing medical director-approved protocols.~~

f. ~~Communications pagers, radios, and base repeaters.~~

b. *Infrastructure support:*

g. (1) Development and enhancement of EMS systems.

h. (2) Office equipment and supplies necessary to coordinate a countywide EMS system.

i. (3) Personnel services for staffing to provide countywide continuous quality improvement and medical direction. The title to any EMS equipment purchased with these funds shall not lie with the department, but shall be determined by the county EMS association.

ITEM 3. Rescind rules **641—140.5(135)** and **641—140.6(135)**.

ARC 3840B

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147A.4, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 141, “Love Our Kids Grant,” Iowa Administrative Code.

The rules in Chapter 141 provide guidance regarding the Love Our Kids Grant, a competitive grant funding program involved in the development, promotion and implementation of injury prevention and education initiatives for children in Iowa. This amendment standardizes definition language in 641—Chapters 131 through 141.

Any interested person may make written comments or suggestions on the proposed amendment on or before December 14, 2004. Such written comments should be directed to Ray Jones, Bureau of EMS, Department of Public Health, 401 SW 7th Street, Suite D, Des Moines, Iowa 50309. E-mail may be sent to rjones@idph.state.ia.us.

This amendment is intended to implement Iowa Code chapter 147A.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendment is proposed.

Amend rule **641—141.1(321)**, definition of “service program,” as follows:

“Service program” or “service” means any 24-hour emergency medical care ambulance service, or nontransport service that has received authorization by the department.

ARC 3820B

REVENUE DEPARTMENT[701]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 421.14, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 10, “Interest, Penalty, Exceptions to Penalty, and Jeopardy Assessments,” Iowa Administrative Code.

Iowa Code section 421.7 requires the Director of the Department of Revenue to determine the interest rate for each calendar year. The Director has determined that the rate of interest on interest-bearing taxes arising under Title XVI

REVENUE DEPARTMENT[701](cont'd)

shall be 6 percent for the calendar year 2005 (0.5% per month). The Department will also pay interest at the 6 percent rate on refunds.

The proposed amendment will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

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

The Department has determined that this proposed amendment may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than December 27, 2004, to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on this proposed amendment on or before December 14, 2004. Such written comments should be directed to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Compliance Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by December 17, 2004.

This amendment is intended to implement Iowa Code section 421.7.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend rule 701—10.2(421) by adding the following **new** subrule:

10.2(24) Calendar year 2005. The interest rate upon all unpaid taxes which are due as of January 1, 2005, will be 6 percent per annum (0.5% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2005. In addition, this interest will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2005. This interest rate of 6 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2005.

ARC 3818B

REVENUE DEPARTMENT[701]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 421.17(19) and 2003 Iowa Acts, First Extraordinary Session, chapter 2, section 135, the Department of Revenue hereby gives Notice of Intended Action to adopt Chapter 211, "Definitions," Chapter 219, "Sales and Use Tax on Construction Activities," and Chapter 231, "Exemptions Primarily of Benefit to Consumers," Iowa Administrative Code.

The proposed new chapters are intended to implement chapter 2, division XIV, of 2003 Iowa Acts, First Extraordinary Session, otherwise known as the Streamlined Sales and Use Tax Act. The newly drafted rules are intended to accomplish three things: (1) to explain the changes to Iowa sales and use tax law made by the Streamlined Sales and Use Tax Act; (2) to preserve the existing interpretation of portions of Iowa sales and use tax law which the Streamlined Sales and Use Tax Act does not change; and (3) to omit from the new rules as many references as possible to sales and use tax law as it existed prior to July 1, 2004, the effective date of the Streamlined Sales and Use Tax Act.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

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

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than December 27, 2004, to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before December 14, 2004. Such written comments should be directed to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Compliance Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by December 17, 2004.

REVENUE DEPARTMENT[701](cont'd)

These amendments are intended to implement 2003 Iowa Acts, First Extraordinary Session, chapter 2, division XIV.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

EDITOR'S NOTE: References to 2005 Iowa Code chapter 423 may be found in 2003 Iowa Acts, First Extraordinary Session, chapter 2, division XIV.

Adopt the following new chapters:

CHAPTER 211
DEFINITIONS

This chapter includes cross references to provisions in 701—Chapters 15 to 20, 21, 26, 30, 32 and 33 that were applicable prior to July 1, 2004.

701—211.1(423) Definitions. The definitions set out in this chapter are applicable wherever the terms they define appear in this title unless the context indicates otherwise.

“Agent” means a person appointed by a seller to represent the seller before the member states.

“Agreement” means the streamlined sales and use tax agreement authorized by 2003 Iowa Acts, First Extraordinary Session, chapter 2, division XIV, to provide a mechanism for establishing and maintaining a cooperative, simplified system for the application and administration of sales and use taxes.

“Agricultural production” is limited to what would ordinarily be considered a farming operation undertaken for profit. The term “agricultural production” refers to the raising of crops or livestock for market on an acreage. See *Bezdek's Inc. v. Iowa Department of Revenue* (Linn County District Court, May 14, 1984). Included within the meaning of the phrase “agricultural production” is any feedlot operation whether or not the land upon which a feedlot operation is located is used to grow crops to feed the livestock in the feedlot and regardless of whether or not the livestock fed are owned by persons conducting the feedlot operation, and operations growing and raising hybrid seed corn or other seed for sale to nurseries, ranches, orchards, and dairies. “Agricultural production” includes the raising of flowering, ornamental, or vegetable plants in commercial greenhouses or elsewhere for sale in the ordinary course of business. “Agricultural production” also includes any kind of aquaculture; commercial greenhouses; and raising catfish. Logging, production of Christmas trees, beekeeping, and the raising of mink, other nondomesticated furbearing animals, and nondomesticated fowl (other than ostriches, rheas, and emus) continue to be excluded from the term “agricultural production.” The above list of exclusions and inclusions within the term “agricultural production” is not exhaustive. “Agricultural products” includes flowering, ornamental, or vegetable plants and those products of aquaculture.

“Business” means any activity engaged in by any person or caused to be engaged in by the person with the object of gain, benefit, or advantage, either direct or indirect.

“Certificate of title” means a certificate of title issued for a vehicle or for manufactured housing under Iowa Code chapter 321.

“Certified automated system” means software certified under the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to

remit to the appropriate state, and maintain a record of the transaction.

“Certified service provider” means an agent certified under the agreement to perform all of a seller's sales or use tax functions, other than the seller's obligation to remit tax on its own purchases.

“Chemical” means a substance which is primarily used for producing a chemical effect. A chemical effect results from a chemical process wherein the number and kind of atoms in a molecule are changed in form (e.g., where oxygen and hydrogen are combined to make water). A chemical process is distinct from a physical process wherein only the state of matter changes (e.g., where water is frozen into ice or heated into steam).

“Computer” means an electronic device that accepts information in digital or similar form and manipulates the information for a result based on a sequence of instructions.

“Computer software” means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

“Delivered electronically” means delivered to the purchaser by means other than tangible storage media.

“Delivery charges” means charges assessed by a seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing charges.

“Department” means the department of revenue.

“Direct mail” means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items is not billed directly to the recipients. “Direct mail” includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. “Direct mail” does not include multiple items of printed material delivered to a single address.

“Director” means the director of revenue.

“Domesticated fowl” means any domesticated bird raised as a source of food, either eggs or meat. “Domesticated fowl” includes, but is not limited to, chickens, ducks, turkeys, pigeons, ostriches, rheas, and emus which are raised for meat rather than for racing or as pets. Excluded from the meaning of “domesticated fowl” are nondomesticated birds, such as pheasants, raised for meat or any other purpose.

“Educational institution” means an institution which primarily functions as a school, college, or university with students, faculty, and an established curriculum. The faculty of an educational institution must be associated with the institution, and the curriculum must include basic courses which are offered every year. “Educational institution” includes an institution primarily functioning as a library.

“Electronic” means related to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

“Farm deer” means the same as defined in Iowa Code section 170.1.

“Farm machinery and equipment” means machinery and equipment used in agricultural production.

“First use of a service” means when a service is rendered, furnished, or performed in Iowa or, if rendered, furnished, or performed outside of Iowa, when the product or result of the service is used in Iowa.

“Goods, wares, or merchandise” means the same as “tangible personal property.”

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“Governing board” means the group comprised of representatives of the member states of the agreement, which is created by the agreement to be responsible for the agreement’s administration and operation.

“Implement of husbandry” means any tool, equipment, or machine necessary to the carrying on of the business of agricultural production and without which the work could not be done. *Reaves v. State*, 50 S.W.2d 286 (Tex. Crim. App. Ct. 1932). An airplane or helicopter designed for and used primarily in spraying or dusting of plants which are raised as part of agricultural production for market is an implement of husbandry.

“Installed purchase price” means the amount charged, valued in money whether paid in money or otherwise, by a building contractor to convert manufactured housing from tangible personal property into realty. “Installed purchase price” includes, but is not limited to, amounts charged for the building contractor’s installing a foundation and electrical and plumbing hookups. “Installed purchase price” excludes any amount charged for landscaping in connection with the conversion.

“Lease or rental.”

1. “Lease or rental” means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A “lease or rental” may include future options to purchase or extend.

2. “Lease or rental” includes agreements covering motor vehicles and trailers when the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. Section 7701(h)(1).

3. “Lease or rental” does not include any of the following:

- A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments.
- A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments, and payment of any option price does not exceed the greater of \$100 or 1 percent of the total required payments.
- Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this paragraph, an operator must do more than maintain, inspect, or set up the tangible personal property.

4. This definition of “lease or rental” shall be used for sales and use tax purposes regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the Uniform Commercial Code, or other provisions of federal, state, or local law.

“Livestock” means domestic animals which are raised on a farm as a source of food or clothing, *Van Clief v. Comptroller of State of Md.*, 126 A.2d 865 (Md. 1956) and *In the Matter of Simonsen Mill Inc.*, Declaratory Ruling of the State Board, Docket No. 211, April 24, 1980. “Livestock” includes cattle, sheep, hogs, goats, chickens, ducks, turkeys, ostriches, rheas, emus, bison, and farm deer. “Farm deer” is defined as set forth in Iowa Code section 170.1 and commonly includes animals belonging to the Cervidae family, such as fallow deer, red deer or elk and sika. However, “farm deer” does not include unmarked free-ranging elk. Fish and any other animals which are products of aquaculture are considered to be “livestock” as well.

Excluded from the term “livestock” are horses, mules, other draft animals, dogs, cats, and other pets. Also excluded from the term “livestock” are mink, bees, or other nondomesticated animals even if raised in captivity and even if raised as a source of food or clothing. Also excluded from “livestock” is any animal raised for racing.

“Manufactured housing” means “manufactured home” as defined in Iowa Code section 321.1.

“Manufacturer” means any person, firm, or corporation that purchases, receives, or holds personal property for the purpose of adding to its value by any process of manufacturing, refining, purifying, or combining of different materials or by packing of meats with an intent to sell at a gain or profit.

“Member state” means any state which has signed the agreement.

“Mobile home” means “manufactured or mobile home” as defined in Iowa Code section 321.1.

“Model 1 seller” means a seller that has selected a certified service provider as its agent to perform all the seller’s sales and use tax functions, other than the seller’s obligation to remit tax on its own purchases.

“Model 2 seller” means a seller that has selected a certified automated system to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.

“Model 3 seller” means a seller that has sales in at least five member states, has total annual sales revenue of at least \$500 million, has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this definition, a “seller” includes an affiliated group of sellers using the same proprietary system.

“Nonresidential commercial operations” means industrial, commercial, mining, or agricultural operations, whether for profit or not, but does not include apartment complexes or mobile home parks.

“Not registered under the agreement” means lack of registration by a seller with the member states under the central registration system referenced in Iowa Code Supplement section 423.11, subsection 4.

“Person” means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

“Place of business” means any warehouse, store, place, office, building, or structure where goods, wares, or merchandise is offered for sale at retail or where any taxable amusement is conducted, or each office where gas, water, heat, communication, pay television, or electric services are offered for sale at retail. When a retailer or amusement operator sells merchandise by means of vending machines or operates music or amusement devices by coin-operated machines at more than one location within the state, the office, building, or place where the books, papers, and records of the taxpayer are kept shall be deemed to be the taxpayer’s place of business.

“Plants” means fungi such as mushrooms, crops commonly grown in this state such as corn, soybeans, oats, hay, alfalfa hay, wheat, sorghum, and rye. Also included within the meaning of the term “plants” are flowers, small shrubs, and fruit trees. Excluded from the meaning of the term “plants” are fir trees raised for Christmas trees and any trees raised to be harvested for wood.

“Prewritten computer software” means software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. The combining of two or more prewritten

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computer software programs or prewritten portions of prewritten programs does not cause the combination to be other than prewritten computer software. "Prewritten computer software" also means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser.

When a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of such person's modifications or enhancements. Prewritten computer software or a prewritten portion of the prewritten software that is modified or enhanced to any degree, when such modification or enhancement is designed and developed to the specifications of a specific purchaser, still is classified as prewritten computer software. However, when there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute prewritten computer software.

"Property purchased for resale in connection with the performance of a service" means property which is purchased for resale in connection with the rendition, furnishing, or performance of a service by a person who renders, furnishes, or performs the service if all of the following occur:

1. The provider and user of the service intend that a sale of the property will occur.
2. The property is transferred to the user of the service in connection with the performance of the service in a form or quantity capable of a fixed or definite price value.
3. The sale is evidenced by a separate charge for the identifiable piece of property.

"Purchase" means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration.

"Purchase price" means the same as "sales price" as defined in this rule.

"Purchaser" means a person to whom a sale of personal property is made or to whom a service is furnished.

"Reagent" means a substance used for various purposes (i.e., in detecting, examining, or measuring other substances, in preparing materials, in developing photographs) because it takes part in one or more chemical reactions or biological processes. A reagent is also a substance used to convert one substance into another by means of the reaction that it causes. To be a reagent for purpose of the exemption, a substance must be primarily used as a reagent.

"Receive" and "receipt" mean any of the following:

1. Taking possession of tangible personal property.
2. Making first use of a service.
3. Taking possession or making first use of digital goods, whichever comes first.

"Receive" and "receipt" do not include possession by a shipping company on behalf of a purchaser.

"Registered under the agreement" means registration by a seller under the central registration system referenced in 2005 Iowa Code section 423.11, subsection 4.

"Relief agency" means the state or any county, city and county, city, or district thereof, or any agency engaged in actual relief work.

"Retailer" means and includes every person engaged in the business of selling tangible personal property or taxable services at retail or the furnishing of gas, electricity, water, pay television, or communication service, and tickets or admissions to places of amusement and athletic events or operating amusement devices or other forms of commercial

amusement from which revenues are derived. However, when in the opinion of the director it is necessary for the efficient administration of these rules to regard any salespersons, representatives, truckers, peddlers, or canvassers as agents of the dealers, distributors, supervisors, employers, or persons under whom the salespersons, representatives, truckers, peddlers, or canvassers operate or from whom they obtain tangible personal property sold by them irrespective of whether or not they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers, or persons, the director may so regard them, and may regard such dealers, distributors, supervisors, employers, or persons as retailers for the purposes of these rules. "Retailer" includes a seller obligated to collect sales or use tax.

"Retailer maintaining a place of business in this state" or any like term includes any retailer having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any representative operating within this state under the authority of the retailer or its subsidiary, irrespective of whether that place of business or representative is located here permanently or temporarily, or whether the retailer or subsidiary is admitted to do business within this state pursuant to Iowa Code chapter 490.

"Retailers who are not model sellers" means all retailers other than model 1, model 2, or model 3 sellers.

"Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose other than resale, sublease, or subrent.

"Sales" or "sale" means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for consideration.

"Sales price" means the measure subject to sales tax.

a. "Sales price" means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for any of the following:

1. The seller's cost of the property sold.
2. The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expenses of the seller.
3. Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges.

4. Delivery charges.

5. Installation charges.

6. The value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise.

7. Credit for any trade-in authorized by 2005 Iowa Code section 423.3, subsection 58.

b. "Sales price" does not include:

1. Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale.

2. Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser.

3. Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.

4. The amounts received for charges included in paragraph "a," paragraphs "3" through "7," if they are separately

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contracted for and separately stated on the invoice, billing, or similar document given to the purchaser.

5. Trade discounts given or allowed by manufacturers, distributors, or wholesalers to retailers or by manufacturers or distributors to wholesalers and payments made by manufacturers, distributors, or wholesalers directly to retailers or by manufacturers or distributors to wholesalers to reduce the sales price of the manufacturer's, distributor's, or wholesaler's product or to promote the sale or recognition of the manufacturer's, distributor's, or wholesaler's product. This paragraph does not apply to coupons issued by manufacturers, distributors, or wholesalers to consumers.

c. For the purposes of this definition, the sales price from a rental or lease includes rent, royalties, and copyright and license fees.

"Sales tax" means the tax levied under 2005 Iowa Code sections 423.2 to 423.4.

"Seller" means any person making sales, leases, or rentals of personal property or services.

"Services" means all acts or services rendered, furnished, or performed, other than services used in processing of tangible personal property for use in retail sales or services, for an employer, as defined in Iowa Code section 422.4, subsection 3, for a valuable consideration by any person engaged in any business or occupation specifically enumerated in 2005 Iowa Code section 423.2. The tax shall be due and collectible when the service is rendered, furnished, or performed for the ultimate user of the service.

"Services used in the processing of tangible personal property" means the reconditioning or repairing of tangible personal property of the type normally sold in the regular course of the retailer's business and which is held for sale.

"Solvent" means a substance in which another substance can be dissolved and which is primarily used for that purpose.

"Sorbent" means a solid material, often in a powder or granular form, which acts to retain another substance, usually on the sorbent's surface, thereby removing the other substance from the gas or liquid phase. The sorbent and the second material bond together at the molecular or atomic scale via physiochemical interactions. A substance is not a sorbent based on an ability to absorb heat or thermal energy.

"State" means any state of the United States and the District of Columbia.

"System" means the central electronic registration system maintained by Iowa and other states which are signatories to the agreement.

"Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. "Tangible personal property" includes electricity, water, gas, steam, and prewritten computer software.

"Tax" means the tax upon retail sales or use of tangible personal property or taxable services.

"Taxpayer" means any person who is subject to Iowa sales and use tax, whether acting on the person's own behalf or as a fiduciary.

"Trailer" means every trailer, as is now or may be hereafter so defined by Iowa Code chapter 321, which is required to be registered or is subject only to the issuance of a certificate of title under Iowa Code chapter 321.

"Use" means and includes the exercise by any person of any right or power over tangible personal property incident to the ownership of that property. A retailer's or building contractor's sale of manufactured housing for use in this state, whether in the form of tangible personal property or of realty, is a use of that property.

"User" means the immediate recipient of the services who is entitled to exercise a right of power over the product of such services.

"Use tax" means the tax levied under 2005 Iowa Code chapter 423, subchapter III, for which the retailer collects and remits tax to the department.

"Value of services" means the price to the user exclusive of any direct tax imposed by the federal government or under these rules.

"Vehicles subject to registration" means any vehicle subject to registration pursuant to Iowa Code section 321.18.

This rule is intended to implement 2003 Iowa Acts, First Extraordinary Session, chapter 2, division XIV.

CHAPTER 219

SALES AND USE TAX ON
CONSTRUCTION ACTIVITIES

Rules in this chapter include cross references to provisions in 701—Chapters 15 to 20, 21, 26, 30, 32 and 33 that were applicable prior to July 1, 2004.

701—219.1(423) General information. 2005 Iowa Code subsection 423.2(1) imposes a tax upon the sales price from the sales of tangible personal property, consisting of goods, wares or merchandise sold at retail in this state to consumers and users. Also subject to tax are certain enumerated services. Those services relating to the construction industry include carpentry; roof, shingle and glass repair; electrical repair and installation; excavating and grading; house and building moving; laboratory testing; landscaping; machinery operator services; machine repair of all kinds; oilers and lubricators; painting, papering, and interior decorating; pipe fitting and plumbing; wood preparations; termite, bug, roach, and pest eradicators; tin and sheet metal repair; welding; well drilling; and wrecking services. Under Iowa law, contractors are consumers or users of certain tangible personal property. Contractors may also be retailers of tangible personal property and taxable enumerated services. It should be noted that these services are exempt from taxation when performed on or in connection with new construction, reconstruction, alteration, expansion, or remodeling of a building or structure. The services of a general building contractor, architect or engineer are exempt from tax when performed on or in connection with new construction, reconstruction, alteration, expansion, or remodeling of a building or structure. For the purposes of this exemption, a structure is defined as that which is artificially built up or composed of parts joined together in some definite manner and which also has some obvious or apparent functional use or purpose. Nonexclusive examples of structures include buildings; roads, whether paved or otherwise; dikes; drainage ditches; and ponds. See rule 219.12(423) relating to structures.

This chapter details the obligation of contractors, contractor-retailers, retailers, and repairpersons to pay or collect sales tax on the sales price from sales of building materials, supplies, equipment, and other tangible personal property and the obligation of these parties to collect tax or claim exemption for their performances of taxable services. How one is classified, whether as a contractor, contractor-retailer, retailer, or repairperson is the basis for determining many of those obligations. It can be very difficult for a person starting a business to determine if that business will be engaged in contracting, retailing, a combination of the two, or providing repair services. However, one status must be chosen. Any reasonable assessment of a new business's status will be honored by the department. A status, once chosen, should not be changed, unless it has become clear from an extended course

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of dealing that the business has become something other than what it was established to be. For instance, if a business is founded to engage in contracting and purchases construction materials based on the fact that it is a contractor, but the founder must sell construction materials at retail if the business is to survive, and after two years' operation half the revenue is from construction contracts and half from retail sales, then the business has become a contractor-retailer and henceforth should purchase construction materials based on that status. Changing the status of a business from job to job to avoid the obligation to pay or collect tax is not a lawful activity.

2005 Iowa Code section 423.5 imposes a tax that is assessed upon tangible personal property purchased for use in this state and on taxable services which are rendered, furnished or performed in Iowa or where the product or result of such service is used in Iowa. "Use" of tangible personal property in Iowa is defined to mean and include the exercise by any person of any right or power over tangible personal property incident to the ownership of that property.

701—219.2(423) Contractors—consumers of building materials, supplies, and equipment by statute. 2005 Iowa Code subsection 423.2(1)"b" provides that sales of building materials, supplies and equipment to owners, contractors, subcontractors or builders for the erection of buildings or the alteration, repair or improvement of real property are retail sales in whatever quantity sold. This means that a contractor, subcontractor, or builder cannot claim an exemption for resale when purchasing building materials or supplies even if the contractor, subcontractor, or builder later separately itemizes material and labor charges for construction contracts. Building materials and supplies would generally consist of items which are incorporated into real property, lose their identity as tangible personal property and cannot be removed without altering the realty, or which are consumed by the contractor during the performance of the construction contract. See subrules 219.3(1), 219.3(2) and 219.3(3). Building equipment would ordinarily consist of machinery and tools. See subrule 219.3(4). The fact that a contractor, subcontractor or builder holds an Iowa retail sales tax permit and has a tax number does not entitle that person to purchase building materials, supplies and equipment without paying sales tax to the vendor. See rules 219.3(423) and 219.4(423).

When bidding on a contract, a contractor (general, special or subcontractor) should anticipate that sales or use taxes will increase the cost of materials by the tax unless the sponsor is a designated exempt entity; reference 701—subrule 19.12(5). The necessary allowance should be made in figuring the bid inasmuch as the contractor will be held responsible for paying the tax on building supplies, materials and equipment. The tax should not be identified as a separate item in the formal bid since the contractor cannot charge sales tax.

701—219.3(423) Sales of building materials, supplies, and equipment to contractors, subcontractors, builders or owners. Suppliers or dealers that sell materials and supplies to contractors, subcontractors, builders or owners are required to collect Iowa sales tax from those persons based upon the sales price from such sales. Reference 701—subrule 19.12(5), which deals with construction contracts with designated exempt entities, for an explanation of one of the few exceptions to this requirement. The fact that a contractor, subcontractor, or builder holds an Iowa retail sales tax permit and has a tax number does not entitle that person to purchase building materials, supplies and equipment without paying

sales tax to the vendor. See rules 219.2(423) and 219.4(423). Materials purchased out of state for use in Iowa are subject to the Iowa use tax which is payable in the quarter that the materials are delivered into the state.

219.3(1) Building materials. The term "building materials" as used in this rule means materials used in construction work, and is not limited to materials used in constructing a building with sides and covering. The term may also include any type of materials used for improvement of the premises or anything essential to the completion of a building or structure for the use intended. *State v. James A. Head & Company, Inc.*, 306 So. 2d 5 (Ala. 1974).

219.3(2) Building supplies. The term "building supplies" as used in this rule means anything that is furnished for and used directly in the carrying on of the work of an owner, contractor, subcontractor or builder and which is used or consumed by the contractor. Such items do not have to enter into and become a physical part of the structure like building materials, but they do become as much a part of the structure as the labor which is performed on it. *United States Fidelity & Guaranty Co. v. Feenaughty Machinery Co.*, 85 P.2d 1085, 197 Wash. 569.

219.3(3) Typical items. While not intended to be inclusive, the following is a list of typical items regarded as building materials and supplies:

- Asphalt
- Bricks
- Builders' hardware
- Caulking material
- Cement
- Central air conditioning
- Cleaning compounds
- Conduit
- Doors
- Ducts
- Electric wiring, connections, and switching devices
- Fencing materials
- Flooring*
- Glass
- Gravel
- Insulation
- Lath
- Lead
- Lighting fixtures
- Lime
- Linoleum*
- Lubricants
- Lumber
- Macadam
- Millwork
- Modular and mobile homes
- Mortar
- Oil
- Paint
- Paper
- Piping, valves, and pipe fittings
- Plaster
- Plates and rods used to anchor masonry foundations
- Plumbing supplies
- Polyethylene covers
- Power poles, towers, and lines
- Putty
- Reinforcing mesh
- Rock salt
- Roofing
- Rope
- Sand
- Sheet metal
- Steel
- Stone

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Stucco
 Tile
 Wallboard
 Wall coping
 Water conditioners
 Weather stripping
 Windows
 Window screens
 Wire netting and screen
 Wood preserver

*Floor coverings which are shaped to fit a particular room or area and which are attached to the supporting floor with cement, tacks or tack strips or by some other method making a permanent attachment are considered to be building materials. Reference rule 701—16.48(422,423) for an exception concerning carpeting. Carpeting (whether attached to the floor or not) is not treated as a building material for the purposes of this chapter. Rugs, mats and linoleum types of floor coverings which are not attached but which are simply laid on finished floors are also not considered to be building materials.

219.3(4) Building equipment. The term “building equipment” as used in this rule means any vehicle, machine, tool, implement or other device used by a contractor in erecting structures for others, or reconstructing, altering, expanding or remodeling property of others which does not become a physical component part of the property upon which work is performed, and which is not necessarily consumed in the performance of such work. “Building equipment” includes, but is not limited to, such items as:

Compressors
 Drill presses
 Electric generators
 Forms
 Hand tools
 Lathes
 Replacement parts for equipment
 Scaffolds
 Tools
 Vehicles including grading, lifting and excavating vehicles

Construction equipment purchased by a contractor which is intended for use in the performance of an Iowa construction contract is subject to the Iowa sales or use tax. Equipment which is rented for use on or in connection with an Iowa construction contract would normally be rented subject to tax. See rule 219.21(423) for an explanation of the existing exemption in favor of rented machinery used by a contractor on a job site.

701—219.4(423) Contractors, subcontractors or builders who are retailers. In some instances, contractors, subcontractors and builders are in a dual business which includes reselling to the general public on a recurring “over-the-counter” basis the same type of building materials and supplies which are used by the contractors, subcontractors and builders in their own construction work. A person operating in such a manner is referred to in this rule as a contractor-retailer. Any person who is engaged in the performance of construction contracts and who also sells building materials or other items at retail is obligated to examine the person’s business and determine if it is that of a contractor or a contractor-retailer. A sale by a contractor-retailer of building materials, supplies and equipment which does not provide for installation of the merchandise sold is considered a retail sale and subject to sales tax. Conversely, a sale by a contractor-retailer of building supplies, materials and equipment which provides for installation of the merchandise is considered a construction contract and tax shall be paid by the contractor-retailer based upon the cost of materials at the time the materials are withdrawn from inventory for use in a construction contract per-

formed in Iowa. When a contractor-retailer does repair work, the contractor-retailer is acting as a retailer and not a contractor and must collect tax on the sales price charged for materials used in the repair and on the sales price charged for any labor used in the repair which is a taxable service or on the entire charge if materials and labor are not separately invoiced. Reference rule 701—18.31(422,423) and rule 219.13(423).

The following is a list of the characteristics of the usual contractor-retailer:

1. A contractor-retailer is a business which makes frequent retail sales to the public or to other contractors and also engages in the performance of construction contracts (see rule 219.8(423)). In determining whether a business is a contractor-retailer or a retailer only, the department looks to the totality of business activity and not only to one portion of the business’s activity. Thus, the maintenance of a small retail outlet does not automatically transform a contractor-retailer into a retailer, and a large number of retail sales without a retail outlet can qualify a business as a contractor-retailer.

2. A business cannot claim the status of a contractor-retailer unless the business is in possession of a valid sales tax permit to report tax due from retail sales and from withdrawals of materials or supplies from inventory for use in construction contracts.

3. A contractor-retailer must purchase building materials, supplies, and equipment placed in its inventory for resale; the contractor-retailer should not pay sales or use tax to its suppliers for these items. Instead, the contractor-retailer should provide suppliers with valid resale exemption certificates. When a valid certificate is furnished, the vendor is relieved from the responsibility of collecting the tax if the purchaser has demonstrated that the purchaser is a contractor-retailer under the provisions of this rule. Reference rule 701—15.3(422,423) and rule 219.19(423) for a detailed explanation of this matter.

4. A contractor-retailer purchasing construction material which will not be placed in its inventory must purchase that material subject to Iowa sales or use tax. For example, if a contractor-retailer purchases wet concrete for use in a construction project, that purchase is taxable.

5. A contractor-retailer usually has a retail outlet, but if not, frequent sales to individuals or other contractors qualify a business as a contractor-retailer.

6. Contractor-retailers do not pay tax on materials withdrawn from inventory for use in construction projects performed outside Iowa. See 2005 Iowa Code subsection 423.2(1)“b.”

The business records of a contractor-retailer must clearly reflect the use made of items purchased, and the records must be in such form that the director can readily determine that the proper sales and use tax liability is being reported and paid.

The following examples are offered to illustrate the responsibility for paying and remitting sales tax under this rule:

EXAMPLE 1. ABC Company operates a retail outlet that sells lumber and other building materials and supplies. ABC Company is also a contractor which builds residential and commercial structures. ABC Company would be considered a contractor-retailer and would, therefore, purchase all inventory items for resale. Those items which are used in the performance of a construction contract would be subject to tax in the period that they are withdrawn from inventory. The tax would be computed on the cost of the items withdrawn from inventory. Those items which are sold over the counter in the retail outlets would be subject to tax at the time of sale.

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The tax would be computed on the over-the-counter sales price.

EXAMPLE 2. EFG Company is a mechanical contractor and has no retail outlets. EFG Company rarely sells any of its inventory to other persons or to other contractors. EFG Company would not be considered a contractor-retailer under this rule. However, EFG Company would be considered a contractor and must pay tax to its vendor at the time it purchases any building materials, supplies and equipment. However, on those rare occasions when an inventory item is sold to another person or to another contractor, tax must be collected at the time of sale; therefore, EFG Company should have a sales tax permit. An adjustment can be made to the sales tax report by taking a credit for tax previously paid on the item sold.

EXAMPLE 3. Home Town Construction Company is owned and operated by two individuals in a rural Iowa farming community. They do not have a retail outlet but they frequently make sales of building materials which are in their inventory to local residents. Home Town Construction Company would be a contractor-retailer and could purchase all inventory items for resale. Those items which are used in the performance of a construction contract would be subject to tax in the period they are withdrawn from inventory. The tax would be computed on the cost of the items withdrawn from inventory. Those items which are sold to residents would be subject to the tax at the time of sale. The tax would be computed on the sales price of the items.

EXAMPLE 4. Down Home Construction Company is operated by two individuals in a rural Iowa farming community. They do not have a retail outlet and rarely make sales of building materials from their inventory to local residents. Down Home Construction Company would not be considered a contractor-retailer under this rule. Rather, Down Home Construction Company would be considered a contractor and must pay tax to its vendor at the time it purchases any building materials, supplies and equipment. When sales are made to local residents, tax must be collected at the time of sale; therefore, Down Home Construction Company should have a sales tax permit. However, Down Home Construction Company can adjust its sales tax report by taking a credit for tax paid to its vendor on an item sold to a local resident.

EXAMPLE 5. Intown Home Construction Company places modular homes on slabs or basement foundations; makes electrical, plumbing and other connections; and otherwise prepares the modular homes for sale as real estate. Intown also has a sales tax permit, maintains an inventory of modular homes for sale, and sells homes from the inventory as tangible personal property to owners who later convert the property to real estate. Intown is a contractor-retailer and is obligated to pay or collect sales tax, respectively, at the time a modular home is withdrawn from inventory for use as material in a construction contract or at the time a modular home is withdrawn from inventory for sale to an owner. See rule 701—231.11(423) for an explanation of the basis on which tax is computed.

EXAMPLE 6. Smith's Plumbing has a retail store in Davenport, but it also installs plumbing fixtures and lines in new construction and remodeling projects. Plumbing supplies that are taken from an inventory in Davenport for a new home being built in Rock Island, Illinois, are withdrawn exempt from Iowa sales tax because the construction contract is performed outside Iowa. However, those supplies may be subject to Illinois sales or use tax.

701—219.5(423) Building materials, supplies, and equipment used in the performance of construction contracts within and outside Iowa.

219.5(1) The use of building materials, supplies, or equipment in the performance of construction contracts by the manufacturer outside Iowa is not a sale of tangible personal property and, therefore, is not a taxable event. The use of tangible personal property as building materials, supplies, or equipment by the manufacturer in the performance of construction contracts in Iowa is a sale at retail and a taxable event. The tax is computed on the manufacturer's fabricated cost or cost of production. See rule 219.6(423) for a characterization of the term manufacturer's "fabricated cost."

219.5(2) A contractor-retailer's withdrawal of materials from inventory for use in construction contracts outside this state is not a taxable event.

219.5(3) A contractor is a consumer by statute. A contractor's purchase of materials for use in a construction contract is subject to tax whether the materials are purchased for use in construction contracts performed in Iowa or outside this state.

219.5(4) A manufacturer's purchase of tangible personal property consumed as building material in the manufacturer's or the manufacturer's subcontractor's performance of construction contracts within Iowa is taxable. The tax is computed on the fabricated cost or cost of production of the materials. See rule 219.6(423) for a characterization of the term "fabricated cost." The purchase of tangible personal property consumed by a manufacturer as building material in the manufacturer's or the manufacturer's subcontractor's performance of a construction contract outside Iowa is not subject to tax.

219.5(5) Reference rule 701—32.8(423) for an exemption from use tax for building materials, supplies, or equipment purchased outside Iowa, brought into this state, and subsequently used in the performance of a construction contract outside this state.

701—219.6(423) Tangible personal property used or consumed by the manufacturer thereof. When a person who is primarily engaged in the manufacture of building materials, supplies, or equipment for sale and not for the person's own use or consumption, considering the totality of the business, from time to time uses or consumes the building materials, supplies, or equipment for construction purposes, the person is deemed to be making retail sales to one's self and subject to tax on the basis of the fabricated cost of the items so used or consumed for construction purposes. If equipment, building materials, or supplies are used by a manufacturer in the performance of a construction contract, a "sale" occurs only if the equipment, materials, or supplies are used in the performance of a construction contract in Iowa. For purposes of this rule, the term "fabricated cost" means and includes the cost of all materials as well as the cost of labor, power, transportation to the plant, and other plant expenses but not installation on the job site. Associated General Contractors of Iowa v. State Tax Commission, 255 Iowa 673, 123 N.W.2d 922 (1963). Also see rule 219.4(423) relating to contractors and rule 219.5(423) relating to materials, supplies, and equipment used in construction contracts within and outside Iowa.

701—219.7(423) Prefabricated structures.

219.7(1) Basic concepts and general rules. A "prefabricated structure" is any structure assembled in a factory and capable of transport to the location where it will be used in the performance of a construction contract by placement on a foundation either by the buyer or a designated contractor.

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The term “prefabricated structure” includes a “modular home” as defined in rule 701—231.11(423), a mobile home whether or not sold subject to the issuance of a certificate of title, “manufactured housing” (reference definition in rule 701—33.10(423)), sectionalized housing, precut housing packages, and panelized construction. With a few major exceptions (see subrule 219.7(2) regarding the “60 percent rule” and reference rule 701—33.10(423) regarding the taxation of manufactured housing while it is real property), the sales and use tax treatment of prefabricated structures generally follows the treatment of construction materials, that is, tax is due when those structures are sold to or used by owners, contractors, subcontractors, or builders. Sales of prefabricated structures which have not been erected on a foundation are considered sales of tangible personal property and thus are taxable at the time of retail sale. The usual basis for computing sales or use tax is the purchase price charged to a consumer or user by the seller of a prefabricated structure. *Custom Built Homes Co. v. Kansas State Commission of Revenue and Taxation*, 184 Kan. 31, 334 P.2d 808 (1959). Sales or use tax is due on the full purchase price when a prefabricated structure is delivered under a contract for sale or sold for use in Iowa. *Dodgen Industries Inc. v. Iowa State Tax Commission*, 160 N.W.2d 289 (Iowa 1968).

219.7(2) Exceptions to the general rules. There are a number of exceptions to the general rules stated above in 219.7(1). Those exceptions are applicable to modular and mobile homes and manufactured housing. They are explained as follows:

a. **Modular homes.** Only 60 percent of the sales price from the sale of a modular home is subject to Iowa tax. See rule 701—231.11(423). This 60 percent rule is applicable only to a “modular home” as that phrase is defined in rule 701—231.11(423) and not to other types of prefabricated structures which do not meet the definition of the term “modular home” such as sectionalized housing or panelized construction. Also, the 60 percent rule is not applicable to the sale of materials used in the assembly of a modular home, only to the sale of the finished product.

b. **Mobile homes and manufactured housing.** Iowa use tax and not Iowa sales tax is imposed on mobile homes or manufactured housing sold subject to the issuance of a certificate of title, and, similar to 219.7(2)“a” above, use tax is imposed only upon 60 percent of the purchase price of these mobile homes or manufactured housing. Reference rule 701—32.3(423). All mobile homes sold in Iowa or sold outside Iowa for use in this state are sold subject to Iowa use tax, whether sold for placement within or outside a mobile home park; see 2005 Iowa Code chapter 423 and Iowa Code chapter 435.

219.7(3) Tax consequences of sales of modular homes by various parties, some operating in a dual capacity.

a. A retailer (dealer) that is not additionally a contractor or manufacturer of modular homes purchases those homes tax-free from a wholesaler or manufacturer for subsequent resale to contractors or owners. Tax must be collected when the dealer sells the modular home to an owner or contractor.

b. A contractor that is not a dealer must pay tax when purchasing a modular home for use in a construction contract or for some other purpose. A contractor’s sale of a modular home to an owner or another contractor is treated as explained in Examples 2 and 4 of rule 219.4(423).

c. A dealer that is also a contractor will purchase homes tax-free for inclusion in its inventory. Tax is imposed when the dealer withdraws a home from inventory for sale or use in

the performance of a construction contract as explained in rule 219.4(423).

d. A manufacturer that acts as its own dealer and sells its own modular homes at retail to contractors or owners will collect tax on the sales price from its sales of those modular homes to its customers. This situation is in contrast to that described in subrule 219.7(4) in which a manufacturer uses its own modular homes in the performance of construction contracts and the tax due is computed on a sum other than the sales price from the sale of a home.

What is stated in this subrule concerning sales of modular homes is generally applicable to the use tax on mobile homes and manufactured housing. However, one distinct difference is that mobile homes and manufactured housing are seldom, if ever, purchased by a dealer for any subsequent use in the performance of construction contracts. A dealer will often purchase a mobile home or manufactured housing for subsequent resale to a customer as tangible personal property and then will place or install the mobile home or manufactured housing on a site prepared by the customer. This is not the performance of a construction contract (see rule 219.8(423)), and the dealer is a retailer who installs tangible personal property and is not a construction contractor.

219.7(4) Manufacturers who perform construction contracts. When companies whose principal business is the manufacture of prefabricated structures use those structures in the performance of construction contracts, this use is treated as a retail sale of the structures on the manufacturer’s part. See rule 219.6(423) for a detailed description of the sales tax treatment of this sort of transaction. The 60 percent rule (see 219.7(2) above) is not applicable when calculating the amount of tax owed by a manufacturer.

219.7(5) Examples. The following examples are intended to illustrate who must collect or remit sales or use tax when a manufacturer sells a modular home to a contractor or owner or acts as a contractor in erecting the home. The incidence of tax depends on several factors, such as the nature of the manufacturer’s business, the point of delivery, the contractual agreement for erection and whether or not a sale for resale has occurred.

EXAMPLE 1. The manufacturer is located outside Iowa. The manufacturer contracts with an Iowa customer to build a home in the manufacturer’s factory. The manufacturer also contracts to completely erect the home, install the furnace, and do electrical and other necessary work to make the home ready for occupancy. The main source of the manufacturer’s income relates to on-site construction. The manufacturer has paid a sales tax equal to Iowa tax in its state of residency. The manufacturer would be considered to be performing a construction contract in Iowa and would owe use tax in Iowa; however, a sales tax credit would be allowed for tax paid to the other state.

EXAMPLE 2. The manufacturer is located outside Iowa. An Iowa unrelated builder/dealer contracts with the customer for the home and then contracts with the manufacturer for construction, delivery, and installation on the customer’s foundation. The manufacturer delivers the home into Iowa on the manufacturer’s own truck. The customer, by contractual agreement, is obligated to pay for the home on delivery of the property so the sale takes place in Iowa. In this situation, the manufacturer is involved in the sale of tangible personal property rather than the sale of real estate and must collect Iowa sales tax on 60 percent of the sales price to the Iowa builder/dealer.

EXAMPLE 3. The manufacturer is located outside Iowa. The manufacturer contracts to sell a home to a customer

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(owner) in Iowa. The manufacturer hires a common carrier to deliver the home to the Iowa customer. The manufacturer has no activity in Iowa that would create a “nexus” requiring the manufacturer to collect Iowa tax. In this situation, the Iowa customer is required to remit use tax on 60 percent of the purchase price of the home.

EXAMPLE 4. The manufacturer may be located in Iowa or outside Iowa. The manufacturer sells a home to a dealer in Iowa that will resell the home to the final customer. The manufacturer may deliver the home, or delivery may be made by a common carrier. The manufacturer has no contractual obligation for erection. In this situation, the manufacturer is making a sale for resale and is not required to collect tax. The manufacturer must have a valid resale certificate on file from the dealer. The dealer, if in Iowa, would be required to collect tax when the home is sold.

EXAMPLE 5. The manufacturer is located in Iowa. The manufacturer contracts to furnish, deliver, and perform the setup on a home in a state other than Iowa. The manufacturer withdraws the home from inventory and transports the home to the other state for setup. In this situation, the Iowa manufacturer does not owe any Iowa tax because 2005 Iowa Code subsection 423.2(1)“b” exempts building materials and supplies that manufacturers withdraw from inventory for construction outside Iowa.

EXAMPLE 6. The manufacturer is located in Iowa. The manufacturer sells a home to an Iowa customer and agrees, under separate contract, to transport the home to the job site and perform the setup. The manufacturer should collect tax on 60 percent of the sales price of the home. The customer also wants a garage. The manufacturer agrees to sell the lumber, nails, and shingles to the customer who would build the garage. This sale would be considered a sale at retail, and the manufacturer should collect tax on the entire sales price of these materials. The same would be true if the manufacturer sold appliances separate from the sale of the home; sales tax would be due on the entire sales price of the appliances.

EXAMPLE 7. The manufacturer may be located inside or outside Iowa. The manufacturer sells a modular home to a dealer that is a general contractor. The dealer subcontracts the work of placing the home on a foundation to various third parties, which transport the home to its site, excavate for and pour the concrete slab, and perform plumbing, electrical hookup, and all other services which are part of the construction contract for placing the modular home at its location. Since the sale of the modular home is to a dealer that is a contractor, the manufacturer will collect and the dealer will pay tax on 60 percent of the modular home’s invoice price.

701—219.8(423) Types of construction contracts. The term “construction contract” is defined as an agreement under the terms of which an individual, corporation, partnership or other entity agrees to furnish the necessary building or structural materials, supplies, equipment or fixtures and to erect the same on the project site for a second party known as a sponsor. Nonexclusive examples of the types of construction contracts include: lump-sum contracts; cost plus contracts; time and material contracts; unit price contracts; guaranteed maximum or upset price contracts; construction management contracts; design built contracts; and turnkey contracts.

The following is a nonexclusive list of activities and items which could fall within the meaning of a construction contract or are generally associated with new construction, reconstruction, alteration, or expansion of a building or structure. The list is provided merely for the purpose of illustration. It should not be used to distinguish machinery and equipment from real property or structures since such a deter-

mination is factual. See rules 219.11(423) and 219.12(423) for details.

- Ash removal equipment
 - (installed as distinguished from portable units)
- Automatic sprinkler systems (fire protection)
- Awnings and venetian blinds
 - which become attached to real property
- Boilers (installed as distinguished from portable units)
- Brick work
- Builder’s hardware
- Burglar alarm and fire alarm fixtures
- Caulking materials work
- Cement work
- Central air conditioner installation
- Coal handling equipment
 - (installed as distinguished from portable units)
- Concrete work
- Counters, lockers (installed as distinguished from portable units), and prefabricated cabinets
- Drapery installation
- Electric conduit work and items relating thereto
- Electric distribution lines
- Electric transmission lines
- Floor covering which is permanently installed—see rule 701—16.48(422,423) for an exception to this regarding carpeting
- Flooring work
- Furnaces, heating boilers and heating units
- Glass and glazing work
- Gravel work (excluding landscaping)
- Installation of modular homes on foundations
- Lathing work
- Lead work
- Lighting fixtures
- Lime work
- Lumber and carpenter works
- Macadam work
- Millwork installation
- Mortar work
- Oil work
- Paint booths and spray booths
 - (installed as distinguished from portable units)
- Painting work
- Paneling work
- Papering work
- Passenger and freight elevators
- Piping valves and pipe fitting work
- Plastering work
- Plumbing work
- Prefabricated cabinets, counters, and lockers
 - (installed as opposed to portable units)
- Putty work
- Refrigeration units
 - (central plants installation as distinguished from portable units)
- Reinforcing mesh work
- Road construction (concrete, bituminous, gravel, etc.)
- Roofing work
- Sheet metal work
- Sign installation (other than portable sign installation)
- Steel work
- Stone work
- Stucco work
- Tile work—ceiling, floor and walls
- Underground gas mains
- Underground sewage disposal
- Underground water mains
- Vault doors and equipment
- Wallboard work
- Wall coping work
- Wallpaper work
- Water heater and softener installation
- Weather stripping work
- Wire net screen work
- Wood preserving work

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701—219.9(423) Machinery and equipment sales contracts with installation. Machinery and equipment sales contracts with installation are transactions which are considered a sale of tangible personal property to a final consumer. Therefore, the individual who sells the equipment with installation must purchase the machinery and equipment tax-free as a purchase for resale. This rule should not be confused with subrule 219.3(3) regarding building equipment. The contract should itemize the sales tax separately. If a contractor wishes to avoid an itemization of sales and use tax on machinery and equipment which remains tangible personal property, the contractor can do so by figuring the tax as a general overhead expense and including a statement in the contract and related invoices that “sales tax is included in the contract price.”

If the sales transaction is one completed out of state and shipped in interstate commerce to a consumer or a user in Iowa, and not otherwise exempt from tax, the final purchaser is required to pay Iowa use tax on the purchase price of the machinery and equipment.

In a “mixed contract” (a construction contract mingled with a machinery and equipment sales contract), the elements of the contract should be separated for sales tax purposes. See rule 219.10(423).

Certain services which are enumerated in 2005 Iowa Code section 423.2 are subject to tax when performed under a contract for the installation of machinery and equipment which is not done in connection with new construction, reconstruction, alteration, expansion or remodeling of a building or structure. Reference rule 701—15.14(422,423) relating to installation charges. Examples of the enumerated services are: electrical installation; plumbing; welding; and pipe fitting. Other labor charges for job site installation which do not involve a taxable enumerated service are not subject to tax if the charges are separately contracted or, if no written contract exists, are separately itemized on the billing from the seller to the purchaser.

EXAMPLE. Company B contracts with Company A to furnish and install a portable conveyor unit in Company A's new building. Company B can purchase the portable conveyor unit tax-free because the portable conveyor unit maintains its identity as tangible personal property after installation and does not become a component part of the real property. Company B would then charge tax to Company A on the sale of the portable conveyor unit. Installation charges would be part of the total sales price subject to tax unless they are separately contracted or, if no written contract exists, separately itemized on the billing from Company B to Company A.

701—219.10(423) Construction contracts with equipment sales (mixed contracts). Construction contracts with equipment sales, commonly known as mixed contracts, place a dual burden on the contractor as a contractor is a consumer of construction materials and also a retailer of the machinery and equipment. As a consumer by statute of construction building materials, supplies, and building equipment, a contractor is required to pay sales tax to the supplier at the time of purchase or remit use tax to the department if purchasing building materials, supplies, and building equipment from an out-of-state supplier. Reference 701—Chapter 30 of the rules regarding use taxes. Machinery and equipment must be purchased for resale by the contractor if the machinery and equipment does not become real property. This means that the contractor does not pay tax to a supplier at the time of purchase of machinery and equipment, but instead, the contractor is responsible for collecting sales tax on the sales price from a sponsor and remitting it to the department.

EXAMPLE. Company A contracts with Company B to have Company B build a new building and install all of the production machinery and equipment for the new building. Company B must pay tax on its purchases of building materials and supplies which lose their identity as tangible personal property and become a component part of the real property. Company B also purchases some refrigeration units for the new building which maintain their identity as tangible personal property. These units must be purchased tax-free by Company B because they will be resold. Company B would then charge Company A the tax on the units which retain their identity as tangible personal property. The installation charges for the units which remain as tangible personal property would be part of the total sales price subject to tax unless they are separately contracted or, if no written contract exists, are separately itemized on the billing from Company B to Company A.

When a mixed construction contract is let for a lump-sum amount, the machinery and equipment furnished and installed shall be considered, for the purposes of this rule only, as being sold by the contractor for an amount equal to the cost of the machinery and equipment.

Persons required to collect sales tax in Iowa under machinery and equipment contracts or a mixed contract are required to have a sales tax or a retailer's use tax permit.

701—219.11(423) Distinguishing machinery and equipment from real property. A construction contract may include many activities, but it does not include a contract for the sale and installation of machinery or equipment. Machinery and equipment includes property that is tangible personal property when it is purchased and remains tangible personal property after installation. Generally, tangible personal property can be moved without causing damage or injury to itself or to the structure, it does not bear the weight of the structure, and it does not in any other manner constitute an integral part of a structure. Manufactured machinery and equipment which does not become permanently annexed to the realty remains tangible personal property after installation.

219.11(1) The following is a list of property which, under normal conditions, remains tangible personal property after installation. The list is nonexclusive and is offered for illustrative purposes only:

a. Furniture, radio and television sets and antennas, washers and dryers, portable lamps, home freezers, portable appliances and window airconditioning units.

b. Portable items such as casework, tables, counters, cabinets, lockers, athletic and gymnasium equipment and other related easily movable property attached to the structure.

c. Machinery, equipment, tools, appliances, and materials used exclusively as such by manufacturers, industrial processors and others performing a processing function with the items.

d. Office, bank and savings and loan association furniture and equipment, including office machines.

e. Radio, television and cable television station equipment, but not broadcasting towers.

f. Certain equipment used by restaurants and in institutional kitchens; for instance, dishwashers, stainless steel wall cabinets, stainless steel natural gas stoves, stainless steel natural gas convection ovens, and combination ovens and steamers with stands. This paragraph is not applicable to similar items used in residential kitchens. See *Petition of Taylor Industries Inc.* (Dkt No. 94-30-6-0367, 3-14-95).

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219.11(2) The following is a list of property which, under normal conditions, becomes a part of realty. The list is non-exclusive and is offered for illustrative purposes only:

- a. Boilers and furnaces.
- b. Built-in household items such as kitchen cabinets, dishwashers, sinks (including faucets), fans, garbage disposals and incinerators.
- c. Buildings, and structural and other improvements to buildings, including awnings, canopies, foundations for machinery, floors (including computer room floors), walls, general wiring and lighting facilities, roofs, stairways, stair lifts, sprinkler systems, storm doors and windows, door controls, air curtains, loading platforms, central airconditioning units, building elevators, sanitation and plumbing systems, decks, and heating, cooling and ventilation systems.
- d. Fixed (year-round) wharves and docks.
- e. Improvements to land including patios, retaining walls, roads, walks, bridges, fencing, railway switch tracks, ponds, dams, ditches, wells, underground irrigation systems, drainage, storm and sanitary sewers, and water supply lines for drinking water, sanitary purposes and fire protection. Reference rule 701—18.35(422,423) relating to drainage tile.
- f. Mobile and modular homes installed on foundations.
- g. Planted nursery stock.
- h. Residential water heaters, water softeners, intercoms, garage door opening equipment, pneumatic tube systems and music and sound equipment (except portable equipment).
- i. Safe deposit boxes, drive-up and walk-up windows, night depository equipment, remote TV auto teller systems, vault doors, and camera security equipment (except portable equipment).
- j. Seating in auditoriums and theaters and theater stage lights (except portable seating and lighting).
- k. Silos and grain storage bins.
- l. Storage tanks constructed on the site.
- m. Swimming pools (wholly or partially underground (except portable pools)).
- n. Truck platform scale foundations.
- o. Walk-in cold storage units that become a component part of a building.

701—219.12(423) Tangible personal property which becomes structures. Items which are manufactured as tangible personal property can, by their nature, become structures. However, the determination is factual and must be made on an item-by-item basis. The following is a listing of criteria which courts have used in making such a determination:

1. The degree of architectural and engineering skills necessary to design and construct the structure.
2. The overall scope of the business and the contractual obligations of the person designing and building the structure.
3. The amount and variety of materials needed to complete the structure, including the identity of materials prior to assembly and the complexity of assembly.
4. The size and weight of the structure.
5. The permanency or degree of annexation of the structure to other real property which would affect its mobility.
6. The cost of building, moving or dismantling the structure.

EXAMPLE. A farm silo, which is a prefabricated glass-lined structure, is intended to be permanently installed. The prefabricated glass-lined structure is 70 feet high and 20 feet around, weighs 30 tons, and is affixed to a concrete foundation weighing 60 tons which is set in the ground specifically for the purpose of supporting the silo. The assembly kit in-

cludes 105 steel sheets and 7000 bolts. The silo can be removed without material injury to the realty or to the unit itself at a cost of \$7,000. In view of its massive size, the firm and permanent manner in which it is erected on a most substantial foundation, its purpose and function, the expense and size of the task and the difficulty of removing it, the silo is considered a structure and not machinery or equipment. *Wisconsin Department of Revenue v. A. O. Smith Harvestore*, 240 N.W.2d 357 (Wisc. 1976).

The above criteria are intended only to be a summation of factors which the department will consider in determining whether or not a project involves construction. The following cases are used as reference material: *Wisconsin Department of Revenue v. A. O. Smith Harvestore Products, Inc.*, 240 N.W.2d 357 (Wisc. 1976); *Prairie Tank or Construction Co. v. Department of Revenue*, 364 N.W.2d 963 (Ill. 1977); *Levine v. State Board of Equalization*, 299 P. 2d 738 (Calif. 1956); *State of Alabama v. Air Conditioning Engineers, Inc.*, 174 So 2d 315 (Ala. 1965); *A. S. Schulman Electric Company v. State Board of Equalization*, 122 Cal. Rptr 278 (Calif. 1975); *Western Pipeline Constructors, Inc. v. J. M. Dickinson*, 310 S.W.2d 455 (Tenn.); and *City of Pella Municipal Light Plant, Order of the Director of Revenue*, June 16, 1975.

701—219.13(423) Tax on enumerated services. The tax on the services enumerated in 2005 Iowa Code section 423.2 is basically a tax on labor. When such services are performed on or connected with new construction, reconstruction, alteration, expansion or remodeling of real property or structures, the services are exempt from tax. Neither the repair nor the rental of machinery on the job site is exempt from tax under this rule. See rule 219.21(423) for an explanation of the exemption in favor of rented machinery used by a contractor on a job site.

The distinction between a repair (see subrule 219.13(1)) and new construction, reconstruction, alteration, expansion and remodeling activities (see subrule 219.13(2)) can, oftentimes, be difficult to grasp. Therefore, the intent of the parties and the scope of the project may become the factors which determine whether certain enumerated services are taxable. An area of particular difficulty is the distinction between repair and remodeling. Remodeling a building or other structure means much more than making repairs or minor changes to it. Remodeling is a reforming or reshaping of a structure or some substantial portion of it to the extent that the remodeled structure or portion of the structure is in large part the equivalent of a new structure or part thereof. See *Board of Commissioners of Guadalupe County v. State*, 43 N.M. 409, 94 P.2d 515 (1939) and *City of Mayville v. Rosing*, 19 N.D. 98, 123 N.W. 393 (1909).

219.13(1) Repair is synonymous with mend, restore, maintain, replace and service. A repair contemplates an existing structure or tangible personal property which has become imperfect and constitutes the restoration to a good and sound condition. A repair is not a capital improvement; that is, it does not materially add to the value or substantially prolong the useful life of the property.

2005 Iowa Code section 423.1(42) defines a person engaged in the business of performing taxable services as a retailer. Since retailers may purchase building materials, supplies and equipment for resale, persons making taxable repairs (repairpersons and servicepersons) are not considered to be contractors and are not subject to the provisions of 2005 Iowa Code subsection 423.2(1)“b.” In addition, such persons are not considered to be owners, subcontractors or builders. Repairpersons and servicepersons will normally purchase building materials and supplies free of tax for sub-

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sequent resale to their customers; contractor-retailers will also do this. However, contractors, subcontractors or builders who may make repairs are subject to 2005 Iowa Code subsection 423.2(1)“b” and must pay tax at the time building materials, supplies and equipment are purchased from vendors even though the contractors, subcontractors or builders hold a valid sales tax permit. See rules 219.2(423) and 219.3(423). In determining who is a contractor and who is a retailer of repair services, the department looks to the total business of the entity in question and not to any one portion of it. Thus, the fact that a business whose overall activity is contracting has a division engaged in taxable repair services does not transform that business into a retailer providing services rather than a contractor. When contractors do repair work, they may separately itemize labor and materials charges and collect sales tax on all charges. A contractor’s markup on a materials charge is part of any taxable sale. A contractor can take a credit for any tax paid on the purchase of materials that are sold as part of a service transaction.

When other persons making repairs sell tangible personal property at retail in connection with any taxable service enumerated in 2005 Iowa Code section 423.2, those persons shall collect and remit tax on the sales price. The person making repairs shall purchase tangible personal property for resale when the property is used in the repair job and is resold to a customer. Reference rule 701—18.31(422,423) for an explanation of when persons performing services sell the property that the persons use in performing those services to their customers. Nonexclusive examples of repair situations are as follows:

- a. Repair of broken or defective glass.
- b. Replacement of broken, defective or rotten windows.
- c. Replacing individual or damaged roof shingles.
- d. Replacing or repairing a segment of worn-out or broken kitchen cabinets.
- e. Repair or replacement of broken or damaged garage doors or garage door openers.
- f. Replacing or repairing a part of a broken or worn tub, shower, or faucets.
- g. Replacing or repairing a broken water heater, furnace or central airconditioning compressor.
- h. Restoration of original wiring in a house or building.

219.13(2) The following are examples of new construction, reconstruction, alteration, expansion and remodeling activities:

- a. The building of a garage or adding a garage to an existing building would be considered new construction.
- b. Adding a redwood deck to an existing structure would be considered new construction.
- c. Replacing a complete roof on an existing structure would be considered reconstruction or alteration.
- d. Adding a new room to an existing building would be considered new construction.
- e. Adding a new room by building interior walls would be considered alteration.
- f. Replacing kitchen cabinets with some modification would be considered an improvement.
- g. Paneling existing walls would be considered an improvement.
- h. Laying a new floor over an existing floor would be considered an improvement.
- i. Rebuilding a structure damaged by flood, fire or other uncontrollable disaster or casualty would be considered reconstruction.
- j. Building a new wing to an existing building would be considered an expansion.

k. Rearranging the interior physical structure of a building would be considered remodeling.

l. Installing manufactured housing or a modular or mobile home on a foundation would be considered new construction. However, reference rule 701—33.10(423) for a description of the special treatment of taxable installation charges when the taxable sale of manufactured housing as real estate occurs.

m. Replacing an entire water heater, water softener, furnace or central air conditioning unit.

n. Sign installation and well-drilling services are generally performed in connection with new construction.

In all the examples, the contractor is responsible for paying tax to any supplier on materials. However, there would be no tax on any enumerated services.

219.13(3) The term “on or connected with” is broad and should be used to convey generally accepted meaning. Therefore, in a specific situation, the facts relating thereto are controlling in determining whether the exemption is applicable. “On or connected with” does not connote that those things connected have to be primary or subsidiary to the construction, reconstruction, alteration, expansion or remodeling of the real property. An incidental relationship can qualify the activity for exemption if the relationship forms an intimate connection with the construction activity. For example, the service of excavating and grading relating to the clearing of land to begin construction of a building would qualify for the exemption; however, excavating and grading land without motive toward construction would not qualify for exemption even though at some later date plans to construct a building were created and a structure was actually erected.

The presence of a time relationship can also be a factor in determining the applicability of exemption. For example, tax would not apply to separate labor charges relating to the installation of production machinery and equipment in a building while remodeling of the real property was in progress. (Tax could apply to the sales price of the production machinery and equipment; reference rule 701—18.58(422, 423)). However, if a year after all construction activity has ended, the owner decides to install a piece of production machinery in the building, any taxable enumerated services relating thereto would be subject to tax. Further, if, following construction, the land is graded for the purpose of seeding a new lawn, the exemption would be applicable. However, if the lawn does not grow and the land is regraded the following year, the exemption would not be applicable. Reference 701—subrule 18.58(8) for the exemption regarding the installation of new industrial machinery and equipment.

Therefore, the motive behind the activity and the course of events that could reasonably be expected to occur would be a further consideration in determining if the exemption is applicable.

A physical relationship is also a factor that should be evaluated. If a building is constructed to house machinery, any enumerated services relating to the installation of that machinery would be exempt from tax. For example, piping joining two pieces of equipment housed in separate buildings would qualify for exemption if the equipment in either building was installed while such new construction, reconstruction, alteration, expansion or remodeling to the structure was also taking place to house the equipment.

On the other hand, an incidental relationship, a time relationship and close physical proximity may not be enough to support the conclusion that a taxable service is performed in connection with new construction or reconstruction. For ex-

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ample, a homeowner hires a general contractor to add a new room to an existing home (which is new construction; see 219.13(2)“d”). The existing home is in need of a number of the repairs described in 219.13(1); for example, it is in need of rewiring and replacement of a broken window. The general contractor rewires the home and repairs the window in addition to building the new room. The taxable services which the general contractor performs while rewiring the home and repairing the window are not performed in connection with the construction of the new room simply because those services happen to be performed at the same time and on the same home as the new construction. If the addition of the new room were the cause of the need for the taxable service (e.g., the window was broken during construction of the new room) and not just a convenient occasion for performance of the service, that performance would be exempt from tax.

The department would like to emphasize that facts and motives are important in the determination of the taxability of services relating to construction activities. However, it should also be noted that taxes on enumerated services are applicable to repair or installation work that is not a construction activity. Refer to subrule 219.13(1) relating to persons who make repairs or perform enumerated services for more information.

219.13(4) Excavating includes digging, hollowing out, scooping out, or making a hole in the earth. It also includes removal of materials or substance found beneath the surface. Grading includes a change in the earth's structure by scraping and filling to a common level or a fixed line known as a grade. The enumerated services of excavating and grading are not subject to tax if performed on or connected with new construction. Removal of overburden which is directly related to road building, building of dikes, building of farm ponds, and creating drainage ditches would not be taxable as such activities would be considered on or connected with the creation of a structure. See *Maasdam v. Kirkpatrick*, 214 Iowa 1388 (1932). However, the mere removal of overburden, without more, would be taxable as the enumerated service of excavating or grading under 2005 Iowa Code subsection 423.2(6).

219.13(5) Services associated with new construction or reconstruction, for example, which are not taxable include, but are not limited to, brick laying, concrete finishing, tiling, siding installation, laying of linoleum and other flooring and carpet installation. No tax can be collected on the performance of these services even when they are furnished in connection with the performance of repairs.

701—219.14(423) Transportation cost. Transportation charges and delivery charges are not subject to the Iowa sales and use tax when they are separately contracted or, if no written contract exists, are separately itemized on the billing from the seller to the purchaser. Reference rule 701—15.13(422, 423).

701—219.15(423) Start-up charges. Start-up charges are not subject to the Iowa sales and use tax when they are separately contracted or, if no written contract exists, are separately itemized on the billing from the seller to the purchaser.

701—219.16(423) Liability of subcontractors. A subcontractor who is providing materials and labor on the actual construction of the building or structure has the same status and tax responsibilities as a general contractor under the Iowa statutes. However, where an individual or firm is hired to provide machinery and equipment to a general contractor or another subcontractor, the individual or firm is considered a

material supplier rather than a subcontractor. This is true even though the machinery and equipment are supplied with installation. Items of machinery and equipment sold by material suppliers to contractors shall be sold for resale and the contractor must provide the material supplier with a valid resale certificate.

701—219.17(423) Liability of sponsors. The sponsor cannot be held responsible for a tax liability incurred on building materials, supplies and equipment by a general contractor or subcontractor in the completion of a construction contract. Likewise, a general contractor cannot be held responsible for the tax liability incurred on building materials, supplies and equipment by a subcontractor in the completion of a construction contract. The tax responsibility regarding machinery and equipment contracts depends on where the sale was consummated. If the sale was consummated in Iowa, the seller is responsible for the collection and remittance of tax unless a valid exemption certificate is given by the purchaser. If the sale was consummated outside Iowa and the seller does not remit use tax to the department, then a use tax would be due from the Iowa user.

701—219.18(423) Withholding. A sponsor of a contract with a nonregistered out-of-state (nonresident) contractor may be asked to withhold the final payment of the contract as a guarantee that sales and use taxes will be paid. The withholding requirement may also apply to registered out-of-state contractors at the discretion of the department. The department will issue a notice to the sponsor to support the withholding of funds. In order to seek a release of the notice, the out-of-state contractor is required to file a report with the department consisting of the following departmental forms:

1. Form 35-012, which is a listing of subcontractors to whom the out-of-state contractor has awarded a construction contract. This statement should be submitted on each project as it becomes available.

2. Form 35-013, which is a list of material suppliers both in state and out of state from whom tangible personal property has been purchased for use in completing each project or contract.

3. Form 35-001, which is a summary of the provisions of the actual contract.

All letters of release furnished by the department are subject to audit and, therefore, are not unconditional release from any Iowa sales or use tax liability. All letters of release will be issued within 60 days upon receipt of the proper information unless an error or discrepancy is noted.

701—219.19(423) Resale certificates. Whenever machinery and equipment which will remain tangible personal property after installation is purchased for a machinery and equipment contract by a contractor from a supplier or a material supplier, it should be purchased for resale. See rule 219.9(423). Resale purchases are most commonly related to machinery and equipment sales contracts with installation and mixed construction contracts. Contractor-retailers and persons making repairs may also purchase materials for resale as long as they collect tax on their retail sales and pay the tax themselves on items withdrawn from inventory for use in the performance of a construction contract. See rule 219.4(423) and subrule 219.13(1). Resale certificates can be obtained by contacting the Iowa department of revenue. Reference rule 701—15.3(422,423) for detailed information on resale certificates.

701—219.20(423) Reporting for use tax. An Iowa contractor can report use tax either on a consumer's use tax return or

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as consumed goods on a sales tax return. Tax is due in the quarter the materials are delivered into Iowa. Nonresident contractors should report use tax on a consumer's use tax return. Consumer's use tax returns for nonresident contractors must be obtained directly from the department of revenue unless the contractor is registered with the department.

701—219.21(423) Exempt lease or rental of equipment. On and after July 1, 2004, the sales price on the lease or rental of the following types of equipment is exempt from tax: self-propelled building equipment, self-constructed cranes, pile drivers, structural concrete forms, regular and motorized scaffolding, generators, or attachments customarily drawn or attached to those items of equipment, including auxiliary attachments which improve the performance, safety, operation, or efficiency of the equipment and replacement parts and are directly and primarily used by contractors, subcontractors, and builders for new construction, reconstruction, alterations, expansion, or remodeling of real property or structures. A contractor's, subcontractor's, or builder's purchases of this equipment would continue to be taxable. A contractor's, subcontractor's, or builder's rental of equipment is not exempt from tax under rule 219.13(423) because the rental of equipment is now the sale of that equipment and no longer the performance of a taxable service. See rule 701—225.6(423) for an extensive explanation of this matter.

These rules are intended to implement 2005 Iowa Code subsections 423.1(42), 423.2(1)“b” and “c,” 423.2(6), 423.3(37), 423.3(63), and 423.5(2).

CHAPTER 231

EXEMPTIONS PRIMARILY OF BENEFIT
TO CONSUMERS

Rules in this chapter include cross references to provisions in 701—Chapters 15 to 20, 21, 26, 30, 32 and 33 that were applicable prior to July 1, 2004.

701—231.1(423) Newspapers, free newspapers and shoppers' guides.

231.1(1) In general. The sales price from the sales of newspapers, free newspapers, and shoppers' guides is exempt from tax. The sales price from the sales of magazines, newsletters, and other periodicals which are not newspapers is taxable. Cases decided by the United States Supreme Court and the Supreme Court of Iowa prohibit exempting from taxation the sale of any periodical if that exemption from taxation is based solely upon the contents of that periodical. See *Arkansas Writers' Project, Inc. v. Ragland*, 481 U.S. 221, 107 S.Ct. 1722, 95 L.Ed.2d 209 (1987) and *Hearst v. Iowa Department of Revenue & Finance*, 461 N.W.2d 295 (Iowa 1990).

231.1(2) General characteristics of a newspaper. “Newspaper” is a term with a common definition. A “newspaper” is a periodical, published at short, stated, and regular intervals, usually daily or weekly. It is printed on newsprint with news ink. The format of a newspaper is that of sheets folded loosely together without stapling. A newspaper is admitted to the U.S. mails as second-class material. Other frequent characteristics of newspapers are the following:

- a. Newspapers usually contain photographs.
- b. Information printed on newspapers is usually contained in columns on the newspaper pages.
- c. The larger the cross section of the population which reads a periodical in the area where the periodical circulates, the more likely it is that the department will consider that periodical to be a “newspaper.”

231.1(3) Characteristics of newspaper publishing companies. Often, companies publishing larger newspapers will subscribe to various syndicates or “wire services.” A larger newspaper will employ a general editor and a number of subordinate editors as well, for example, sports and lifestyle editors; business, local, agricultural, national, and world news editors; and editorial page editors. A larger newspaper will also employ a variety of reporters and staff writers. Smaller newspapers may or may not have these characteristics or may consolidate these functions.

231.1(4) Characteristics which distinguish a newsletter from a newspaper. A “newsletter” is generally distributed to members or employees of a single organization and not usually to a large cross section of the general public. It is often published at irregular intervals by a volunteer, rather than by a paid individual who usually publishes a newspaper. A newsletter is often printed on sheets which are held together at one point only by a staple, rather than folded together.

This rule is intended to implement 2005 Iowa Code subsection 423.3(54).

701—231.2(423) Motor fuel, special fuel, aviation fuels and gasoline.

231.2(1) In general. The sales price from the sale of motor fuel, including gasohol, and special fuel is exempt from sales tax under 2005 Iowa Code section 423.3(55) if (a) the fuel is consumed for highway use, in watercraft, or in aircraft, (b) the Iowa fuel tax has been imposed and paid, and (c) no refund or credit of fuel tax has been made or will be allowed. The sales price from the sale of special fuel for diesel engines used in commercial watercraft on rivers bordering Iowa is exempt from sales tax, even though no fuel tax has been imposed and paid, providing the seller delivers the fuel to the owner's watercraft while it is afloat.

231.2(2) Refunds or credits of motor fuel and special fuel. Claims for refund or credit of fuel taxes under the provisions of Iowa Code chapter 452A must be reduced by any sales or use tax owing the state unless a sales tax exemption is applicable. Generally, refund claims or credits are allowed where fuel is purchased tax paid and used for purposes other than to propel a motor vehicle or used in watercraft.

231.2(3) Refunds of tax on fuel purchased in Iowa and consumed outside of Iowa. Even though fuel is purchased in Iowa, fuel tax is paid in Iowa, and the fuel tax is subject to refund under the provisions of division III of Iowa Code chapter 452A relating to interstate motor vehicle operations, the refund of the fuel tax does not subject the purchase of the fuel to sales tax. Subjecting the purchase of the fuel to sales tax has the effect of imposing sales tax when fuel is consumed in interstate commerce while fuel consumed on Iowa highways in intrastate commerce is exempt from sales tax pursuant to 2005 Iowa Code subsection 423.3(55). The effect for sales tax purposes is to impose a greater tax burden on non-Iowa highway fuel consumption than Iowa highway fuel consumption thereby discriminating against interstate commerce. In addition, the effect of imposing sales tax on interstate excess purchases where intrastate highway use is not subject to the tax constitutes an export duty for purchasing fuel in Iowa and exporting it for use in another state. Such effects are in violation of the commerce clause of the United States Constitution. *Boston Stock Exchange v. State Tax Commission*, 1977, 429 U.S. 319, 97 S.Ct. 599, 50 L.Ed.2d 514 and *Coe v. Errol*, 1886, 116 U.S. 517, 6 S.Ct. 475, 29 L.Ed. 715.

231.2(4) Tax base. The basis for computing the Iowa sales tax will be the retail sales price of the fuel less any Iowa fuel tax included in such price. Federal excise tax should not

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be removed from the sales price in determining the proper sales tax due. *W. M. Gurley v. Arny Rhoden supra*. Reference rule 701—15.12(422,423).

This rule is intended to implement Iowa Code subsection 423.3(55).

701—231.3(423) Sales of food and food ingredients. On and after July 1, 2004, the sales price from all sales of food and food ingredients is exempt from tax. For the purposes of this rule, “food and food ingredients” means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value.

231.3(1) Most substances can easily be classified either as food, food ingredients, or nonfood items. There are, however, certain substances that are not readily distinguishable as food or nonfood and may present problems in judgment. The following guidelines apply to some of the more unique categories of eligible foods and food ingredients and ineligible nonfood items about which questions may arise. The guidelines and their lists are not to be considered all-inclusive:

a. Foods eligible for purchase with food coupons. Sales of almost all substances which may be purchased with food coupons issued by the United States Department of Agriculture under the regulations in effect on July 1, 1974, remain exempt from tax on and after July 1, 2004. However, since the exemption no longer depends on ability to be purchased with food stamps (reference 701—subrule 20.1(1)), sales of certain substances which can be purchased with food stamps but are neither food nor food ingredients are taxable on and after July 1, 2004.

These taxable sales include garden seeds and plants sold for use in gardens to produce food for human consumption. Seeds and plants eligible for purchase with food coupons include vegetable seeds and food-producing plants such as tomato and green pepper plants and fruit trees, food-producing roots, bushes, and bulbs (e.g., asparagus roots and onion sets) and seeds and plants used to produce spices for use in cooking foods. Sales of all these substances are taxable. Sales of chewing gum are taxable as sales of “candy” on and after July 1, 2004.

b. Distilled water and ice. These substances, although having some nonfood uses, are largely used as food or as ingredients in food for human consumption. Unless these substances are specifically labeled for nonfood use or the recipient indicates that they will be used for some purpose other than as food for human consumption or as ingredients in food for human consumption, their sales are exempt from tax.

c. Specialty foods. This category of eligible foods includes special dietary foods (e.g., diabetic and dietetic), enriched or fortified foods, infant formulas, and certain foods commonly referred to as health food items. These substances are food products which are substituted for more commonly used food items in the diet, and thus they are purchased for ingestion by humans and are consumed for their taste or nutritional value. Examples of items in this category of eligible foods are Metrecal, Enfamil, Sustegen, wheat germ, brewer’s yeast, sunflower seeds which are packaged for human consumption, and rose hips powder which is used for preparing tea. It is not possible to formulate a comprehensive list of eligible specialty foods. The guideline to be used to determine the eligibility of a specific product is the ordinary use of the product.

NOTE: If the product is primarily used as a food or as an ingredient in food, then it is an eligible item; if it is primarily used for medicinal purposes as either a therapeutic agent or a

deficiency corrector and only occasionally used as a food, the product is not an eligible item.

d. Snack foods. These substances are food items and, therefore, are usually eligible for the exemption. Typical examples of snack foods are cheese puffs; corn chips; popcorn; peanuts; potato chips and sticks; packaged cookies, cupcakes, and donuts; and pretzels. Alcoholic beverages, candy, and soft drinks are examples of snack foods the sales of which are not exempt from tax; see subrule 231.3(2).

e. Others. There are certain eligible food substances which are normally consumed only after being incorporated into foods sold for ingestion or chewing by humans. Sales of substances which are ingredients of items identical to those which are eligible for exemption when sold as finished products are sales eligible for exemption. Since these substances are food ingredients, their sales are exempt. An example is pectin. Pectin is the generic term for products marketed under various brand names and commonly used as a base in making jams and jellies. When pectin is incorporated into jams or jellies, it becomes part of a food for human consumption and, therefore, is an eligible food item. Other examples are lard and vegetable oils.

f. The following general classifications of food products are also exempt from tax unless taxable as prepared food; see rule 701—231.5(423):

Bread and flour products

Bottled water, unless it is a sweetened bottled water and thus taxable as a soft drink (a change from previous law; reference 701—subparagraph 20.1(3)“b”(1))

Cereal and cereal products

Cocoa and cocoa products, unless taxable in the form of candy as in rule 701—231.4(423)

Coffee and coffee substitutes, unless taxable as soft drinks; see paragraph 231.3(2)“F”

Dietary substitutes, other than dietary supplements; see paragraphs 231.3(1)“c” and 231.3(2)“a”

Eggs and egg products

Fish and fish products

Frozen foods

Fruits and fruit products including fruit juices, unless taxable as soft drinks; see paragraph 231.3(2)“f”

Margarine, butter, and shortening

Meat and meat products

Milk and milk products, including packaged ice cream products
Milk substitutes, such as soy and rice milk substitutes (a change from previous law; reference 701—subparagraph 20.1(3)“b”(2))

Spices, condiments, extracts, and artificial food coloring

Sugar and sugar products and substitutes, unless taxable in the form of candy as in rule 701—231.4(423)

Tea, unless taxable as a soft drink; see paragraph 231.3(2)“f”

Vegetables and vegetable products

231.3(2) Substances excluded from the term “food and food ingredients.” Sales of alcoholic beverages, candy, dietary supplements, food sold through vending machines, prepared food, soft drinks, and tobacco are not sales of “food” and are not exempt from tax by this rule.

a. “Alcoholic beverages” means beverages that are suitable for human consumption and contain one-half of 1 percent or more of alcohol by volume.

b. “Candy.” See rule 701—231.4(423).

c. “Dietary supplement” means any product, other than tobacco, intended to supplement the diet that contains one or more of the following dietary ingredients:

(1) A vitamin.

(2) A mineral.

(3) An herb or other botanical.

(4) An amino acid.

(5) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake.

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(6) A concentrate, metabolite, constituent, extract, or combination of any of the ingredients in subparagraphs (1) through (5) that is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and is required to be labeled as a dietary supplement, identifiable by the “supplement facts” box found on the label and as required pursuant to 21 Code of Federal Regulations 101.36.

Dietary supplements, as their name indicates, serve as supplements to food or food products rather than as “food,” and, therefore, are not included within the definition of that word. Since these substances serve as deficiency correctors or therapeutic agents to supplement diets deficient in essential nutrition rather than as foods, they are not eligible for the food and food ingredients exemption. In addition to vitamin and mineral tablets or capsules, this category includes substances such as cod liver oil, which is used primarily as a source of vitamins A and D. It is not possible to provide a comprehensive list of other such items which are primarily used for medicinal purposes or as health aids and which may be stocked by authorized firms.

d. “Food sold through vending machines” means food dispensed from a machine or other mechanical device that accepts payment, other than food which would be qualified for exemption if purchased with coupons (commonly known as “food stamps”) issued under the federal Food Stamp Act of 1977, 7 United States Code 2011 et seq. Alcoholic beverages, candy, dietary supplements, prepared food, soft drinks, and tobacco sold through vending machines are sold subject to tax in all instances because they are specifically excluded from this rule’s definition of “foods”; see subrule 231.3(2) generally. This paragraph “d” should be interpreted in such a fashion that if the sale of a substance is exempt from tax because it is a sale of “food” when the substance is sold by means other than a vending machine, then the sale of that same substance through a vending machine will also be exempt from tax. Conversely, if the sale of a substance by any means other than through a vending machine is taxable, then the sale of that same substance through a vending machine will also be taxable.

e. “Prepared food.” See rule 701—231.5(423).

f. “Soft drinks” means nonalcoholic beverages that contain natural or artificial sweeteners. Soft drinks may be noncarbonated. “Soft drinks” does not include beverages that contain milk or milk products; soy, rice, or similar milk substitutes; coffee and tea which are not sweetened; effervescent, noneffervescent, and mineral water sold in containers; beverages that contain greater than 50 percent of vegetable or fruit juice by volume. This latter is a change from the law as it existed prior to July 1, 2004, which required a volume of only 15 percent for exemption.

Taxable soft drinks are noncarbonated water and soda water if naturally or artificially sweetened; soft drinks carbonated and noncarbonated including but not limited to colas, ginger ale, near beer, and root beer; bottled and sweetened tea and coffee; lemonade, orangeade, and all other drinks or punches with natural fruit or vegetable juice less than 50 percent by volume.

Beverage mixes and ingredients intended to be made into soft drinks are taxable. Beverage mixes or ingredients may be liquid or frozen, concentrated or nonconcentrated, dehydrated, powdered, granulated, sweetened or unsweetened, seasoned or unseasoned. Sales of beverage mixes to which a sweetener is to be added before drinking are taxable. Concentrates intended to be made into beverages which contain

natural fruit or vegetable juice of less than 50 percent by volume are taxable.

Beverages, the sales of which are otherwise exempt, are taxable if sold as prepared food under rule 701—231.5(423).

Nondairy coffee “creamers” in liquid, frozen or powdered form are not beverages. Sugar or other artificial or natural sweeteners sold separately are not taxable as beverage ingredients. Specialty foods that are liquids or that are to be added to a liquid and that are intended to be a substitute in the diet for more commonly used food items are not beverages and are not taxable as beverages. These foods include infant formula.

g. “Tobacco” means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

231.3(3) Other substances which are not food or food ingredients. Various products are not purchased for ingestion or chewing by humans or, if they are, are not consumed for their taste or nutritional value. Therefore, they are not purchased exempt from tax under this rule. They include, but are not limited to, the following:

a. Health aids. Over-the-counter medicines and other products used primarily as health aids or therapeutic agents are not foods since they are consumed for their medicinal value as opposed to their nutritional value or taste. Such products include aspirin, cough drops or syrups and other cold remedies, antacids, and all over-the-counter medicines or other products used as health aids. In addition to these commonly used health aids, any product used primarily for medicinal purposes is ineligible. An example of such products is slippery elm powder, a demulcent which is used to soothe sore throats.

b. Items not exempt. The following general classifications of products are subject to tax:

- Cosmetics
- Household supplies
- Paper products
- Pet foods and supplies
- Soaps and detergents
- Tobacco products
- Toiletry articles
- Tonics

Lunch counter foods or foods prepared for consumption on the premises of the retailer

This rule is intended to implement Iowa Code subsection 423.3(56).

701—231.4(423) Sales of candy.

231.4(1) Definition. Sales of candy were excluded from exemption prior to July 1, 2004; however, the definition of “candy” applicable to the exclusion was slightly different from the definition set out in this rule. Reference rule 701—21.1(422,423). For the purposes of this rule, “candy” means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy shall not include any preparation containing flour and shall require no refrigeration. Any preparation to which flour has been added only for the purpose of excluding its sales from tax and not for any legitimate purpose, culinary or otherwise, shall not be sold exempt from tax under this rule.

231.4(2) Candy, candy-coated items and candy products. Candy-coated items and candy products include those products normally considered to be “candy.” Their sales were taxable prior to July 1, 2004, and remain taxable after that date.

a. Candy. Candy is a prepared food made of a sugar paste or syrup or other natural or artificial sweeteners often

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enriched and varied with coloring and flavoring and formed into various shapes.

b. Candy-coated items. Candy-coated items are products like fruit or nuts which are dipped or otherwise substantially covered with candy and which would normally be considered candy and which are “candy” under the definition set out in subrule 231.4(1).

c. Candy products. Candy products include mixtures containing both candy and noncandy items. The inclusion of candy merely as an incidental ingredient in a product does not make the item a candy product.

d. Taxable candy, candy-coated items, and candy products. Candy, candy-coated items, and candy products include: preparation of fruits, nuts or other ingredients in combination with sugar, honey or other natural or artificial sweeteners in the form of bars, drops or pieces; hard or soft candies including jelly beans, taffy, licorice, and mints; dried fruit leathers or other similar products prepared with natural or artificial sweeteners; cotton candy; candy breath mints; chewing gum; and mixes of candy pieces, dried fruits, nuts, and similar items.

Sales of items which are normally sold for use as ingredients in recipes but which can be eaten as candy are taxable on and after July 1, 2004. Examples of these items include but are not limited to the following: white, milk, and German chocolate baking squares; unsweetened or sweetened baking chocolate in bars or pieces; white and dark chocolate almond bark; toffee bits; M&M’s sold for baking; candy primarily intended for decorating baked goods; and the following baking chips: mint, mint-chocolate, peanut butter, peanut butter and chocolate, butterscotch, chocolate, and butterscotch and chocolate.

e. Nontaxable items and products. Candy, candy-coated items, or candy products do not include: jams, jellies, preserves, or syrups; frostings; dried fruits; marshmallows; breakfast cereals; prepared fruit in a sugar or similar base; ice cream or other frozen desserts covered with chocolate or similar coverings; caramel-coated or other candy-coated apples or other fruit; candy-coated popcorn; cakes, cookies, and similar products covered with chocolate or other similar coating; and granola bars. However, these and similar items are taxable if sold as prepared food under rule 701—231.5(423).

This rule is intended to implement 2005 Iowa Code subsection 423.3(56).

701—231.5(423) Sales of prepared food. On and after July 1, 2004, sales of “prepared food” are subject to tax as such sales were taxable prior to that date. However, before and after that date, the definitions of “prepared food” differ slightly. Reference rule 701—20.5(423) for a description of the taxation of “prepared food” prior to July 1, 2004.

231.5(1) Prepared food.

a. On and after July 1, 2004, “prepared food” means any of the following:

(1) Food sold in a heated state or heated by the seller, including food sold by a caterer.

(2) Two or more food ingredients mixed or combined by the seller for sale as a single item.

(3) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport food.

The types of retailers who are generally considered to be offering prepared food for sale include restaurants, coffee shops, cafeterias, convenience stores, snack shops, and con-

cession stands including those at recreation and entertainment facilities. Other retailers that often offer prepared food include vending machine retailers, mobile vendors, and concessionaires operating facilities for such activities as education, office work, or manufacturing.

If food is sold for consumption on the premises of a retailer, the food is rebuttably presumed to be prepared food. “Premises of a retailer” means the total space and facilities under control of the retailer or available to the retailer, including buildings, grounds, and parking lots that are made available or that are available for use by the retailer, for the purpose of sale of prepared food and drink or for the purpose of consumption of prepared food and drink sold by the retailer. Availability of self-service heating or other preparation facilities or eating facilities such as tables and chairs and knives, forks, and spoons, indicates that food, food products, and drinks are sold for consumption on the premises of the retailer and are subject to tax as sales of prepared food.

The following examples are intended to show some of the situations in which sales are taxable as sales of prepared food and drink.

EXAMPLE A. A movie theater owner operates a movie theater and a concession stand in the lobby of the theater. There is not a separate area set aside for eating facilities. Sales of prepared food and drink through the concession stand are taxable.

EXAMPLE B. As a convenience to employees, a manufacturer owns and operates several food and drink vending machines located on the premises of the plant. No separate seating or other facilities for eating are provided. Sales of prepared food and drink through the vending machines are taxable.

EXAMPLE C. Mobile vendor units located throughout an office are operated by the owner of the business and are stocked with snack food priced to cover the cost of the items to the employer. No separate eating facilities are provided. Sales of prepared food through the mobile vendors are taxable.

EXAMPLE D. An insurance company hires a caterer to run a cafeteria which provides food, at a low cost, to its employees. The insurance company also pays the caterer an amount, per month, which varies with the number of meals the caterer serves to provide this food service. The caterer does not lease the cafeteria premises; thus the premises remains under the control of the insurance company. In this case, the caterer sells the food in a space made “available to the retailer [caterer],” and the amount which the insurance company pays, on a monthly basis, to the caterer is presumed to be the taxable sales price from the sale of prepared food, as well as the amount paid by the employees to the caterer.

b. “Prepared food,” for the purposes of this rule, does not include food that is any of the following:

(1) Only cut, repackaged, or pasteurized by the seller.

(2) Eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the United States Food and Drug Administration in Chapter 3, Part 401.11 of its Food Code, so as to prevent food-borne illnesses.

(3) Bakery items sold by the seller that baked them. The term “bakery items” includes but is not limited to breads, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas. On and after July 1, 2004, baked goods sold for consumption on the premises by the seller that baked them are sold exempt from tax. This is a change from previous law;

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reference 701—subrule 20.5(2), Example D.

(4) Food sold without eating utensils provided by the seller in an unheated state as a single item which is priced by weight or volume.

231.5(2) Examples. The following are additional examples of foods that either are or are not “prepared foods,” the sales price of which is taxable.

EXAMPLE A: A supermarket retailer cuts Bibb and romaine lettuce, mixes them together, and places them in a bag for sale. This is food which is only cut and repackaged. Its sale is not the sale of prepared food; thus its sale is exempt from tax.

EXAMPLE B: The same factual situation as Example A above applies, except that the lettuce is mixed with a salad dressing, placed in a container, and sold as a salad which is ready to eat. Sale of the salad is a taxable sale of “prepared food.”

EXAMPLE C: A supermarket retailer slices a roll of cotto salami and a roll of regular salami. The retailer places ten slices of each in the same container and sells the combination as an Italian luncheon meat variety pack. This is, again, the sale of food which is only cut and repackaged. The sale of the salami is exempt from tax.

EXAMPLE D: The same factual circumstances as in Example C apply, except that the retailer takes the sliced salami, places it between two slices of bread, adds some condiments, surrounds the meat, bread, and condiments with plastic, and sells the result as a ready-to-eat sandwich. This is prepared food, “two or more food ingredients . . . combined by the seller for sale as a single item,” and more is done to the ingredients than cutting and repackaging. Sales of the sandwiches are taxable.

This rule is intended to implement 2005 Iowa Code subsection 423.3(56).

701—231.6(423) Prescription drugs, medical devices, and oxygen. Sales of prescription drugs and medical devices as defined in subrule 231.6(1) and dispensed for human use or consumption in accordance with subrules 231.6(3) and 231.6(4) shall be exempt from sales tax. Rentals of medical devices as defined in subrule 231.6(1) are also exempt from tax. The sales price from the sales of any oxygen purchased for human use or consumption (whether or not the oxygen is prescribed) is exempt from tax.

231.6(1) Definitions.

“Medical device” means equipment or supplies, including orthopedic or orthotic devices, intended to be prescribed by a practitioner for human use to an ultimate user.

“Prescription drug” means a drug intended to be dispensed for human consumption to an ultimate user pursuant to a prescription or medication order from a practitioner.

“Ultimate user” means any individual who has lawfully obtained and possesses a prescription drug or medical device for the individual’s own use or for the use of a member of the individual’s household, or an individual to whom a prescription drug or medical device has been lawfully supplied, administered, dispensed or prescribed. The phrase does not include any entity created by law, such as a corporation or partnership.

231.6(2) Tax exemption. The sale or rental of a medical device or a prescription drug is exempt from tax only if the device or drug is intended to be prescribed or dispensed to an ultimate user. A drug or device is intended to be prescribed or dispensed to an ultimate user only if the drug or device is obtained by or supplied or administered to an ultimate user for placement on or in the ultimate user’s body.

EXAMPLE A: A sports medicine clinic purchases a new type of device which scans the inside of the human body to disclose injured soft tissue. The device can be used only on the order of a practitioner. The device is prescribed, but since, by its very nature, the device cannot be dispensed to an ultimate user, its purchase is not exempt from tax.

EXAMPLE B: Pursuant to a practitioner’s prescription, a pacemaker is inserted in a patient’s body. The pacemaker is dispensed to an ultimate user, and its sale is exempt from tax.

EXAMPLE C: A physician prescribes a tranquilizer for a patient who is chronically nervous. The patient uses the prescription to purchase the tranquilizer at a pharmacy. The purchase is exempt from tax.

For purposes of this subrule, any medical device or drug prescribed in writing by a licensed physician, surgeon, osteopath, osteopathic physician or surgeon, or other person authorized by law to an ultimate user for human use or consumption shall be deemed a device or drug exempt from tax if a prescription is required or permitted under Iowa state or federal law.

EXAMPLE D: A common painkiller is sold over the counter in doses of 200 milligrams per tablet. In doses of 600 milligrams per tablet, federal law requires a prescription before the drug can be dispensed. Sales of 600 milligram tablets by prescription are exempt from tax.

EXAMPLE E: A federal law permits but does not require the painkiller mentioned in Example D to be prescribed by a practitioner in dosages of 200 milligrams per tablet. A practitioner might prescribe the painkiller in the over-the-counter dosage, for example, to impress upon a patient the importance of taking the drug. Sales of 200 milligram tablets by prescription are exempt from tax.

See rules 701—231.7(423) and 701—231.8(423) for examples of medical devices sold without a prescription but exempt from tax.

231.6(3) Persons authorized to dispense prescription drugs or prescription devices. In order for a prescription drug or device to qualify for an exemption, it must be dispensed by one of the following persons:

a. Any store or other place of business where prescription drugs are compounded, dispensed or sold by a person holding a license to practice pharmacy in Iowa, and where prescription orders for prescription drugs or devices are received or processed in accordance with pharmacy laws.

b. Persons licensed by the state board of medical examiners to practice medicine or surgery in Iowa.

c. Persons licensed by the state board of medical examiners to practice osteopathic medicine or surgery in Iowa.

d. Persons licensed by the state board of podiatry examiners to engage in the practice of podiatry in Iowa.

e. Persons licensed by the state board of dental examiners to practice dentistry in Iowa.

f. Persons licensed by the state board of optometry examiners as therapeutically certified optometrists.

g. Persons licensed by the state board of chiropractic examiners to practice chiropractic in Iowa, when dispensing in accordance with Iowa Code chapter 151.

h. Any other person authorized under Iowa law to dispense prescription drugs or devices in this state.

i. Any person licensed in another state in a health field in which, under Iowa law, licensees in this state may legally prescribe drugs or devices.

231.6(4) Disposition of prescription drugs and devices. Prescription drugs or devices may be dispensed either directly from one of the persons licensed in 231.6(3) who may also prescribe drugs or devices or by a pharmacist upon receipt of

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a prescription from one of the persons licensed to prescribe. A prescription received by a licensed pharmacist from one of the persons licensed in 231.6(3) who may also prescribe drugs or devices shall be sufficient evidence that a drug or device is exempt from sales tax. When a person who prescribes a drug or device is also the dispenser, the drug or device will not require a prescription by such person, but the drug or device must be recorded as if a prescription would have been issued or required. If this condition is met, the sales price from the sale of the drug or device shall be exempt from sales tax.

231.6(5) Others required to collect sales tax. Any person other than those who are allowed to dispense drugs or devices under 231.6(3) shall be required to collect sales tax on any prescription drugs or devices.

231.6(6) Prescription drugs and devices purchased by hospitals for resale. This subrule applies to for-profit hospitals only. Hospitals have purchased prescription drugs or devices for resale to patients and not for use or consumption in providing hospital services only if the following circumstances exist: (a) the drug or device is actually transferred to the patient; (b) the drug or device is transferred in a form or quantity capable of a fixed or definite price value; (c) the hospital and the patient intend the transfer to be a sale; and (d) the sale is evidenced in the patient's bill by a separate charge for the identifiable drug or device. Reference rule 701—18.31(422, 423) for a discussion generally of sales for resale by persons performing a service. Also reference 701—18.59(422,423) for the exemption applicable to all purchases of goods and services by a nonprofit hospital licensed under Iowa Code chapter 135B.

EXAMPLE A: A hospital purchases a bone saw blade and uses the blade to cut the bone of patient X during hip replacement surgery. This dulls the blade to the point that the blade cannot be used again and is discarded. The hospital bills patient X for "one bone saw blade—\$30." In spite of the separate charge for an identifiable piece of property, the hospital did not purchase the bone saw blade for resale. The blade was used up by the hospital, not transferred to the ownership of X. Since there was no transfer, there was no sale, thus no purchase for resale.

EXAMPLE B: A hospital buys lotion for use in massages given to patients by a nurse's aide. In spite of the fact that one can argue that a transfer of ownership of the lotion from hospital to patient occurred, the lotion was not purchased for resale. No real intent to sell the lotion to patients ever existed; the lotion was not transferred to patients in a quantity capable of a definite price value; and there is no separate charge for the lotion.

A hospital's purchase of a prescription drug or device for purposes other than resale will still be exempt from tax if a device or drug is intended to be prescribed to an ultimate user and the hospital's use of the drug or device is otherwise exempt under 231.6(1).

This rule is intended to implement 2005 Iowa Code subsection 423.3(59).

701—231.7(423) Exempt sales of nonprescription medical devices, other than prosthetic devices. A prescription is not required for sales of the medical devices listed in subrule 231.7(1) to be exempt from tax if those devices are purchased for human use or consumption.

231.7(1) Definitions.

"Anesthesia trays" includes, without limit, paracervical anesthesia trays, saddle block anesthesia trays, spinal anesthesia trays, and continuous epidural anesthesia trays.

"Biopsy" means the removal and examination of tissue from a living body, performed to establish a precise diagnosis.

"Biopsy needles" includes, without limit, needles used to perform liver, kidney, other soft tissue, bone, and bone marrow biopsies. Menghini technique aspirating needles, rosenthal-type needles, and "J" Jamshidi needles are all examples of biopsy needles.

"Cannula" means a tube inserted into a body duct or cavity to drain fluid, insert medication including oxygen, or to open an air passage. Examples are lariat nasal cannulas and ableson cricothyrotomy cannulas.

"Catheter" means a tubular, flexible, surgical instrument used to withdraw fluids from or introduce fluids into a body cavity, or for making examinations. Examples are: robinson/relation catheters, all types of foley catheters (e.g., pediatric and irrigating), three-way catheters, suction catheters, IV catheters, angiocath catheters and male and female catheters.

"Catheter trays." Universal foley catheter trays, economy foley trays, urethral catheterization trays and catheter trays with domed covers are nonexclusive examples of these trays.

"Diabetic testing materials" means all materials used in testing for sugar or acetone in the urine, including, but not limited to, Clinitest, Tes-tape, and Clinistix; also, all materials used in monitoring the glucose level in the blood, including, but not limited to, bloodletting supplies and test strips.

"Drug infusion device" means a device designed for the slow introduction of a drug solution into the human body. The term includes devices which infuse by means of pumps or gravity flow (drip infusion).

"Fistula" means an abnormal passage usually between the internal organs or between an internal organ and the surface of the body.

"Hypodermic syringe" means an instrument for applying or administering liquid into any vessel or cavity beneath the skin. This includes the needle portion of the syringe if it accompanies the syringe at the time of purchase, and it also includes replacement needles.

"Insulin" means a preparation of the active principle of the pancreas, used therapeutically in diabetes and sometimes in other conditions.

"Intraocular lens" means a lens located inside the eye.

"Kit" means a combination of medical equipment and supplies used to perform one particular medical procedure which is packaged and sold as a single item.

"Medical device," for the purposes of this rule, means medical equipment or supplies intended to be dispensed for human use with or without a prescription to an ultimate user.

"Myelogram" means a radiographic picture of the spinal cord. A "radiographic picture" is one taken using radiation other than visible light.

"Nebulizer" means a mechanical device which converts a liquid to a spray or fog.

"Oxygen equipment" means all equipment used to deliver medicinal oxygen including, but not limited to, face masks, humidifiers, cannula, tubing, mouthpieces, tracheotomy masks or collars, regulators, oxygen concentrators and oxygen accessory racks or stands.

"Set." See "Kit" above.

"Tray." See "Kit" above.

231.7(2) Sales of the following medical devices are exempt from tax:

- Sales of insulin, hypodermic syringes, and diabetic testing materials.
- Sales and rentals of oxygen equipment.

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c. Sales of hypodermic needles, anesthesia trays, biopsy trays and needles, cannula systems, catheter trays, invasive catheters, dialyzers, drug infusion devices, fistula sets, hemodialysis devices, insulin infusion devices, intraocular lenses, irrigation solutions, intravenous administering sets, solutions and stopcocks, myelogram trays, nebulizers, small vein infusion kits, spinal puncture trays, transfusion sets and venous blood sets, all of which are no longer taxable.

231.7(3) Component parts. Sales of any component parts of the trays, systems, devices, sets, or kits listed above are taxable unless the sale of a component part, standing alone, is otherwise exempt under these rules. For instance, the sale of a biopsy needle or an invasive catheter will be exempt from tax whether or not it was purchased for use as a component part in a biopsy tray or catheter tray, so long as the needle or catheter will be dispensed for human use to an ultimate user. Conversely, sales of catheter introducers, disposable latex gloves, rayon balls, forceps, and specimen bottles are exempt when those items are sold as part of a catheter tray, but are not exempt when those items are sold individually.

This rule is intended to implement 2005 Iowa Code subsection 423.3(59).

701—231.8(423) Prosthetic, orthotic and orthopedic devices.

231.8(1) Prosthetic devices. Sales or rental of prosthetic devices shall be exempt from sales tax.

231.8(2) Orthotic and orthopedic devices. Sales or rental of orthotic and orthopedic devices prescribed for human use which meet the provisions of subrules 231.8(3) and 231.8(4) shall be exempt from sales tax. "Prescribed" refers to a written prescription, or an oral prescription later reduced to writing, issued by any of the persons described in paragraphs "a" through "i" of subrule 231.6(3).

231.8(3) Definitions.

a. "Prosthetic device" means a piece of special equipment designed to be a replacement or artificial substitute for an absent or missing part of the human body and intended to be dispensed with or without a prescription to an ultimate user. See subrule 231.6(1) for a definition of the term "ultimate user." The term "prosthetic device" includes ostomy, urological, and tracheostomy devices and supplies.

The following is a nonexclusive list of prosthetic devices:

Artificial arteries
Artificial breasts
Artificial ears
Artificial eyes
Artificial heart valves
Artificial implants
Artificial larynx
Artificial limbs
Artificial noses
Artificial teeth
Cardiac pacemakers
Contact lenses
Cosmetic gloves
Dental bridges and implants
Drainage bags
Hearing aids
Ileostomy devices
Intraocular lenses
Karaya paste
Karaya seals
Organ implants
Ostomy belts
Ostomy clamps
Ostomy cleaners and deodorizers
Ostomy pouch
Ostomy stoma caps and paste
Penile implants

Prescription eyeglasses
Stoma bags
Tracheal suction catheters
Tracheostomy care and cleaning starter kits
Tracheostomy cleaning brushes
Tracheostomy tubes
Urinary catheters
Urinary drainage bags
Urinary irrigation tubing
Urinary pouches

b. "Orthotic device" means a piece of special equipment designed to straighten a deformed or distorted part of the human body, such as corrective shoes or braces. An orthotic device is an orthopedic device.

c. "Orthopedic device" means a piece of special equipment designed to correct deformities or to preserve and restore the function of the human skeletal system, its articulations and associated structures. A hot tub or spa is not an orthopedic device.

The following is a nonexclusive list of orthopedic devices:

Abdominal belts
Alternating pressure mattresses
Alternating pressure pads
Anti-embolism stockings
Arch supports
Arm slings
Artificial sheepskin
Bone cement
Bone nails
Bone pins
Bone plates
Bone screws
Bone wax
Braces
Canes
Casts
Cast heels
Cervical braces
Cervical collars
Cervical pillows
Clavicle splints
Corrective braces
Corrective shoes
Crutch cushions
Crutch handgrips
Crutch tips
Crutches
Decubitus prevention devices
Dorsolumbar belts
Dorsolumbar supports
Elastic bandages
Elastic supports
Exercise devices
Head halters
Hernia belts
Iliac belts
Invalid rings
Knee immobilizers
Lumbosacral supports
Muscle stimulators
Nerve stimulators
Orthopedic implants
Orthopedic shoes
Patient lifts
Plaster (surgical)
Rib belts
Rupture belts
Sacroiliac supports
Sacrolumbar belts
Sacrolumbar supports
Shoulder immobilizers
Space shoes

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Splints
 Traction equipment
 Transcutaneous electrical nerve stimulators (tens units)
 Trapezes
 Trusses
 Walkers
 Wheelchairs

d. "Related devices." Sales or rental of devices which are used exclusively in conjunction with prosthetic, orthotic, or orthopedic devices shall be exempt from tax. *Daw Industries, Inc. v. United States*, 714 F.2d 1140 (Fed. Cir. 1983).

e. "Medical equipment and supplies." The scope of the term medical equipment and supplies is broader than the terms prescription drugs or medical devices. While all exempt prescription drugs are medical supplies and all exempt medical devices are medical equipment, not all medical equipment and supplies are exempt medical devices or prescription drugs. The following is a nonexclusive list of items which are medical equipment or supplies, but are not prescription drugs or medical devices exempt from tax under subrules 231.6(1), 231.8(1), and 231.8(2) and rule 701—231.7(423). Sales of the below-listed items are generally taxable.

Adhesive bandages
 Aneurysm clips
 Arterial bloodsets
 Aspirators
 Athletic supporters
 Atomizers
 Autolit
 Back cushions
 Bathing aids
 Bathing caps
 Bedpans
 Bedside rails
 Bedside tables
 Bedside trays
 Bedwetting prevention devices
 Belt vibrators
 Blood cell washing equipment
 Blood pack holders
 Blood pack trays
 Blood pack units
 Blood pressure meters
 Blood processing supplies
 Blood tubing
 Blood warmers
 Breast pumps
 Breathing machines
 Cardiac electrodes
 Cardiopulmonary equipment
 Chair lifts
 Clamps
 Clip-on ashtrays
 Commode chairs
 Connectors
 Contact lens cases
 Contact lens solution
 Convuluted pads
 Corrective pessaries
 Cotton balls
 Diagnostic kits
 Dialysis chairs
 Dialysis supplies
 Dietetic scales
 Disposable diapers
 Disposable gloves
 Disposable underpads
 Donor chairs
 Dressings
 Dryaid kits for ears
 EKG paper

Ear molds
 Electrodes (other than tens units)
 Emesis basins
 Enema units
 First-aid kits
 Foam slant pillows
 Gauze bandages
 Gauze packings
 Gavage containers
 Geriatric chairs
 Grooming aids
 Hand sealers
 Hearing aid carriers
 Hearing aid repair kits
 Heart stimulators
 Heat lamps
 Heat pads
 Hemolators
 Hospital beds
 Hot water bottles
 Ice bags
 Ident-a-bands
 Incontinent garments
 Incubators
 Infrared lamps
 Inhalators
 Iron lungs
 Irrigation apparatus
 IV connectors
 Laminar flow equipment
 Latex gloves
 Leukopheresis pumps
 Lymphedema pumps
 Manometer trays
 Massagers
 Maternity belts
 Medigrade tubing
 Modulung oxygenators
 Moist heat pads
 Myringotomy tubes
 Nebulizers (hypodermic)
 Overbed tables
 Page turning devices
 Pap smear kits
 Paraffin baths
 Physicians instruments
 Pigskin
 Plasma extractors
 Plasma pheresis units
 Plastic heat sealers
 Prescribed device repair kits and batteries
 Respirators
 Resuscitators
 Sauna baths
 Security pouches
 Servipak dialysis supplies
 Shelf trays
 Shower chairs
 Side rails
 Sitz bath kit
 Specimen containers
 Sponges (surgical)
 Stairway elevators
 Staples
 Steri-peel
 Stools
 Suction equipment
 Sunlamps
 Surgical bandages
 Surgical equipment
 Suspensories
 Sutures
 Thermometers
 Toilet aids

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Tourniquets
 Transfer boards
 Tube sealers
 Underpads
 Urinals
 Vacutainers
 Vacuum units
 Vaporizers
 Vibrators
 Whirlpools
 X-ray film

231.8(4) Power devices. Sales or rental of power devices especially designed to operate prosthetic, orthotic or orthopedic devices shall be exempt from tax. This exemption does not include batteries which can be used to operate a number of devices, but batteries designed solely for use in hearing aids are exempt.

This rule is intended to implement 2005 Iowa Code subsection 423.3(59).

701—231.9(423) Raffles. The sales price from the sale of tickets for a raffle conducted at a fair pursuant to Iowa Code section 99B.5 is not subject to tax.

This rule is intended to implement 2005 Iowa Code subsection 423.3(61).

701—231.10(423) Exempt sales of prizes. The sales price from sales of tangible personal property which will be given as prizes to players in games of skill, games of chance, raffles, and bingo games as defined in and lawful under Iowa Code chapter 99B is exempt from tax. See department of inspections and appeals' 481—Chapters 100 through 106, Iowa Administrative Code, for a description of the games of skill, games of chance, raffles, and bingo games which are lawful. See rule 481—100.6(99B) for a description of the prizes which it is lawful to award. A gift certificate is not tangible personal property. If a person wins a gift certificate as a prize and then redeems the gift certificate for merchandise, tax is payable at the time the gift certificate is redeemed. Reference 701—15.16(422,423).

This rule is intended to implement 2005 Iowa Code subsection 423.3(62).

701—231.11(423) Modular homes. Forty percent of the sales price from the sale of a modular home is exempt from tax. A "modular home" is any structure built in a factory, made to be used as a place for human habitation, which cannot be attached or towed behind a motor vehicle and which does not have permanently attached to its body or frame any wheels or axles.

This rule is intended to implement 2005 Iowa Code subsection 423.3(63).

701—231.12(423) Access to on-line computer service. The sales price from charges paid to a provider for access to an on-line computer service is exempt from tax. An "on-line computer service" is one which provides for or enables multiple users to have computer access to the Internet. Also, the furnishing of any contracted on-line service is exempt from Iowa tax if the information is made available through a computer server. The exemption applies to all contracted on-line services, as long as they provide access to information through a computer server.

This rule is intended to implement 2005 Iowa Code subsection 423.3(64).

701—231.13(423) Sale or rental of information services. The sales price from the service of the sale or rental of information services is exempt from tax. This exemption does not

repeal by implication the tax on the performance of the services of investment counseling, service charges of all financial institutions, private employment agencies, test laboratories, detective services, or any other services enumerated by statute. Those services remain taxable; reference 701—Chapter 26 generally.

"Information services" means every business activity, process, or function by which a seller or its agent accumulates, prepares, organizes, or conveys data, facts, knowledge, procedures, and like services to a particular buyer (or its agent) of the information through any tangible or intangible medium. Information accumulated, prepared, or organized for a particular buyer, its agent, a group of buyers, or their agent is an information service even though it may incorporate preexisting components of data or other information.

Information services include, but are not limited to, database files, mailing lists, subscription files, market research, credit reports, surveys, real estate listings, bond rating reports, abstracts of title, bad check lists, broadcasting rating services, wire services, scouting reports, white and yellow page listings, and other similar items of compiled information prepared for a particular customer. The furnishing of artwork (including musical compositions and films), drawings, illustrations, or other graphic material is not the performance of an "information service"; nor does the term include information prepared for general dissemination to the public in the form of books, magazines, newsletters, videotapes or audio tapes, compact discs, or any other medium commonly used to communicate with large numbers of customers. The sale of a book, magazine, or similar item is not the sale of an information service, even if the item contains material of practical use (e.g., in conducting a private, for-profit business) to its purchaser.

The following specific examples illustrate the general principles set out above.

EXAMPLE A. John Doe buys a packaged set of preprinted documents and instructions which anyone may purchase and which is entitled "Legal Eagle." Mr. Doe prepares his own will by reading the instructions, making choices and filling in the blanks on the preprinted documents. Mr. Doe has purchased tangible personal property and not an information service. His purchase is taxable.

EXAMPLE B. A taxpayer buys a book entitled "Doing Your Own Iowa Individual Income Tax," which is written by an accountant and is available to any buyer. The taxpayer uses the book to prepare her own IA 1040. Since her purchase contains information prepared for general dissemination to the public in the form of a book, that purchase is a taxable sale of tangible personal property and not an exempt sale of an information service.

EXAMPLE C. The seller provides, for a fee, a weekly bulletin listing information on real estate of use to brokers selling homes in a certain Iowa county. The seller secures the information from a multiple listing service without applying any independent thought during the compiling of that information. The bulletin is useful only to those brokers and not to the general public. Since the bulletin is a "real estate listing" and has been prepared for a particular group of customers and not for the general public, its sale is the sale of an information service rather than the sale of tangible personal property and is thus exempt from tax.

EXAMPLE D. A-1 Corporation sells gourmet meats through the mail. A-1 rents its list of customers to whom it mails its catalog to other retailers that specialize in sales of goods or services to the wealthy. Since the list is a "mailing list" and made available only to a particular group of buyers,

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its rental is the performance of an exempt information service and not the taxable rental of tangible personal property.

EXAMPLE E. Company E is a tariff bureau which specializes in compiling and preparing tariff schedules. E acquires these schedules from various companies throughout the country. E then provides these schedules to common carriers who subscribe to its service. Its printed tariff schedules are published in bound and loose-leaf form; they may be updated daily. E's providing the schedules is the performance of an exempt information service because the schedules are compiled for a particular group of customers and they are items of compiled information similar to the files, lists, reports, and other information services named above. E's services are not subject to tax.

EXAMPLE F. Company F compiles and prints telephone directories. F purchases white and yellow page listings from various telephone companies and uses those listings to make up its directories. F's purchases of the white and yellow page listings are purchases of an exempt information service. Any sales on F's part of the directories to the general public would be sales of tangible personal property subject to tax.

EXAMPLE G. Company G purchases the assets of four businesses. The primary asset of each of the businesses is a database containing names, addresses, and other customer information of use to G but not to anyone other than a company similar to G. G transfers the lists to its own computers by way of paper or magnetic tape. G has purchased an exempt information service with its purchases of the four databases.

This rule is intended to implement 2005 Iowa Code subsection 423.3(65).

701—231.14(423) Exclusion from tax for property delivered by certain media. A taxable "sale" of tangible personal property does not occur if the substance of the transaction is delivered to the purchaser digitally, electronically, or by utilizing cable, radio waves, microwaves, satellites, or fiber optics. This exclusion from tax is also applicable to the leasing of tangible personal property, since a lease is classified as a "sale" of tangible personal property for the purposes of Iowa sales and use tax law. The exclusion is not applicable to property delivered by any medium other than those listed above. Sales of items such as artwork, drawings, photographs, music, electronic greeting cards, "canned" software (reference 701—subrule 18.34(1)), entertainment properties (e.g., films, concerts, books, and television and radio programs), and all other digitized products delivered as described above are not taxable, except the exclusion does not repeal by implication the tax on the service of providing pay television. Reference rule 701—26.56(422,423). If an order for a product is placed by way of any of the media described above but the product ordered is delivered by conventional, physical means, e.g., the U.S. Postal Service or common carrier, sale of the product is not excluded from tax under this rule.

This rule is intended to implement 2005 Iowa Code subsection 423.3(66).

701—231.15(423) Exempt sales of clothing and footwear during two-day period in August. Tax is not due on the sale or use of a qualifying article of clothing or footwear if the sales price of the article is less than \$100 and the sale takes place during a period beginning at 12:01 a.m. on the first Friday in August and ending at 12 midnight of the following Saturday. For example, in the year 2004, this period began at 12:01 a.m. on Friday, August 6, and ended at 12 midnight on Saturday, August 7. Eligible purchases of clothing and footwear are exempt from local option sales taxes as well as Iowa state sales tax.

231.15(1) Definitions. The following words and terms, when used in this rule, shall have the following meanings, unless the context clearly indicates otherwise.

"Accessories" includes, but is not limited to jewelry, handbags, purses, briefcases, luggage, wallets, watches, cufflinks, tie tacks and similar items carried on or about the human body, without regard to whether worn on the body in a manner characteristic of clothing.

"Clothing or footwear" means an article of wearing apparel designed to be worn on or about the human body. For the purposes of this rule, the term does not include accessories or special clothing or footwear or articles of wearing apparel designed to be worn by animals.

"Special clothing or footwear" is clothing or footwear primarily designed for athletic activity or protective use and which is not normally worn except when used for the athletic activity or protective use for which it is designed.

231.15(2) Exempt sales. The exemption applies to each article of clothing or footwear selling for less than \$100, regardless of how many items are sold on the same invoice to a customer. For example, if a customer purchases two shirts for \$80 each, both items qualify for the exemption even though the customer's total purchase price (\$160) exceeds \$99.99. The exemption does not apply to the first \$99.99 of an article of clothing or footwear selling for more than \$99.99. For example, if a customer purchases a pair of pants costing \$110, sales tax is due on the entire \$110.

231.15(3) Taxable sales. This exemption does not apply to sales of the following goods or services:

a. Any special clothing or footwear that is primarily designed for athletic activity or protective use and that is not normally worn except when used for the athletic activity or protective use for which it is designed. For example, golf cleats and football pads are primarily designed for athletic activity or protective use and are not normally worn except when used for those purposes; therefore, they do not qualify for the exemption. However, tennis shoes, jogging suits, and swimsuits are commonly worn for purposes other than athletic activity and qualify for the exemption.

b. Accessories, including jewelry, handbags, purses, briefcases, luggage, umbrellas, wallets, watches, and similar items carried on or about the human body, without regard to whether they are worn on the body in a manner characteristic of clothing.

c. The rental of any clothing or footwear. For example, this exemption does not apply to rentals of formal wear, costumes, diapers, and bridal gowns, but would apply to sales of the above items.

d. Taxable services performed on clothing or footwear, such as garment and shoe repair, dry cleaning or laundering, and alteration services. Sales tax is due on alterations to clothing, even though the alteration service may be performed, invoiced and paid for at the same time as the clothing is being purchased. If a customer purchases a pair of pants for \$90 and pays \$15 to have the pants cuffed, the \$90 charge for the pants is exempt, but tax is due on the \$15 alteration charge.

e. Purchases of items used to make, alter, or repair clothing or footwear, including fabric, thread, yarn, buttons, snaps, hooks, belt buckles, and zippers.

231.15(4) Special situations.

a. Articles normally sold as a unit. Articles that are normally sold as a unit must continue to be sold in that manner if the exemption is to apply; they cannot be priced separately and sold as individual items in order to obtain the exemption. For example, if a pair of shoes sells for \$150, the pair cannot

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be split in order to sell each shoe for \$75 to qualify for the exemption. If a suit is normally priced at \$225 and sold as a unit on a single price tag, the suit cannot be split into separate articles so that any of the components may be sold for less than \$100 in order to qualify for the exemption. However, components that are normally priced as separate articles (e.g., slacks and sport coats, and suit coats and suit pants sold separately prior to the two-day period) may continue to be sold as separate articles and qualify for the exemption if the price of an article is less than \$100.

b. Sales of exempt clothing combined with gifts of taxable merchandise. When exempt clothing is sold in a set that also contains taxable merchandise as a free gift and no additional charge is made for the gift, the exempt clothing may qualify for this exemption. For example, a boxed set may contain a tie and a free tie tack. If the price of the set is the same as the price of the tie sold separately, the item being sold is the tie, which is exempt from tax if sold for less than \$100 during the exemption period.

c. Layaway sales. A layaway sale is a transaction in which merchandise is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time and, at the end of the payment period, receives the merchandise. Under Iowa sales tax law, a sale of tangible personal property occurs when a purchaser takes delivery of tangible personal property in return for a consideration. Therefore, if a customer takes delivery of qualifying clothing or footwear during the exemption period (usually by taking possession of it; reference rule 701—16.22(422,423) for general information on layaway sales), that sale of eligible clothing will qualify for the exemption.

231.15(5) Calculating taxable and exempt sales price—discounts, coupons, buying at a reduced price, and rebates.

a. Discounts. A discount allowed by a retailer and taken on a taxable sale can be used to reduce the sales price of an item. If the discount reduces the sales price of an item to \$99.99 or less, the item may qualify for the exemption. For example, a customer buys a \$150 dress and a \$100 blouse from a retailer offering a 10 percent discount. After applying the 10 percent discount, the final sales price of the dress is \$135, and the blouse is \$90. The dress is taxable (it is over \$99.99), and the blouse is exempt (it is less than \$99.99). Reference rule 701—15.6(422,423) for a definition of the word “discount” and a description of which retailers’ reductions in price are discounts which reduce the taxable sales price of items and which are not.

b. Coupons. When a coupon is issued by a retailer and is actually used to reduce the sales price of any taxable item, the value of the coupon is excludable from the tax as a discount, regardless of whether the retailer is reimbursed for the amount represented by the coupon. Therefore, a retailer’s coupon can be used to reduce the sales price of an item to \$99.99 or less in order to qualify for the exemption. For example, if a customer purchases a pair of shoes priced at \$110 with a coupon worth \$20 off, the final sales price of the shoes is \$90, and the shoes qualify for the exemption. A manufacturer’s coupon cannot be used to reduce the sales price of an item. Reference 701—subrule 15.6(3).

c. Buy one, get one free or for a reduced price or “two for the price of one” sales. The total price of items advertised as “buy one, get one free,” or “buy one, get one for a reduced price,” or “two for the price of one” cannot be averaged in order for both items to qualify for the exemption. The following examples illustrate how such sales should be handled.

EXAMPLE 1. A retailer advertises pants as “buy one, get one free.” The first pair of pants is priced at \$120; the second pair of pants is free. Tax is due on \$120. Having advertised that the second pair is free, the store cannot ring up each pair of pants for \$60 in order for the items to qualify for the exemption. However, if the retailer advertises and sells the pants for 50 percent off, selling each pair of \$120 pants for \$60, each pair of pants qualifies for the exemption.

EXAMPLE 2. A retailer advertises shoes as “buy one pair at the regular price, get a second pair for half price.” The first pair of shoes is sold for \$100; the second pair is sold for \$50 (half price). Tax is due on the \$100 shoes, but not on the \$50 shoes. Having advertised that the second pair is half price, the store cannot ring up each pair of shoes for \$75 in order for the items to qualify for the exemption. However, if the retailer advertises the shoes for 25 percent off, thereby selling each pair of \$100 shoes for \$75, each pair of shoes qualifies for the exemption.

EXAMPLE 3. A retailer advertises shirts as “buy two for the price of one” for \$140. Tax is due on \$140. Each shirt cannot be rung up as costing \$70. However, as described in Examples 1 and 2 above, the \$140 cost of each shirt can be discounted to bring the price of each shirt within the exemption’s limitation.

d. Rebates. Rebates occur after the sale and do not affect the sales price of an item purchased. For example, a customer purchases a sweater for \$110 and receives a \$12 rebate from the manufacturer. The retailer must collect tax on the \$110 sales price of the sweater. Reference 701—subrule 15.6(2) for additional information regarding rebates.

e. Shipping and handling charges. Shipping charges separately stated and separately contracted for (reference rule 701—15.13(422,423) for explanation) are not part of the amount used to determine whether the sales price of an item qualifies it for exemption. Handling charges, however, are part of the amount used to make this determination if it is necessary to pay those charges in order to purchase an item.

231.15(6) Treatment of various transactions associated with sales.

a. Rain checks. Eligible items purchased during the exemption period using a rain check will qualify for the exemption regardless of when the rain check was issued. However, issuance of a rain check during the exemption period will not qualify an eligible item for the exemption if the item is actually purchased after the exemption period.

b. Exchanges.

(1) If a customer purchases an item of eligible clothing or footwear during the exemption period and later exchanges the item for the same item (different size, different color, etc.), no additional tax will be due even if the exchange is made after the exemption period.

EXAMPLE. A customer purchases a \$35 shirt during the exemption period. After the exemption period ends, the customer exchanges the shirt for the same shirt in a different size. Tax is not due on the \$35 price of the shirt.

(2) If a customer purchases an item of eligible clothing or footwear during the exemption period and after the exemption period has ended returns the item and receives credit on the purchase of a different item, the appropriate sales tax will apply to the sale of the newly purchased item.

EXAMPLE. A customer purchases a \$35 shirt during the exemption period. After the exemption period ends, the customer exchanges the shirt for a \$35 jacket. Because the jacket was not purchased during the exemption period, tax is due on the \$35 price of the jacket.

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(3) If a customer purchases an item of eligible clothing or footwear during the exemption period and later during the exemption period returns the item and purchases a similar but nonexempt item, the purchase of the second item is not exempt from tax.

EXAMPLE. During the exemption period, a customer purchases a \$90 dress that qualifies for the exemption. Later, during the exemption period, the customer exchanges the \$90 dress for a \$150 dress. Tax is due on the \$150 dress. The \$90 credit from the returned item cannot be used to reduce the sales price of the \$150 item to \$60 for exemption purposes.

(4) If a customer purchases an item of eligible clothing or footwear before the exemption period and during the exemption period returns the item and receives credit on the purchase of a different item of eligible clothing or footwear, no sales tax is due on the sale of the new item if it is purchased during the exemption period and otherwise meets the qualifications for exemption.

EXAMPLE. Before the exemption period, a customer purchases a \$60 dress. Later, during the exemption period, the customer exchanges the \$60 dress for a \$95 dress. Tax is not due on the \$95 dress because it was purchased during the exemption period and otherwise meets the qualifications for the exemption.

231.15(7) Nonexclusive list of exempt items. The following is a nonexclusive list of clothing or footwear, sales of which are exempt from tax during the two-day period in August:

- Adult diapers
- Aerobic clothing
- Antique clothing
- Aprons—household
- Athletic socks
- Baby bibs
- Baby clothes—generally
- Baby diapers
- Baseball caps
- Bathing suits
- Belts with buckles attached
- Blouses
- Boots—general purpose
- Bow ties
- Bowling shirts
- Bras
- Bridal apparel—sold not rented
- Camp clothing
- Caps—sports and others
- Chefs' uniforms
- Children's novelty costumes
- Choir robes
- Clerical garments
- Coats
- Corsets
- Costumes—Halloween, Santa Claus, etc., sold not rented
- Coveralls
- Cowboy boots
- Diapers—cloth and disposable
- Dresses
- Dress gloves
- Dress shoes
- Ear muffs
- Employee uniforms other than those primarily designed for athletic activity or protective use
- Formal clothing—sold not rented
- Fur coats and stoles
- Galoshes
- Garters and garter belts
- Girdles
- Gloves—cloth, dress and leather

- Golf clothing—caps, dresses, shirts and skirts
- Graduation caps and gowns—sold not rented
- Gym suits and uniforms
- Hats
- Hiking boots
- Hooded (sweat) shirts
- Hosiery, including support hosiery
- Jackets
- Jeans
- Jerseys for other than athletic wear
- Jogging apparel
- Knitted caps or hats
- Lab coats
- Leather clothing
- Leg warmers
- Leotards and tights
- Lingerie
- Men's formal wear—sold not rented
- Neckwear, e.g., scarves
- Nightgowns and nightshirts
- Overshoes
- Pajamas
- Pants
- Panty hose
- Prom dresses
- Ponchos
- Raincoats and hats
- Religious clothing
- Riding pants
- Robes
- Rubber thongs—"flip-flops"
- Running shoes without cleats
- Safety shoes (adaptable for street wear)
- Sandals
- Shawls
- Shirts
- Shoe inserts and laces
- Stockings
- Suits
- Support hose
- Suspenders
- Sweatshirts
- Sweatsuits
- Swim trunks
- Tennis dresses
- Tennis skirts
- Ties
- Tights
- Trousers
- Tuxedos (except cufflinks)—sold not rented
- Underclothes
- Underpants
- Undershirts
- Uniforms—generally
- Veils
- Vests—general, for wear with suits
- Walking shoes
- Windbreakers
- Work clothes

231.15(8) Nonexclusive list of taxable items. The following is a nonexclusive list of items, sales of which are taxable during the two-day period in August:

- Accessories—generally
- Alterations of clothing
- Athletic supporters
- Backpacks
- Ballet shoes
- Barrettes
- Baseball cleats
- Baseball gloves
- Belt buckles sold without belts
- Belts for weight lifting
- Belts needing buckles but sold without them

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Bicycle shoes with cleats
 Billfolds
 Blankets
 Boutonnieres
 Bowling shoes—rented and sold
 Bracelets
 Buttons
 Chest protectors
 Clothing repair
 Coin purses
 Corsages
 Dry cleaning services
 Elbow pads
 Employee uniforms primarily designed for athletic activities or protective use
 Fabric sales
 Fishing boots (waders)
 Football pads
 Football pants
 Football shoes
 Goggles
 Golf gloves
 Ice skates
 In-line skates
 Insoles
 Jewelry
 Key cases and chains
 Knee pads
 Laundry services
 Life jackets and vests
 Luggage
 Monogramming services
 Pads—elbow, knee, and shoulder, football and hockey
 Patterns
 Protective gloves and masks
 Purses
 Rental of clothing
 Rental of shoes or skates
 Repair of clothing
 Roller blades
 Safety clothing
 Safety glasses
 Safety shoes—not adaptable for street wear
 Shoes with cleats or spikes
 Shoulder pads for dresses and jackets
 Shower caps
 Skates—ice and roller
 Ski boots, masks, suits and vests
 Special protective clothing or footwear not adaptable for street wear
 Sports helmets
 Sunglasses—except prescription
 Sweatbands—arm, wrist and head
 Swim fins, masks and goggles
 Tap dance shoes
 Thread
 Vests—bulletproof
 Weight lifting belts
 Wrist bands
 Yard goods
 Yarn
 Zippers

This rule is intended to implement 2005 Iowa Code subsection 423.3(67).

701—231.16(423) State sales tax phase-out on energies. Beginning January 1, 2002, the state sales tax is phased out at the rate of 1 percent per year on the sales price from the sale, furnishing, or service of metered natural gas, electricity and fuels, including propane and heating oils, to residential customers for use as energy for residential dwellings, apartment units, and condominiums for human occupancy.

Local option taxes are not included in the phase-out of the state sales tax.

This phase-out of tax does not impact franchise fees. Franchise fees will continue to be imposed where applicable.

231.16(1) Definitions. The following definitions are applicable to this rule:

“Energy” means a substance that generates power to operate fixtures or appliances within a residential dwelling or that creates heat or cooling within a residential dwelling.

“Fuel” means a liquid source of energy for a residential dwelling, individual apartment unit, or condominium. “Fuel” includes propane, heating fuel, and kerosene. However, “fuel” does not include blended kerosene used as motor fuel or special fuel.

“Metered gas” means natural gas that is billed based on metered usage to provide energy to a residential dwelling, individual apartment unit, or individual condominium.

“Residential dwelling” means a structure used exclusively for human occupancy. This does not include commercial or agricultural structures, nor does it include nonresidential buildings attached to or detached from a residential dwelling, such as an outbuilding. However, a garage attached to or detached from a dwelling that is used strictly for residential purposes will fall within the phase-out provisions. A building containing apartment units is not considered to be qualifying property for purposes of this rule. However, if each apartment has a separate meter, it may qualify for the phase-out if classified as qualifying property by the utility. Also excluded from the phase-out provisions are certain nonqualifying properties that include, but are not limited to, nursing homes, adult living facilities, assisted living facilities, halfway houses, charitable residential facilities, YMCA residential facilities, YWCA residential facilities, apartment units not individually metered, and group homes.

231.16(2) Schedule for phase-out of tax. State sales tax will be phased out at the rate of 1 percent per year based on the following schedule:

a. If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2002, through December 31, 2002, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occur on or after January 1, 2002, through December 31, 2002, the rate of state tax is 4 percent of the sales price.

b. If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2003, through December 31, 2003, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occur on or after January 1, 2003, through December 31, 2003, the rate of state tax is 3 percent of the sales price.

c. If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2004, through December 31, 2004, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occur on or after January 1, 2004, through December 31, 2004, the rate of state tax is 2 percent of the sales price.

d. If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2005, through December 31, 2005, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occur on or after January 1, 2005, through December 31, 2005, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occur on or after January 1, 2005, through December 31, 2005, the rate of state tax is 1 percent of the sales price.

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ery of the fuel occur on or after January 1, 2005, through December 31, 2005, the rate of state tax is 1 percent of the sales price.

e. If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2006, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occur on or after January 1, 2006, the rate of state tax is 0 percent of the sales price.

231.16(3) Determination of tax rate. Determination of the rate of state tax to be imposed on a transaction depends on the type of energy that is being purchased.

a. Electricity or metered natural gas. If the energy being purchased is either electricity or natural gas, then the rate of tax is governed by either the billing date or meter reading date. For example, ABC natural gas company sends out bills with a billing date of December 31, 2002, to qualifying residential customers. However, the bills to these qualifying customers are not placed in the United States mail until January 2, 2003. Based on the foregoing facts, the state sales tax to be imposed on the bills is 4 percent. Four percent is the tax rate imposed at the time of the billing date on the gas bills sent to the customers.

If a billing for the same usage period needs to be billed more than once due to loss of the original bill or some other error, the billing date of the original bill controls qualification for the phase-out provisions of metered gas or electricity. For example, a utility company issues a billing for metered gas on December 28, 2001, to a customer and the customer loses the billing. The customer calls the utility company on January 10, 2002, to report the lost billing and to request a new billing. The utility company issues a new billing with a billing date of January 12, 2002, to the customer. The original billing date issued to the customer is determinative for the tax rate to be imposed. As a result, a 5 percent state tax rate should be imposed on the billing because the original billing date was prior to January 1, 2002.

b. Fuel and heating oil. The proper rate of tax to be imposed for the sale, furnishing or service of fuel including propane is governed by the date of delivery of the fuel to the customer. Consequently, if a farmer purchases propane for home heating by executing an agreement and paying for the propane in October 2002 but the propane is not delivered to the farmer until January 2003, the rate of state sales tax that should be imposed on the transaction is 3 percent.

231.16(4) Qualifying and nonqualifying usage. Customers that have both qualifying and nonqualifying usage on the same meter or fuel tank are subject to a proration formula to obtain the qualifying portion eligible for the phase-out provisions. In these situations, the percentage of qualifying usage must be determined by the purchaser for the purposes of applying the phase-out tax. Nonqualifying usage would be subject to the full state tax rate. Consequently, a proration of the metered gas, electricity or fuel usage for the qualifying and the nonqualifying usage must be calculated by the purchaser. Reference 701—subrules 15.3(4) and 15.4(5) for guidance on proration of electricity, natural gas and fuels. In addition, the purchaser must furnish an exemption certificate to the supplier with respect to that percentage of metered gas or electricity that is eligible for the phase-out provisions. Reference 701—subrule 15.3(2). The customer may provide a calculation which includes only the usage not subject to phase-out.

The customer must notify the utility provider of the percentage of qualifying and nonqualifying usage and the customer has the burden of proof regarding the percentage. The

customer is liable for any mistakes or misrepresentations made regarding the computation or for failure to notify the utility provider in writing of the percentage of qualifying or nonqualifying usage.

Security lights used by customers that are billed as a flat rate tariff will be subject to the phase-out if the customer is classified as a residential customer. However, if a customer uses security lights which are billed as a flat rate tariff and that customer is classified as a commercial customer, the sales price including the usage of the security lights is not subject to the phase-out of state sales tax and is subject to the full state sales tax rate, unless another exemption from state sales tax is applicable.

231.16(5) Reporting over the phase-out period. Sales/use tax returns will be filed on the same basis as they are currently filed. During each phase-out period, the entire sales price from sales should be reported on the return. The appropriate state sales tax rate for the tax period will be applied by claiming the phased-out portion of the tax rate as a deduction on the return.

The sales prices for local option taxes are also to be reported in their entirety and computed by applying the appropriate local option tax rate.

The following are examples regarding how state sales and local option taxes should be reported:

EXAMPLE 1. Reporting of tax by an energy provider:

Sales price for a tax period in 2002	\$100,000
Phase-out (20,000 for the first year, 40,000 for the second year, etc.)	<u>20,000</u>
Taxable sales	80,000
State tax at 5% to compute state sales tax due	4,000
Sales price to be reported for local option	100,000
Local option tax rate (assuming a 1% local option tax rate)	<u>× 1%</u>
Local option tax due	1,000
Total tax due (local option and state sales tax)	\$5,000

EXAMPLE 2. Reporting of tax on an individual billing:

Monthly charge during a billing or delivery period in 2002	\$400
State tax rate	<u>× 4%</u>
State tax due	16
Sales price for local option tax	400
Local option tax rate	<u>× 1%</u>
Local option tax due	4
Total tax (local option and state sales tax)	\$20

This rule is intended to implement 2005 Iowa Code section 423.3(68).

NOTICE—PUBLIC FUNDS INTEREST RATES

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions James E. Forney, Superintendent of Banking Thomas B. Gronstal, and Auditor of State David A. Vaudt have established today the following rates of interest for public obligations and special assessments. The usury rate for November is 6.25%.

NOTICE—PUBLIC FUNDS INTEREST RATES(cont'd)

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

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

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

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

New official state interest rates, effective November 11, 2004, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

- 7-31 days Minimum 0.70%
- 32-89 days Minimum 1.05%
- 90-179 days Minimum 1.10%
- 180-364 days Minimum 1.35%
- One year to 397 days Minimum 1.65%
- More than 397 days Minimum 2.60%

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

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

NOTICE—USURY

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

December 1, 2003 — December 31, 2003	6.25%
January 1, 2004 — January 31, 2004	6.25%
February 1, 2004 — February 29, 2004	6.25%
March 1, 2004 — March 31, 2004	6.25%
April 1, 2004 — April 30, 2004	6.00%
May 1, 2004 — May 31, 2004	5.75%
June 1, 2004 — June 30, 2004	6.25%
July 1, 2004 — July 31, 2004	6.75%
August 1, 2004 — August 31, 2004	6.75%
September 1, 2004 — September 30, 2004	6.50%
October 1, 2004 — October 31, 2004	6.25%
November 1, 2004 — November 30, 2004	6.25%
December 1, 2004 — December 31, 2004	6.00%

ARC 3821B**CREDIT UNION DIVISION[189]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 533.1, the Credit Union Review Board hereby rescinds Chapter 17, "Investment Powers," and adopts new Chapter 17, "Investment and Deposit Activities for Credit Unions," Iowa Administrative Code.

Chapter 17 describes commercial paper purchased for investment by a state credit union for its own account. This proposed amendment describes investment and deposit activities in which a credit union would be authorized to engage if the credit union were federally chartered.

This amendment was published under Notice of Intended Action in the Iowa Administrative Bulletin on September 15, 2004, as **ARC 3643B**. No oral or written comments on the amendment were received. The amendment is identical to that published under Notice.

The Board adopted this amendment on November 3, 2004.

This amendment is intended to implement Iowa Code section 533.4(5).

This amendment will become effective December 29, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 17] is being omitted. These rules are identical to those published under Notice as **ARC 3643B**, IAB 9/15/04.

[Filed 11/4/04, effective 12/29/04]

[Published 11/24/04]

[For replacement pages for IAC, see IAC Supplement 11/24/04.]

ARC 3817B**HOMELAND SECURITY AND
EMERGENCY MANAGEMENT
DIVISION[605]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 29C.8(3), the Homeland Security and Emergency Management Division hereby amends Chapter 9, "Iowa Comprehensive Plan," Iowa Administrative Code.

Iowa Code section 29C.8(3) requires the administrator of the Homeland Security and Emergency Management Division to prepare a comprehensive plan for homeland security, disaster response, recovery, mitigation, and emergency resource management for the state.

Notice of Intended Action was published in the September 29, 2004, Iowa Administrative Bulletin as **ARC 3697B**. No public comment was received. In addition, this amendment was simultaneously Adopted and Filed Emergency as **ARC 3698B**. The adopted amendment is identical to that published under Notice and Adopted and Filed Emergency.

This amendment was adopted by the administrator on November 3, 2004.

This amendment will become effective on December 29, 2004, at which time the Adopted and Filed Emergency amendment is hereby rescinded.

This amendment is intended to implement Iowa Code section 29C.8.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this amendment [9.1 to 9.4] is being omitted. This amendment is identical to that published under Notice as **ARC 3697B** and Adopted and Filed Emergency as **ARC 3698B**, IAB 9/29/04.

[Filed 11/3/04, effective 12/29/04]

[Published 11/24/04]

[For replacement pages for IAC, see IAC Supplement 11/24/04.]

ARC 3827B**INSURANCE DIVISION[191]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 515.109 and chapter 515F, the Insurance Division hereby amends Chapter 20, "Property and Casualty Insurance Rate and Form Filing Procedures," Iowa Administrative Code.

This amendment rescinds rule 191—20.12(515,515F) regarding the use of credit information in personal insurance. This rule is no longer necessary due to the enactment of 2004 Iowa Acts, Senate File 2257.

Notice of Intended Action was published in the September 29, 2004, Iowa Administrative Bulletin as **ARC 3694B**. No comments were received on the amendment. The adopted amendment is identical to that published under Notice of Intended Action.

This amendment shall become effective December 29, 2004.

This amendment is intended to implement 2004 Iowa Acts, Senate File 2257.

The following amendment is adopted.

Rescind and reserve rule **191—20.12(515,515F)**.

[Filed 11/5/04, effective 12/29/04]

[Published 11/24/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/24/04.

ARC 3828B**IOWA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM[495]****Adopted and Filed**

Pursuant to the authority of Iowa Code Supplement sections 97B.4 and 97B.15, the Iowa Employees' Retirement System (IPERS) hereby rescinds 581—Chapter 21, "Iowa Public Employees' Retirement System"; amends 495—Chapter 4, "Employers"; and adopts 495—Chapter 7, "Service Credit and Vesting Status," Chapter 8, "Service Pur-

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

chases," Chapter 9, "Refunds," Chapter 10, "Interest on Accumulated Contributions," Chapter 11, "Application for, Modification of, and Termination of Benefits," Chapter 12, "Calculation of Monthly Retirement Benefits," Chapter 13, "Disability for Regular and Special Service Members," Chapter 14, "Death Benefits and Beneficiaries," Chapter 15, "Dividends," Chapter 16, "Assignments," Chapter 20, "Recognition of Agents," and Chapter 21, "Mergers," Iowa Administrative Code.

The amendments complete the transfer of rules governing the Iowa Public Employees' Retirement System previously published at 581—Chapter 21 to agency number 495 of the Iowa Administrative Code. The transfer restructures prior rules to achieve a more logical order, combines scattered rules on the same subject matter, and deletes superseded and duplicative text. The amendments also implement Iowa Code Supplement chapter 97B as amended by 2004 Iowa Acts, House File 2262.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 15, 2004, as **ARC 3670B**.

A public hearing was held on October 5, 2004. No one attended the public hearing, and no written comments were received. No comments were received at the Administrative Rules Review Committee meeting on October 12, 2004. These amendments are identical to those published under Notice except for nonsubstantive corrections and the following corrections which were suggested after further review by IPERS staff:

The last unnumbered paragraph of paragraph 8.1(2)"a" is amended by replacing the words "will be given" with the words "may be purchased" in order to clarify that service credit will be given for the actual purchase of the service represented by the wages received by the employee. The paragraph now reads as follows:

"A quarter of credit may be purchased for each quarter the employee received wages."

Paragraph 8.1(7)"c" is amended by deleting a sentence that is inconsistent with Iowa Code section 97B.53(4), which requires a member to remain out of all covered employment for 30 days after the last payment of wages or if the member begins covered employment prior to filing a request for a refund with the system. Paragraph "c" now reads as follows:

"c. Effective July 1, 1994, a person who is employed before that date with an area community college may file a one-time irrevocable election form with IPERS and the employer electing participation in an alternative plan. The election form must be postmarked by December 31, 1995. If a person is employed July 1, 1994, or later, the person may file a one-time election form with IPERS and the employer electing participation in the alternative plan. The election form must be postmarked within 60 days from the date employed. The employee will be a member of IPERS unless an election is filed within the specified time frames. An employee vested with IPERS retains all of the rights of any vested member for as long as the contributions remain with the fund. Such members may not, however, apply for retirement benefits until attaining the age of 70, or until they terminate employment with all public employers."

The introductory paragraph of subrule 11.1(1) is amended to allow members to fax applications for benefits to IPERS. This change confers a benefit to members and is consistent with current administrative practice. The introductory paragraph of subrule 11.1(1) now reads as follows:

"**11.1(1)** Form used. It is the responsibility of the member to notify IPERS of the intention to retire. This should be

done 60 days before the expected retirement date. The application for monthly retirement benefits is obtainable from IPERS, 7401 Register Drive, P.O. Box 9117, Des Moines, Iowa 50306-9117. The printed application form shall be completed by each member applying for benefits and shall be mailed, sent by fax or brought in person to IPERS. An application that is incomplete or incorrectly completed will be returned to the member. To be considered complete, an application must include the following:"

Paragraph 11.2(1)"c" and subrule 11.2(2) are amended to clarify that a member may be required to meet eligibility requirements for IPERS benefits other than by reaching a certain age. Paragraph 11.2(1)"c" and subrule 11.2(2) now read as follows:

"c. Effective July 1, 1997, a member shall be eligible to receive monthly retirement benefits with no age reduction effective the first of the month in which the member's age on the last birthday and the member's years of service equal or exceed 88, provided that the member is at least the age of 55 and is otherwise eligible."

"**11.2(2)** Early retirement. A member shall be eligible to receive benefits for early retirement effective with the first of the month in which the member attains the age of 55 or the first of any month after attaining the age of 55 before the member's normal retirement date, provided the date is after the last day of service and the member is otherwise eligible."

Subrule 11.3(1) is amended by adding a final sentence to the introductory paragraph to be consistent with the provisions in 2004 Iowa Acts, House File 2262, which authorize the removal of retroactive payment of benefits. Benefits will commence no sooner than the month in which IPERS receives a complete application. The introductory paragraph of subrule 11.3(1) now reads as follows:

"**11.3(1)** General. A member shall submit a written application to IPERS setting forth the retirement date, provided the member has attained at least age 55 by the retirement date and the retirement date is after the member's last day of service. A member's first month of entitlement shall be no earlier than the first day of the first month after the member's last day of service or, if later, the month provided for under subrule 11.3(2). No payment shall be made for any month prior to the month the completed application for benefits is received by IPERS."

The introductory paragraph of rule 495—11.4(97B) is amended by deleting the first sentence because it is inconsistent with current practice. IPERS pays retirement benefits through the month of the member's death. The introductory paragraph now reads as follows:

"**495—11.4(97B) Termination of monthly retirement allowance.** A member's retirement benefit shall terminate after payment is made to the member for the entire month during which the member's death occurs. Death benefits shall begin with the month following the month in which the member's death occurs."

Subrules 12.3(5) and 12.3(6) are amended to remove a nonspecific reference to a subrule and to clarify the actual subrules referenced in the text. The subrules now read as follows:

"**12.3(5)** IPERS shall compare the member's current benefit to the adjusted benefit determined as provided in subrules 12.3(3) and 12.3(4). If the member's current benefit is greater than or equal to the adjusted minimum benefit, no change shall be made. Otherwise, the member shall receive the adjusted minimum benefit.

"**12.3(6)** Effective January 1, 1999, the monthly allowance of certain retired members and their beneficiaries, in-

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cluding those whose monthly allowance was increased by the operation of subrules 12.3(3) to 12.3(5), shall be increased. If the member retired from the system before July 1, 1986, the monthly allowance currently being received by the member or the member's beneficiary shall be increased by 15 percent. If the member retired from the system on or after July 1, 1986, and before July 1, 1990, the monthly allowance currently being received by the member or the member's beneficiary shall be increased by 7 percent."

Paragraph 12.8(4)"j" and subrule 12.9(2) are amended to be consistent with the provisions in 2004 Iowa Acts, House File 2262, which authorize the removal of retroactive payment of benefits. Paragraph 12.8(4)"j" and subrule 12.9(2) now read as follows:

"j. A retired reemployed member who has attained the age of 70 may take an actuarial equivalent (AE) payment. However, such a member must terminate all covered employment for at least one full calendar month before taking an additional AE payment."

"**12.9(2)** If a member, upon attaining the age of 70 or later, requests a retirement allowance without terminating employment and the member's monthly benefit amount under Option 2 is less than \$50, the member shall receive an AE payment based on the member's employment up to, but not including, the quarter in which the application is filed. When the member subsequently terminates covered employment, any benefits due to the member will be based only on the period of employment not used in computing the AE paid when the member first applied for a retirement allowance. If an estimate of benefits based on the later period of employment again results in a monthly benefit amount under Option 2 of less than \$50, the member shall receive another AE payment. However, a member who elects to receive an AE payment upon or after attaining age 70 without terminating employment may not elect to receive additional AE payments unless the member terminates all covered employment for at least one full calendar month."

The catchwords for rule 495—13.1(97B) are amended to more clearly state the reference to Iowa Code section 97B.50(2) for in-service disability retirement allowance. The catchwords now read as follows:

"**495—13.1(97B) Disability for persons retiring under Iowa Code section 97B.50(2).**"

The first unnumbered paragraph of rule 495—14.1(97B) is amended to clarify that this rule does not apply to post-retirement death benefits unless otherwise specified by rule. The paragraph now reads as follows:

"To ensure that the limit is not exceeded, a member's combined lump sum death benefit under Iowa Code sections 97B.52(1) and 97B.52(2) shall not exceed 100 times the Option 2 amount that would have been payable to the member at the member's earliest normal retirement age. If a beneficiary of a special service member is eligible for an in-the-line-of-duty death benefit, any reduction required under this rule shall be taken first from a death benefit payable under Iowa Code section 97B.52(1). The "100 times" limit shall apply to active and inactive members. The death benefits payable under this chapter for a period of reemployment for a retired reemployed member who dies during the period of reemployment shall also be subject to the limits described in this rule."

These amendments were prepared after consultation with the IPERS' legal, benefits, investments and operational units, and the members of the investment board and the benefits advisory committee.

There are no waiver provisions included in these amendments.

These amendments are intended to implement Iowa Code Supplement chapter 97B as amended by 2004 Iowa Acts, House File 2262.

These amendments will become effective December 29, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [rescind 581—Ch 21; amend 495—Ch 4; adopt 495—Chs 7 to 16, 20, 21] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 3670B**, IAB 9/15/04.

[Filed 11/5/04, effective 12/29/04]

[Published 11/24/04]

[For replacement pages for IAC, see IAC Supplement 11/24/04.]

ARC 3812B**LABOR SERVICES DIVISION[875]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 88.5 and 17A.3(1), the Labor Commissioner adopts amendments to Chapter 10, "General Industry Safety and Health Rules," and Chapter 26, "Construction Safety and Health Rules," Iowa Administrative Code.

These amendments adopt by reference new federal occupational safety and health regulations. The changes delete references to a nonexistent table in the mechanical power-transmission apparatus standard, correct typographical errors in the mechanical power presses standard, and correct erroneous cross references in the telecommunications and hydrogen standards.

The principal reasons for adoption of these amendments are to implement Iowa Code chapter 88 and to protect the safety and health of Iowa's workers. Adoption of these amendments is required by 29 Code of Federal Regulations Subsection 1953.23(a)(2) and Iowa Code subsection 88.5(1)"a."

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 21, 2004, as **ARC 3511B**. In compliance with Iowa Code section 88.5(1)"b," a public hearing was scheduled for August 18, 2004. No one appeared at the hearing to comment and no written comments were received. These amendments are identical to the Notice of Intended Action.

No waiver or variance provision is included in these rule changes because there is a statutory variance procedure in Iowa Code section 88.5.

These amendments are intended to implement Iowa Code section 88.5.

These amendments will become effective December 29, 2004.

The following amendments are adopted.

ITEM 1. Amend rule **875—10.20(88)** by inserting at the end thereof:

69 Fed. Reg. 31881 (June 8, 2004)

LABOR SERVICES DIVISION[875](cont'd)

ITEM 2. Amend rule **875—26.1(88)** by inserting at the end thereof:

69 Fed. Reg. 31881 (June 8, 2004)

[Filed 10/28/04, effective 12/29/04]

[Published 11/24/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/24/04.

ARC 3816B

LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D]

Adopted and Filed

Pursuant to the authority of Iowa Code section 544B.5, the Landscape Architectural Examining Board hereby amends Chapter 2, "Examinations and Licensing," Iowa Administrative Code.

The amendments adopt new definitions for interns and retired individuals, as well as more clearly outline the requirements for reinstatement of a lapsed license. These amendments are subject to waiver pursuant to 193—Chapter 5.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 7, 2004, as **ARC 3472B**. No public comments were received. These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapters 17A and 544B.

The amendments will become effective December 29, 2004.

The following amendments are adopted.

ITEM 1. Amend rule **193D—2.1(544B,17A)** by adopting the following **new** definitions to be inserted in alphabetical order:

"Intern landscape architect" means an individual who has a degree in landscape architecture, who is employed under the direct supervision of a professional landscape architect, and who intends to actively pursue registration by completing the landscape architecture registration examination. The initials "I.L.A." should not be used.

"L.A., retired" means the same as "landscape architect, retired."

"Landscape architect, retired" means a person who held a license as a professional landscape architect and who is retired from the practice of landscape architecture in all states of registration.

"L.A.R.E." means the landscape architecture registration examination.

ITEM 2. Adopt **new** subrule 2.8(3) as follows:

2.8(3) Retired status. A person who held a license as a professional landscape architect and who is retired from the practice of landscape architecture in all states of registration may use the title "landscape architect, retired" or "L.A., retired," respectively, in the context of non-income-producing personal activities.

Retired status does not require payment of a fee.

ITEM 3. Rescind rule 193D—2.9(544B,17A) and adopt the following **new** rule:

193D—2.9(544B,17A) Reinstatement. An applicant for reinstatement must inform the board in writing of the intention

to reinstate. The board shall use the following criteria when determining the individual requirements for reinstatement:

2.9(1) An individual may reinstate an expired license within two years by:

- a. Paying the reinstatement fee of \$100;
- b. Paying the current renewal fee;
- c. Providing a written statement outlining the professional activities of the applicant during the period of nonregistration; and

d. Submitting documented evidence of completion of 18 contact hours (6 hours in public protection subjects) of continuing education for each year or portion of a year of expired registration in compliance with requirements in 193D—Chapter 3. The hours reported shall be in addition to the 36 hours (12 hours in public protection subjects) which should have been reported on the June 30 renewal date at which the registrant failed to renew. The continuing education hours used for reinstatement may not be used again at the next renewal.

2.9(2) An individual may reinstate a license which has been expired for more than two years by:

- a. Paying the reinstatement fee of \$100;
- b. Paying the current renewal fee;
- c. Providing a written statement outlining the professional activities of the applicant during the period of nonregistration; and

d. Submitting documented evidence of completion of continuing education as determined by the board. The board shall require no more than 72 hours (24 hours in public protection subjects); however, the hours reported shall not have been earned more than four years prior to the date of the application to reinstate.

The board shall review reinstatement applications on a case-by-case basis and may, at its discretion, require that the applicant take the L.A.R.E. as a prerequisite to reinstatement.

[Filed 11/3/04, effective 12/29/04]

[Published 11/24/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/24/04.

ARC 3826B

MEDICAL EXAMINERS BOARD[653]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Medical Examiners hereby amends Chapter 1, "Administrative and Regulatory Authority," Iowa Administrative Code.

These amendments update Chapter 1, which sets the standards for how the Board conducts its business.

Notice of Intended Action was published in the September 29, 2004, Iowa Administrative Bulletin as **ARC 3689B**. One comment was received from the Board's Assistant Attorney General and as a result a change was made in subrule 1.3(4) to clarify that action, including filing of formal charges or imposition of discipline, requires a majority vote of the number of Board members present and not the number appointed to the Board. Subrule 1.3(4) now reads as follows:

1.3(4) A majority of the members of the board shall constitute a quorum. Official action, including filing of for-

MEDICAL EXAMINERS BOARD[653](cont'd)

mal charges or imposition of discipline, requires a majority vote of members present."

The Board adopted the amendments during a telephone conference call on November 3, 2004.

These amendments are intended to implement Iowa Code chapters 17A, 68B, 147, and 272C.

These amendments will become effective December 29, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [1.2, 1.3(4), 1.3(5), 1.10] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 3689B**, IAB 9/29/04.

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[Published 11/24/04]

[For replacement pages for IAC, see IAC Supplement 11/24/04.]

ARC 3825B

MEDICAL EXAMINERS BOARD[653]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Medical Examiners hereby amends Chapter 14, "Iowa Physician Health Committee," and Chapter 17, "Licensure of Acupuncturists," Iowa Administrative Code.

The amendments open the Iowa Physician Health Program (IPHP) to any applicants for licensure or to licensees of the Iowa Board of Medical Examiners and clarify how the board and IPHP will handle confidentiality issues of the IPHP participants.

Notice of Intended Action was published in the September 29, 2004, Iowa Administrative Bulletin as **ARC 3690B**. No public comment was received. These amendments are identical to those published under Notice.

The Board adopted the amendments during a telephone conference call on November 3, 2004.

These amendments implement Iowa Code section 272C.3(1)"k."

These amendments will become effective December 29, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [14.2, 14.3, 14.6, 14.7(3), 14.9, 14.11(2), 14.11(3), 17.1] is being omitted. These amendments are identical to those published under Notice as **ARC 3690B**, IAB 9/29/04.

[Filed 11/5/04, effective 12/29/04]
[Published 11/24/04]

[For replacement pages for IAC, see IAC Supplement 11/24/04.]

ARC 3819B

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby adopts amendments to Chapter 10, "Interest, Penalty, Exceptions to Penalty, and Jeopardy Assessments," Chapter 38, "Administration," Chapter 39, "Filing Return and Payment of Tax," Chapter 40, "Determination of Net Income," Chapter 41, "Determination of Taxable Income," Chapter 42, "Adjustments to Computed Tax," Chapter 43, "Assessments and Refunds," Chapter 44, "Penalty and Interest," Chapter 46, "Withholding," Chapter 47, "Declaration of Estimated Income Tax by Individuals," Chapter 49, "Estimated Income Tax for Individuals," Chapter 51, "Administration," Chapter 52, "Filing Returns, Payment of Tax and Penalty and Interest," Chapter 53, "Determination of Net Income," Chapter 55, "Assessments, Refunds, Appeals," Chapter 57, "Administration," Chapter 58, "Filing Returns, Payment of Tax, Penalty and Interest, and Allocation of Tax Revenues," Chapter 59, "Determination of Net Income," Chapter 60, "Assessments, Refunds, Appeals," and Chapter 89, "Fiduciary Income Tax," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXVII, No. 7, p. 465, on September 29, 2004, as **ARC 3700B**.

Item 1 rescinds rules 701—10.40(422) through 701—10.43(422), which are obsolete rules regarding the computation of penalty for individual income tax for tax periods beginning prior to January 1, 1991.

Item 2 rescinds rule 701—10.50(422), which is an obsolete rule regarding the computation of penalty for withholding tax for tax periods beginning prior to January 1, 1991.

Item 3 rescinds rules 701—10.56(422) through 701—10.58(422), which are obsolete rules regarding the computation of penalty for corporation income tax for tax periods beginning prior to January 1, 1996.

Item 4 rescinds rule 701—10.66(422), which is an obsolete rule regarding the computation of penalty for franchise tax for tax periods beginning prior to January 1, 1991.

Item 5 amends rule 701—38.15(422) to provide a similar time frame for requesting innocent spouse relief for Iowa tax purposes that is applicable for federal tax purposes.

Item 6 amends subrule 38.17(3) to change the method of taxing military nonresidents of Iowa based on the Servicemembers Civil Relief Act passed by Congress in 2003.

Items 7, 8 and 9 amend subrules 39.1(1), 39.1(2) and 39.1(3) to remove obsolete provisions regarding filing requirements for residents, nonresidents and part-year residents of Iowa for tax years prior to 1993.

Item 10 amends subrule 39.1(7) to update the examples of refundable tax credits listed in the subrule.

Item 11 rescinds subrules 39.2(2) and 39.2(3), which are obsolete subrules regarding extensions of time to file Iowa returns for tax years prior to 1991.

Item 12 amends subrule 39.5(2) to update a cross reference to a chapter which is rescinded under Item 38.

Item 13 rescinds subrules 39.5(8) and 39.5(9), which are obsolete subrules regarding the exemption from Iowa income tax for tax years prior to 1992.

Item 14 rescinds subrules 39.6(1) and 39.6(2), which are obsolete subrules regarding Iowa minimum tax for tax years prior to 1987.

REVENUE DEPARTMENT[701](cont'd)

Item 15 amends subrule 39.6(3) to delete a cross reference to a rule which is rescinded under Item 35.

Item 16 amends subrule 40.2(1) to provide that interest income from Series I bonds issued by the United States Treasury is exempt from Iowa income tax.

Item 17 rescinds rule 701—40.4(422), which is an obsolete rule regarding pension, annuities and retirement allowances for tax years prior to 1991.

Item 18 rescinds rule 701—40.10(422), which is an obsolete rule regarding exclusion of interest and dividend income for tax years prior to 1987.

Item 19 rescinds rule 701—40.11(422), which is an obsolete rule regarding a two-earner married couple deduction for tax years prior to 1987.

Item 20 rescinds rule 701—40.25(422), which is an obsolete rule regarding unemployment benefits that covered only the 1979 tax year.

Item 21 rescinds rule 701—40.26(422), which is an obsolete rule regarding contributions to the judicial retirement system for tax years prior to 1989.

Item 22 rescinds rule 701—40.33(422), which is an obsolete rule regarding a partial exclusion of pension and annuities for retired and disabled public employees that covered only the 1989 and 1990 tax years.

Item 23 rescinds rule 701—40.41(422), which is an obsolete rule regarding disallowance of private club expenses for tax years prior to 1994.

Item 24 rescinds subrule 41.5(2), which is an obsolete subrule regarding political contributions for tax years prior to 1982.

Item 25 rescinds subrule 41.5(6), which is an obsolete subrule regarding private club expenses for tax years prior to 1994.

Item 26 adopts new rule 701—41.13(422) to clarify how Iowa tax refunds from refundable tax credits should be reported in computing Iowa adjusted gross income. To clarify this provision, an example is included.

Item 27 amends rule 701—42.1(257,422) to provide that the school district surtax is applicable for resident members of the armed forces of the United States living in an Iowa school district with a surtax, even if the member is not physically present in Iowa on the last day of the tax year.

Item 28 amends rule 701—42.2(422) to update the amounts for the personal exemption credit.

Item 29 rescinds subrules 42.2(2) through 42.2(5), which are obsolete subrules regarding the child care credit for tax years prior to 1990, the political contributions credit for tax years prior to 1986, and the Iowa venture capital investment credit, which was repealed in 1995. In addition, the current exemption credit listed in subrule 42.2(2) is incorporated into the amendment to subrule 42.2(1) in Item 28.

Item 30 amends rule 701—42.6(422) to remove obsolete provisions regarding the motor fuel credit for tax years beginning prior to July 1, 1986.

Item 31 amends subrule 42.7(2) to correct a cross reference.

Item 32 amends rule 701—42.9(422) to delete a cross reference to a subrule rescinded under Item 29.

Item 33 adopts new rule 701—42.23(422) to set forth the sequence of tax credits for individual income tax.

Item 34 rescinds subrule 43.3(13), which is an obsolete subrule regarding the statute of limitations that affected only the 1988 tax year.

Item 35 rescinds rules 701—43.6(422) and 701—43.7(422), which are obsolete rules regarding the 1978 in-

come tax rebate and a special refund for net capital gains for tax years prior to 1990.

Item 36 rescinds 701—Chapter 44 and adopts a new Chapter 44 with the same title setting forth provisions for penalty and interest for individual income tax.

Item 37 adopts new rule 701—46.5(422) to set forth the provisions for penalty and interest for withholding tax.

Item 38 rescinds and reserves 701—Chapter 47, which is an obsolete chapter regarding estimated income tax for tax years beginning before January 1, 1986.

Item 39 amends subrule 49.1(1) to remove obsolete provisions regarding the payment of estimated tax for tax years beginning prior to January 1, 1990.

Item 40 rescinds subrule 49.6(3), which is an obsolete subrule regarding the penalty for underpayment of estimated tax that only affected the 1987 tax year.

Item 41 rescinds subrule 51.2(2), which is an obsolete subrule regarding waiver of the statute of limitations for waivers entered into before July 1, 1989.

Item 42 adopts new subrule 52.4(3) to set forth the provisions for penalty and interest for corporation income tax.

Item 43 rescinds subrule 52.5(1), which is an obsolete subrule regarding minimum tax for tax years beginning prior to January 1, 1987.

Item 44 adopts new subrule 52.5(3) to provide that estimated payments are required for corporations that are subject to minimum tax.

Item 45 amends rule 701—52.6(422) to remove obsolete provisions regarding the motor fuel credit for tax years beginning prior to July 1, 1986.

Item 46 rescinds subrules 52.11(7) through 52.11(9), 52.11(11) and 52.11(13), which are obsolete subrules regarding the computation of interest on refunds for claims filed prior to June 11, 1984, and interest on overpayments for returns due prior to April 30, 1981.

Item 47 rescinds subrule 53.8(1), which is an obsolete subrule regarding the disallowance of private club expenses for tax years prior to 1994.

Item 48 amends rule 701—53.13(422) to clarify how Iowa tax refunds from refundable tax credits should be reported in computing Iowa taxable income. To clarify this provision, an example is included.

Item 49 rescinds subrule 55.3(4), which is an obsolete subrule regarding the statute of limitations for refunds for tax years prior to 1979.

Item 50 adopts new subrule 55.3(7) to clarify how the statute of limitations for refund is determined for taxpayers who have paid 90 percent of the tax by the due date and file an Iowa return in the six-month extended period after the due date. To clarify this provision, examples are included.

Item 51 rescinds subrule 57.2(2), which is an obsolete subrule regarding waiver of the statute of limitations for waivers entered into before July 1, 1989.

Item 52 amends subrule 58.4(3) to set forth the provisions for penalty and interest for franchise tax.

Item 53 rescinds subrule 58.5(1), which is an obsolete subrule regarding minimum tax for tax years beginning prior to January 1, 1987.

Item 54 amends subrule 58.5(3) to delete a reference to a rule rescinded under Item 4.

Item 55 rescinds subrules 58.6(7), 58.6(8), 58.6(10), 58.6(12) and 58.6(14), which are obsolete subrules regarding the computation of interest on refunds for claims filed prior to June 11, 1984, and interest on overpayments for returns due prior to April 30, 1981.

REVENUE DEPARTMENT[701](cont'd)

Item 56 rescinds rule 701—59.17(422), which is an obsolete rule regarding the disallowance of private club expenses for tax years prior to 1994.

Item 57 rescinds subrule 60.3(4), which is an obsolete subrule regarding the statute of limitations for refunds for tax years prior to 1979.

Item 58 adopts new subrule 60.3(7) to clarify how the statute of limitations for refund is determined for taxpayers who have paid 90 percent of the tax by the due date and file an Iowa return in the six-month extended period after the due date.

Items 59, 60 and 61 amend subrules 89.4(7), 89.4(9) and 89.5(3) to correct cross references.

Item 62 amends rule 701—89.9(422) to correct an incorrect cross reference.

These amendments are identical to those published under Notice of Intended Action.

These amendments will become effective December 29, 2004, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code chapter 422.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 10, 38 to 44, 46, 47, 49, 51 to 53, 55, 57 to 60, 89] is being omitted. These amendments are identical to those published under Notice as **ARC 3700B**, IAB 9/29/04.

[Filed 11/4/04, effective 12/29/04]
[Published 11/24/04]

[For replacement pages for IAC, see IAC Supplement 11/24/04.]

ARC 3813B

STATE PUBLIC DEFENDER[493]

Adopted and Filed

Pursuant to the authority of Iowa Code section 13B.4(7), the State Public Defender amends Chapter 7, "Definitions," Chapter 11, "Attorney Fee Contracts," and Chapter 12, "Claims for Indigent Defense Services," and adopts new Chapter 13, "Claims for Other Professional Services," Iowa Administrative Code.

These amendments implement 2004 Iowa Acts, House File 2138, which revises procedures regarding appointment of counsel and approval and judicial review of claims filed with the State Public Defender. These amendments clarify current practice of the State Public Defender regarding review and approval of fee claims from court-appointed attorneys and other professionals providing services to indigent clients in court.

These amendments were Adopted and Filed Emergency and published in the June 23, 2004, Iowa Administrative Bulletin as **ARC 3443B** and were also published under Notice of Intended Action as **ARC 3442B** on the same date to allow for public comment.

Following a public hearing and comments, changes were made to the amendments proposed in the Notice of Intended Action. Specifically, rule 493—7.1(13B,815), paragraph 12.2(1)"a," and subrules 12.2(10), 12.2(12), and 12.6(5) were modified as follows:

The definition of "paralegal time" in rule 493—7.1(13B, 815) was amended to read as follows:

"Paralegal time,' which is payable from the indigent defense fund, means time spent preparing pleadings and motions, reviewing transcripts, performing legal research, interviewing witnesses, and attending staffings in juvenile cases. In Class A felony cases in which only one attorney is appointed, paralegal time may include time spent in court assisting the appointed attorney. Paralegal time does not include typing, scheduling, answering the telephone, talking on the telephone except when interviewing witnesses, or other clerical activities or activities that duplicate work performed by the appointed attorney."

Paragraph "a" of 12.2(1) was amended to read as follows:

"a. A completed fee claim on a form promulgated by the state public defender. Adult fee claims, including misdemeanor appeals to district court, postconviction relief and applications for discretionary review or interlocutory appeals to the Iowa supreme court, must be submitted on an Adult form. Juvenile fee claims, including petitions on appeal, must be submitted on a Juvenile form. Appellate fee claims must be submitted on an Appellate form. The claim forms may be obtained from the clerk of court or downloaded from the state public defender Web site: www.spd.state.ia.us. Claims submitted using forms downloaded from the Web site that do not comply with the instructions on the Web site may be returned to the claimant for additional information and resubmission."

Subrules 12.2(10), 12.2(12), and 12.6(5) were amended to read as follows:

"**12.2(10)** Time claimed by an attorney in withdrawing from a case in order to either retire from the practice of law or pursue another job will be denied."

"**12.2(12)** A court order that affects the amount of a claim and is entered after the date of the state public defender's action, except following court review as provided in rule 493—12.9(13B,815), is void. See Iowa Code section 13B.4(4)."

"**12.6(5)** Retroactivity of authorization. Authorization to exceed the fee limitations shall be effective only as to services performed after a request for authorization to exceed the fee limitations is filed with the court unless the court enters an order specifically authorizing a late filing of the application and finding that good cause exists excusing the attorney's failure to file the application prior to the attorney's exceeding the fee limitations. Retroactive court orders entered after the date of the state public defender's action on a claim are void. See Iowa Code section 13B.4(4)."

These amendments will become effective December 29, 2004, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

These amendments are intended to implement Iowa Code chapters 13B and 815 as amended by 2004 Iowa Acts, House File 2138.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amend Chs 7, 11, 12; adopt Ch 13] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 3442B** and Adopted and Filed Emergency as **ARC 3443B**, IAB 6/23/04.

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