



# IOWA ADMINISTRATIVE BULLETIN

Published Biweekly

VOLUME XXXII  
June 16, 2010

NUMBER 26  
Pages 2769 to 2934

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## PREFACE

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

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

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

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

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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	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

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

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

NOTE: In accordance with Iowa Code section 7.17, a rule number within the Iowa Administrative Code includes a reference to the statute which the rule is intended to implement: 441—79.1(249A).

## Schedule for Rule Making 2010

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
<b>*Dec. 23 '09*</b>	Jan. 13 '10	Feb. 2 '10	Feb. 17 '10	Feb. 19 '10	Mar. 10 '10	Apr. 14 '10	July 12 '10
Jan. 8	Jan. 27	Feb. 16	Mar. 3	Mar. 5	Mar. 24	Apr. 28	July 26
Jan. 22	Feb. 10	Mar. 2	Mar. 17	Mar. 19	Apr. 7	May 12	Aug. 9
Feb. 5	Feb. 24	Mar. 16	Mar. 31	Apr. 2	Apr. 21	May 26	Aug. 23
Feb. 19	Mar. 10	Mar. 30	Apr. 14	Apr. 16	May 5	June 9	Sep. 6
Mar. 5	Mar. 24	Apr. 13	Apr. 28	Apr. 30	May 19	June 23	Sep. 20
Mar. 19	Apr. 7	Apr. 27	May 12	May 14	June 2	July 7	Oct. 4
Apr. 2	Apr. 21	May 11	May 26	<b>***May 26***</b>	June 16	July 21	Oct. 18
Apr. 16	May 5	May 25	June 9	June 11	June 30	Aug. 4	Nov. 1
Apr. 30	May 19	June 8	June 23	<b>***June 23***</b>	July 14	Aug. 18	Nov. 15
May 14	June 2	June 22	July 7	July 9	July 28	Sep. 1	Nov. 29
<b>***May 26***</b>	June 16	July 6	July 21	July 23	Aug. 11	Sep. 15	Dec. 13
June 11	June 30	July 20	Aug. 4	Aug. 6	Aug. 25	Sep. 29	Dec. 27
<b>***June 23***</b>	July 14	Aug. 3	Aug. 18	Aug. 20	Sep. 8	Oct. 13	Jan. 10 '11
July 9	July 28	Aug. 17	Sep. 1	<b>***Sep. 1***</b>	Sep. 22	Oct. 27	Jan. 24 '11
July 23	Aug. 11	Aug. 31	Sep. 15	Sep. 17	Oct. 6	Nov. 10	Feb. 7 '11
Aug. 6	Aug. 25	Sep. 14	Sep. 29	Oct. 1	Oct. 20	Nov. 24	Feb. 21 '11
Aug. 20	Sep. 8	Sep. 28	Oct. 13	Oct. 15	Nov. 3	Dec. 8	Mar. 7 '11
<b>***Sep. 1***</b>	Sep. 22	Oct. 12	Oct. 27	<b>***Oct. 27***</b>	Nov. 17	Dec. 22	Mar. 21 '11
Sep. 17	Oct. 6	Oct. 26	Nov. 10	<b>***Nov. 10***</b>	Dec. 1	Jan. 5 '11	Apr. 4 '11
Oct. 1	Oct. 20	Nov. 9	Nov. 24	<b>***Nov. 24***</b>	Dec. 15	Jan. 19 '11	Apr. 18 '11
Oct. 15	Nov. 3	Nov. 23	Dec. 8	<b>***Dec. 8***</b>	Dec. 29	Feb. 2 '11	May 2 '11
<b>***Oct. 27***</b>	Nov. 17	Dec. 7	Dec. 22	<b>***Dec. 22***</b>	Jan. 12 '11	Feb. 16 '11	May 16 '11
<b>***Nov. 10***</b>	Dec. 1	Dec. 21	Jan. 5 '11	Jan. 7 '11	Jan. 26 '11	Mar. 2 '11	May 30 '11
<b>***Nov. 24***</b>	Dec. 15	Jan. 4 '11	Jan. 19 '11	Jan. 21 '11	Feb. 9 '11	Mar. 16 '11	June 13 '11
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### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
1	Wednesday, June 23, 2010	July 14, 2010
2	Friday, July 9, 2010	July 28, 2010
3	Friday, July 23, 2010	August 11, 2010

**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\*\*\***

**CULTURAL AFFAIRS DEPARTMENT[221]**

Cultural trust sustainability challenge grants, 13.5 IAB 6/2/10 <b>ARC 8811B</b>	Tone Board Room, Third Floor Iowa Historical Bldg. 600 E. Locust St. Des Moines, Iowa	June 28, 2010 1 p.m.
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**DENTAL BOARD[650]**

Licensure; continuing education; standards of practice and principles of professional ethics, 11.1 to 11.3, 11.5, 11.6, 13.2, 25.4(3), 25.9(2), 27.7, 27.9 IAB 6/16/10 <b>ARC 8846B</b>	Board Conference Room, Suite D 400 SW 8th St. Des Moines, Iowa	July 6, 2010 10 a.m.
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**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]**

Trade mission, 72.2, 72.3 IAB 6/2/10 <b>ARC 8833B</b>	Iowa Tourism Room, First Floor 200 E. Grand Ave. Des Moines, Iowa	June 22, 2010 2 to 3 p.m.
Targeted industries internship program—definition of “Iowa student,” 104.1 to 104.13 IAB 6/16/10 <b>ARC 8849B</b>	Southwest Conference Room, First Floor 200 E. Grand Ave. Des Moines, Iowa	July 6, 2010 2 to 3 p.m.
Iowa innovation council, ch 114 IAB 6/16/10 <b>ARC 8851B</b>	Main Conference Room, Second Floor 200 E. Grand Ave. Des Moines, Iowa	July 6, 2010 8:30 to 10 a.m.

**EDUCATIONAL EXAMINERS BOARD[282]**

One-year teacher exchange license, 13.17(1) IAB 6/2/10 <b>ARC 8822B</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	June 23, 2010 1 p.m.
Elementary counselor endorsement, 13.28(26) IAB 6/2/10 <b>ARC 8824B</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	June 23, 2010 1 p.m.
Secondary counselor endorsement, 13.28(27) IAB 6/2/10 <b>ARC 8825B</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	June 23, 2010 1 p.m.
Supervisor of special education (instructional)—content requirements, 15.5(2) IAB 6/2/10 <b>ARC 8828B</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	June 23, 2010 1 p.m.
Director of special education (AEA)—professional service, 18.11(2) IAB 6/2/10 <b>ARC 8830B</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	June 23, 2010 1 p.m.
Professional service administrator requirements for special education support programs, 27.3(5) IAB 6/2/10 <b>ARC 8829B</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	June 23, 2010 1 p.m.
Director of special education (AEA)—professional service, 27.3(6) IAB 6/2/10 <b>ARC 8831B</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	June 23, 2010 1 p.m.

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

Air quality, 23.1, 24.1, 28.1 IAB 6/16/10 <b>ARC 8845B</b>	Air Quality Bureau Office 7900 Hickman Rd. Windsor Heights, Iowa	July 19, 2010 1 p.m.
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**HUMAN SERVICES DEPARTMENT[441]**

Medicaid—consumer choices option, 78.34(3), 78.37(16), 78.38(9), 78.41(15), 78.43(15), 78.46(6) IAB 6/2/10 <b>ARC 8832B</b>	Iowa Medicaid Enterprise Bldg. 100 Army Post Rd. Des Moines, Iowa	June 30, 2010 10:30 a.m. to 12 noon
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Child care quality rating system, 118.1 to 118.5, 118.7, 118.8 IAB 6/16/10 <b>ARC 8863B</b> (See also <b>ARC 8757B</b> , IAB 5/19/10)	First Floor SE Conference Rooms 1 & 2 Hoover State Office Bldg. Des Moines, Iowa	July 9, 2010 10 a.m. to 12 noon
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**LABOR SERVICES DIVISION[875]**

OSHA regulations—adoption by reference, 10.20, 26.1 IAB 6/16/10 <b>ARC 8862B</b>	Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa	July 7, 2010 9 a.m.
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Bonding requirements for out-of-state contractors, 150.2, 150.4, 150.13 to 150.15 IAB 6/2/10 <b>ARC 8818B</b>	Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa	June 23, 2010 8:30 a.m. (If requested)
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**NATURAL RESOURCE COMMISSION[571]**

State parks and recreation areas, 61.5, 61.7, 61.11 IAB 6/2/10 <b>ARC 8819B</b>	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	June 22, 2010 2 p.m.
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Fireworks displays at state parks and recreation areas, ch 65 IAB 6/2/10 <b>ARC 8817B</b>	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	June 22, 2010 2 p.m.
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Restrictions on alcohol use at state parks, recreation areas, and public access areas on Fourth of July holiday, ch 68 IAB 6/2/10 <b>ARC 8814B</b>	Gull Point State Park Lodge West Lake Okoboji 1500 Harpen St. Milford, Iowa	July 13, 2010 6:30 p.m.
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**NATURAL RESOURCES DEPARTMENT[561]**

Groundwater hazard statement, 9.2(1) IAB 6/2/10 <b>ARC 8776B</b>	Fifth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	June 24, 2010 1 p.m.
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**PROFESSIONAL LICENSURE DIVISION[645]**

Audit of continuing education, 4.11 IAB 6/2/10 <b>ARC 8784B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	June 22, 2010 9:30 to 10 a.m.
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Board of chiropractic, 41.2(1), 43.5, 43.10(3), 44.1, 44.3(2)“a,” 45.2(2)“g” IAB 6/2/10 <b>ARC 8782B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	June 22, 2010 10 to 10:30 a.m.
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Board of physician assistants— filing of electronic prescriptions, 327.6(1) IAB 6/2/10 <b>ARC 8775B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	June 22, 2010 9 to 9:30 a.m.
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**PUBLIC HEALTH DEPARTMENT[641]**

Plumbing and mechanical systems board—contested cases, ch 33 IAB 6/16/10 <b>ARC 8861B</b> <b>(ICN Network)</b>	ICN Room, Sixth Floor Lucas State Office Bldg. Des Moines, Iowa	July 6, 2010 11 a.m. to 1 p.m.
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	Public Library 400 Willow Ave. Council Bluffs, Iowa	July 6, 2010 11 a.m. to 1 p.m.
	Meeting Room C, Public Library 415 Commercial St. Waterloo, Iowa	July 6, 2010 11 a.m. to 1 p.m.
	Kelison Room Public Library Information Center 2950 Learning Campus Dr. Bettendorf, Iowa	July 6, 2010 11 a.m. to 1 p.m.
	National Guard Armory 1160 19th St. SW Mason City, Iowa	July 6, 2010 11 a.m. to 1 p.m.
	Room 45, Crestwood High School 1000 4th Ave. E Cresco, Iowa	July 6, 2010 11 a.m. to 1 p.m.
	Room 113, Trinity Hospital 802 Kenyon Rd. Fort Dodge, Iowa	July 6, 2010 11 a.m. to 1 p.m.
	University of Iowa 2222 Old Highway 218 S Iowa City, Iowa	July 6, 2010 11 a.m. to 1 p.m.

**PUBLIC SAFETY DEPARTMENT[661]**

Licensing of fire protection system installers and maintenance workers, ch 276 IAB 6/16/10 <b>ARC 8855B</b>	First Floor Conference Room 125 Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	July 6, 2010 9 a.m.
Residential construction requirements, 301.8 IAB 5/19/10 <b>ARC 8770B</b>	First Floor Public Conference Room 125 Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	July 6, 2010 10 a.m.

**UTILITIES DIVISION[199]**

Disconnection of residence with a deployed service member, 19.4, 20.4 IAB 6/16/10 <b>ARC 8858B</b>	Board Hearing Room 350 Maple St. Des Moines, Iowa	July 27, 2010 10 a.m.
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The following list will be updated as changes occur.

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

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

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

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**ARC 8835B****ACCOUNTANCY EXAMINING BOARD[193A]****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 542.4, the Accountancy Examining Board hereby rescinds Chapter 10, “Continuing Education,” Iowa Administrative Code, and adopts new Chapter 10 with the same title.

The proposed new chapter provides clarity so that accounting professionals will have more understandable rules to follow for continuing professional education (CPE).

During the process of drafting the proposed rules, the Board solicited participation from several constituent groups. A task force that included members of the Board as well as members from the Iowa Society of Certified Public Accountants and Accountants Association of Iowa, consultants and business valuation professionals, employees of the IRS and the Iowa Department of Revenue and several CPAs involved in private industry reviewed several drafts of these rules prior to submission of this Notice of Intended Action.

These rules are subject to waiver or variance pursuant to 193A—Chapter 5.

Consideration will be given to all written suggestions or comments on the proposed rules received on or before July 6, 2010. Comments should be addressed to Jodi Adams, CPA MBA, Accountancy Examining Board, 1920 S.E. Hulsizer Road, Ankeny, Iowa 50021, or faxed to (515)281-7411. E-mail may be sent to [jodi.adams@iowa.gov](mailto:jodi.adams@iowa.gov).

These rules are intended to implement Iowa Code chapters 17A, 272C, 542, and 546.

The following amendment is proposed.

Rescind 193A—Chapter 10 and adopt the following **new** chapter in lieu thereof:

CHAPTER 10  
CONTINUING EDUCATION

**193A—10.1(542) Scope.** The right to use the title “Certified Public Accountant” and “Licensed Public Accountant” is regulated in the public interest and imposes a duty on accounting professionals to maintain public confidence and current knowledge, skills, and abilities in all areas of services. CPAs and LPAs must accept and fulfill their ethical responsibilities to the public and the profession regardless of their fields of employment.

**10.1(1)** The development of professional competence involves a continued commitment to learning and professional improvement. A CPA and an LPA performing professional services must have a broad range of knowledge, skills and abilities. A program that promotes professional competence in the practice of accountancy is defined as one that refers to the process, methods, or principles of accounting or is directly related to the CPA’s and LPA’s employment and is above the level of the CPA’s and LPA’s current knowledge.

**10.1(2)** Acceptable subjects for continuing professional education include accounting, assurance/auditing, consulting services, specialized knowledge and applications, management, taxation, and ethics. Other subjects, including nontechnical professional skills, may be approved by the board if they maintain or improve CPAs’ and LPAs’ competence in their current employment.

**193A—10.2(542) Definitions.** The following definitions shall be applicable to the rules of this chapter.

## ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

“*Continuing professional education (CPE)*” means education that is acquired by a licensee in order to maintain, improve, or expand skills and knowledge present at initial licensure or to develop new and relevant skills and knowledge.

“*Firm meeting*” means a formally arranged gathering/assembly of staff or management groups or both to inform them of administrative matters.

“*Formal program*” means a structured learning activity based on clearly defined learning objectives and outcomes that articulate achievable knowledge, skills and abilities.

“*In-house or on-site training*” means a formally organized professional educational program sponsored by the employer.

“*Live instruction*” means an educational program delivered in a classroom setting or through videoconferencing whereby the instructor and student carry out essential tasks while together. Examples include distance learning and Webcasts.

“*Nontechnical professional skills*” means formal programs of learning which contribute to the professional competence of a certificate holder or license holder in fields of study that indirectly relate to the holder’s field of business. “Nontechnical professional skills” includes, but is not limited to, the following programs or courses:

1. Communication;
2. Interpersonal management;
3. Leadership and personal development;
4. Client and public relations;
5. Practice development;
6. Marketing;
7. Motivational and behavioral, and
8. Speed reading and memory building.

“*Qualified instructor*” means an individual whose training and experience adequately prepares the individual to carry out specified training assignments.

“*Self-study*” means a computer-generated program, such as CD-ROM, or written materials or exercises intended for self-study which do not include simultaneous interaction with an instructor but do include tests transmitted to the provider for review and grading.

“*Technical professional skills*” means formal programs of learning which contribute to the professional competence of a certificate holder or license holder in fields of study that directly relate to the holder’s field of business. “Technical professional skills” includes, but is not limited to, the following programs or courses:

1. Auditing standards or procedures;
2. Compilation and review of financial statements;
3. Financial statement preparation and disclosures;
4. Attestation standards and procedures;
5. Projection and forecast standards or procedures;
6. Accounting and auditing;
7. Management advisory services;
8. Personal financial planning;
9. Taxation;
10. Management information systems;
11. Budgeting and cost analysis;
12. Asset management;
13. Professional ethics;
14. Specialized areas of industry;
15. Human resource management;
16. Economics;
17. Business law;
18. Mathematics, statistics and quantitative applications in business;
19. Business management and organization;

## ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

20. General computer skills, computer software training, information technology planning and management;
21. Operations management, inventory, and production; and
22. Negotiation or dispute resolution.

**193A—10.3(542) Applicability.** Each active certificate holder or license holder, including persons working in private industry or education, is required to comply with the continuing professional education requirements as a condition precedent to the renewal of the certificate or license.

**193A—10.4(542) Cost of continuing professional education.** All costs of complying with the continuing professional education requirements of the board are the responsibility of the certificate holder or license holder wishing to maintain registration in this state.

**193A—10.5(542) Basic requirement.** During the three-year period ending on the December 31 preceding the July 1 renewal date of the certificate or license, an applicant for renewal shall have completed 120 hours of qualifying continuing professional education subject to the following exceptions:

**10.5(1)** At the first annual renewal date of July 1 that is less than 12 months from the date of filing the initial application for the certificate or license, the certificate holder or license holder shall not be required to report continuing professional education.

**10.5(2)** At the annual renewal date of July 1 that is more than 12 months, but less than 24 months, from the date of filing the initial application for the certificate or license, the certificate holder or license holder shall report 40 hours of continuing professional education earned in the one-year period ending December 31 prior to the July 1 renewal date.

**10.5(3)** At the annual renewal date of July 1 that is more than 24 months, but less than 36 months, from the date of filing the initial application for the certificate or license, the certificate holder or license holder shall report 80 hours of continuing professional education earned in the two-year period ending December 31 prior to the July 1 renewal date.

**10.5(4)** An applicant who wishes to restore a certificate or license to active status must meet the basic requirement of 120 hours of continuing professional education earned in the preceding three-year period prior to the date of application to restore active status.

**10.5(5)** A licensee shall be deemed to have complied with the requirements of this rule if, for the period that the licensee is a resident of another state or district having a continuing professional education requirement, the licensee met the resident state's mandatory requirement.

**10.5(6)** The board shall have authority to make exceptions for reasons of individual hardship including health, certified by a medical doctor, military service, foreign residency, retirement, or other good cause. No exceptions shall be made solely because of age.

**10.5(7)** Licensees who apply to reinstate a lapsed or inactive certificate or license to active status pursuant to 193A—subrule 5.6(3) or 5.9(7) shall satisfy the basic requirement of 120 hours of continuing professional education earned in the preceding three-year period prior to the date of the application, including all required mandatory education described in rule 193A—10.7(542), to reinstate on an annual renewal schedule, modified as needed to incorporate the phase-in schedule for initial licensees described in subrules 10.5(1) to 10.5(3). Once the certificate or license is reinstated, the following schedule shall apply:

*a.* No continuing professional education shall be required on the first annual renewal after reinstatement of a lapsed or inactive certificate or license to active status.

*b.* 40 hours of continuing professional education that has not previously been reported shall be required in the one-year period ending December 31 prior to the second July 1 annual renewal date following reinstatement to active status. In the second and subsequent renewals following reinstatement, the applicant must demonstrate compliance with the mandatory education described in rule 193A—10.7(542).

## ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

*c.* 80 hours of continuing professional education that has not previously been reported shall be required in the two-year period ending December 31 prior to the third July 1 annual renewal date following reinstatement to active status.

*d.* 120 hours of continuing professional education shall be required in the three-year period ending December 31 prior to the fourth and subsequent July 1 annual renewal dates following reinstatement to active status.

**193A—10.6(542) Measurement standards.** The following standards will be used to measure the hours of credit to be given for qualifying continuing professional education programs completed by individual applicants:

**10.6(1)** Credit is measured with one 50-minute period equaling one contact hour of credit. Half-hour credits may be allowed (equal to not less than 25 minutes) after the first hour of credit has been earned.

**10.6(2)** Only class hours or the equivalent, and not student hours devoted to preparation, will be counted.

**10.6(3)** Credit expressed as continuing education units (CEUs) shall be counted as ten contact hours for each continuing professional education unit. (.1 CEU = 1 CPE)

**10.6(4)** Service as lecturer or discussion leader of continuing professional education programs will be counted to the extent that this service contributes to the applicant's professional competence.

**193A—10.7(542) Mandatory education required.**

**10.7(1)** Every CPA certificate holder or LPA license holder who is responsible for supervising compilation services or who signs or authorizes someone to sign the accountant's compilation report on the financial statements on behalf of a firm shall complete, as a condition of certificate or license renewal, a minimum of eight hours of continuing professional education devoted to financial statement presentation, such as courses covering the statements on standards for accounting and review services (SSARS) and accounting and auditing updates. When required, the financial statement presentation continuing education shall be completed within the three-year period ending on the December 31 preceding the application for certificate or license renewal. For credit to be claimed for a course covering multiple topics, a minimum of one hour as outlined in subrule 10.6(1) shall be devoted to financial statement presentation. For example, if a seminar or presentation is conducted for a total of four hours and only one hour is devoted to financial statement presentation, then only one hour shall be claimed toward meeting the requirement of this subrule.

**10.7(2)** Every CPA certificate holder or LPA license holder shall complete a minimum of four hours of continuing education devoted to ethics and rules of professional conduct during the three-year period ending December 31, prior to the July 1 annual renewal date. For a course to qualify to meet this requirement, the course description shall clearly outline the subject matter covered as professional or business ethics. If credit is to be claimed for a course covering multiple topics, a minimum of one hour as outlined in rule 193A—10.6(542), measurement standards, specifically in subrule 10.6(1), shall be devoted to business or professional ethics. For example, if a seminar or presentation is conducted for a total of four hours and only one hour is devoted to business or professional ethics, then only one hour shall be claimed toward meeting the requirement of this subrule. Ethics courses, which are defined as courses dealing with regulatory and behavioral ethics, shall be limited to courses on the following:

- a.* Professional standards;
- b.* Licenses and renewals;
- c.* SEC oversight;
- d.* Competence;
- e.* Acts discreditable;
- f.* Advertising and other forms of solicitation;
- g.* Independence;
- h.* Integrity and objectivity;
- i.* Confidential client information;
- j.* Contingent fees;

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- k.* Commissions;
- l.* Conflicts of interest;
- m.* Full disclosure;
- n.* Malpractice;
- o.* Record retention;
- p.* Professional conduct;
- q.* Ethical practice in business;
- r.* Personal ethics;
- s.* Ethical decision making; and
- t.* Corporate ethics and risk management as these topics relate to malpractice and relate solely to the practice of certified public accounting.

**193A—10.8(542) Programs that qualify and CPE limitations.**

**10.8(1)** The overriding consideration in determining whether a specific program qualifies as acceptable continuing education is that it be a formal program of learning which contributes directly to the professional competence of an individual certified or licensed in this state. It will be left to each individual certificate holder or license holder to determine the technical or nontechnical professional skills courses of study to be pursued. Thus, the auditor may study accounting and auditing, the tax practitioner may study taxes, and the management advisory services practitioner may study subjects related to such practice. Job-related continuing professional education shall qualify as acceptable provided the courses selected from nontechnical professional skills contribute to the professional competence of the certificate holder or license holder.

**10.8(2)** Program standards:

- a.* Learning activities must be based on clearly defined, relevant learning objectives and outcomes that clearly articulate the knowledge, skills, and abilities that can be achieved by participants.
- b.* Learning activities must be developed in a manner consistent with the prerequisite education, experience, and advanced preparation of the participants.
- c.* Activities, materials, and delivery systems must be current, technically accurate, and effectively designed. Providers, sponsors, or contractors must be competent in the subject matter. Competence may be demonstrated through practical experience or education.
- d.* Learning programs must be reviewed by qualified persons other than those who develop the program to ensure that the program is technically accurate and current and addresses the stated learning objectives. This requirement is waived for single presentations such as lectures that are given once.

**10.8(3)** Continuing professional education programs will qualify only if:

- a.* An outline of the program is prepared in advance and preserved.
- b.* The program is at least one hour (50-minute period) in length.
- c.* The program is conducted by a qualified instructor, discussion leader or lecturer. A qualified instructor, discussion leader or lecturer is anyone whose background, training, education or experience makes it appropriate for that person to lead a discussion on the subject matter of the particular program.
- d.* A record of attendance or certification of completion or transcript is maintained.

**10.8(4)** The following programs are deemed to qualify provided all other requirements of this rule are met.

- a.* Professional development programs of recognized national and state accounting organizations.
- b.* Technical sessions at meetings of recognized national and state accounting organizations and their chapters.
- c.* Formally organized in-house or on-site educational programs provided by the certificate holder's or license holder's employer.
- d.* Distance learning programs or group study Webcast programs.
- e.* University or college courses meet the continuing professional education requirements of those attending.

Each semester hour shall be equal to 15 contact hours of credit. Each quarter hour shall be equal to 10 contact hours of credit.

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*f.* Technical or nontechnical sessions offered by employers in business and industry, as well as firms of certified public accountants.

**10.8(5)** Formal correspondence and formal self-study programs contributing directly to the professional competence of an individual that require registration and provide evidence of satisfactory completion will be considered for credit. The amount of credit to be allowed for correspondence and formal self-study programs (including tested study programs) shall be recommended by the program sponsor and based upon appropriate “field tests” and shall not exceed 50 percent of the renewal requirement. A licensee claiming credit for correspondence or formal self-study courses is required to obtain evidence of satisfactory completion of the course from the program sponsor. Credit will be allowed in the renewal period in which the course is completed.

**10.8(6)** Credit may be allowed for self-study programs on the basis of one hour of credit for each 50 minutes spent on the self-study program if the developer of such programs is approved by either the national continuing professional education registry or by the NASBA continuing education registry and the program sponsor has not designated the amount of credit to be claimed for completing the course of study. The licensee must estimate the equivalent number of hours and justify the amount of hours claimed. The maximum credit shall not exceed 50 percent of the renewal requirement. Credit will be allowed in the renewal period in which the course is completed.

**10.8(7)** The credit allowed an instructor, discussion leader, or speaker will be on the basis of two hours for subject preparation for each hour of teaching. Credit for teaching college or university coursework may be claimed for courses taught above the elementary accounting or principles of accounting level. Repetitious presentations shall not be considered. The maximum credit for such preparation and teaching shall not exceed 50 percent of the renewal period requirement.

**10.8(8)** Credit may be awarded for published articles and books. The amount of credit so awarded will be determined by the board. Credit may be allowed for published articles and books provided they contribute to the professional competence of the licensee. Credit for preparation of such publications may be given on a self-declaration basis up to 25 percent of the renewal period requirement. In exceptional circumstances, a licensee may request additional credit by submitting the article(s) or book(s) to the board with an explanation of the circumstances that the licensee believes justify additional credit.

**10.8(9)** Credit may be allowed for the successful completion of professional examinations as detailed below. Credit is calculated at the rate of five times the length of each examination, which is presumed to include all preparation time, claimed in the calendar year of the examination, and limited to 50 percent of the total renewal requirement.

- a.* Certified Management Accountant/CMA.
- b.* Certified Information Systems Auditor/CISA.
- c.* Certified Information Technology Professional/CITP.
- d.* Certified Financial Planner/CFP.
- e.* Enrolled Agent/EA.
- f.* Certified Governmental Financial Manager/CGFM.
- g.* Certified Government Auditing Professional/CGAP.
- h.* Certified Internal Auditor/CIA.
- i.* Accredited Business Valuation/ABV.
- j.* Certified Financial Forensics/CFF.
- k.* Certified Valuation Analyst/CVA.
- l.* Certified Insolvency & Restructuring Advisor/CIRA.
- m.* Forensic Certified Public Accountant/FCPA.
- n.* Certified Fraud Examiner/CFE.
- o.* Certified Business Analyst/CBA.
- p.* Certified Trust and Financial Advisor/CTFA.
- q.* Chartered Financial Analyst/CFA.
- r.* Registered Representative, Series 6 and 7 and other examinations.
- s.* Registered Investment Advisor/RIA.
- t.* Certified Forensic Accountant/CrFA.

## ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

- u. Personal Financial Specialist/PFS.
- v. Chartered Life Underwriter/CLU.
- w. Fellow of the Society of Actuaries/FSA.
- x. Chartered Property & Casualty Underwriter/CPCU.
- y. Fellow Life Management Institute/FLMI.
- z. Other similar examinations approved by the board.

**10.8(10)** Firm meetings for staff or management groups for the purpose of administrative and firm matters do not meet the standards set forth in subrule 10.8(1).

**10.8(11)** Dinner, luncheon and breakfast meetings of recognized organizations may qualify if they meet the appropriate requirements and shall be limited to 25 percent of the total renewal requirements if the individual meeting is no more than two hours long.

**10.8(12)** Continuing professional education taken in nontechnical skills area as defined in rule 193A—10.2(542) shall be limited to 50 percent of the total renewal requirement.

**10.8(13)** The board may look to recognized state or national accounting organizations for assistance in interpreting the acceptability of and credit to be allowed for individual courses.

**10.8(14)** The right is specifically reserved to the board to approve or deny credit for continuing professional education claimed under these rules.

**193A—10.9(542) Controls and reporting.**

**10.9(1)** An applicant for renewal may be requested to provide, in such manner and at such time as prescribed by the board, a signed statement, under penalty of perjury, on forms provided by the board, setting forth the continuing professional education in which the licensee has participated. The board, in certain instances, may allow for attestation that the licensee has met the requirements in lieu of providing a listing. If requested to provide a listing of the continuing professional education completed, the documentation shall include:

- a. School, firm or organization conducting the course and contact information.
- b. Location of course.
- c. Title of course or description of content.
- d. Principal instructor.
- e. Dates attended.
- f. Hours claimed.
- g. Certificate of completion.
- h. Name of participant.
- i. Course field of study.
- j. Type of instruction or delivery method.
- k. Amount of CPE recommended.
- l. Verification by CPE program sponsor representative.

Canceled checks and registration forms are NOT proof of attendance.

**10.9(2)** The board may require sponsors of courses to furnish an attendance record, a certification of completion or any other information the board deems essential for administration of these continuing professional education rules.

**10.9(3)** The board will verify, on a test basis, information submitted by licensees. If an application for renewal is not approved, the applicant will be so notified and may be granted a period of time by the board in which to correct the deficiencies noted.

**10.9(4)** Primary responsibilities for documenting the requirements shall be with the licensee, and evidence to support fulfillment of those requirements must be retained for a period of three years subsequent to submission of the report claiming the credit. (Refer to 193A—subrule 14.3(1) and Iowa Code section 542.10(1)(a), which provides for permanent revocation based on fraud or deceit in procuring a license.) Satisfaction of the requirements, including retention of attendance records, certification of completion records, and written outlines, may be accomplished as follows:

- a. For courses taken for scholastic credit in accredited universities and colleges (state, community, or private) or high school districts, evidence of satisfactory completion of the course will be sufficient;

## ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

for noncredit courses taken, a statement of the hours of attendance, signed by the instructor, must be obtained by the licensee.

b. For correspondence and formal independent self-study courses, written evidence or a certificate of completion from the sponsor or course provider shall be obtained by the licensee.

c. In all other instances, the licensee must maintain a record of the information as listed in subrule 10.8(3).

**193A—10.10(542) Grounds for discipline.** A licensee or an applicant is subject to discipline, including permanent revocation, if the licensee or applicant provides false information to the board in connection with an application to renew or reinstate a certificate or license. A licensee or an applicant is also subject to discipline if the licensee or applicant is unable to document the continuing professional education hours reported to the board in connection with an audit or other request for documentation. False information of this nature will subject the licensee or applicant to discipline whether the false information was supplied intentionally or with reckless disregard for the truth or accuracy of the number of hours claimed. Licensees and applicants are accordingly cautioned to supply the board with accurate continuing professional education information.

These rules are intended to implement Iowa Code chapters 272C and 542.

**ARC 8836B****ACCOUNTANCY EXAMINING BOARD[193A]****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 542.4, the Accountancy Examining Board hereby proposes to rescind Chapter 13, “Rules of Professional Conduct,” and to adopt a new Chapter 13, “Rules of Professional Ethics and Conduct,” Iowa Administrative Code.

The proposed new chapter is intended to make the rules of professional ethics and conduct clearer and more understandable for accounting professionals working in Iowa.

During the process of drafting these rules, the Board solicited participation from several constituent groups. A task force that included members of the Board as well as members from the Iowa Society of Certified Public Accountants and the Accountants Association of Iowa, consultants and business valuation professionals, employees of the IRS and the Iowa Department of Revenue and several CPAs involved in private industry reviewed several drafts of these rules prior to submission of this Notice of Intended Action.

These rules are subject to waiver or variance pursuant to 193A—Chapter 5.

Consideration will be given to all written suggestions or comments on the proposed rules received on or before July 6, 2010. Comments should be addressed to Jodi Adams, CPA MBA, Accountancy Examining Board, 1920 S.E. Hulsizer Road, Ankeny, Iowa 50021; or faxed to (515)281-7411. E-mail may be sent to [jodi.adams@iowa.gov](mailto:jodi.adams@iowa.gov).

These rules are intended to implement Iowa Code chapters 17A, 272C, 542, and 546.

The following amendment is proposed.

Rescind 193A—Chapter 13 and adopt the following new chapter in lieu thereof:

CHAPTER 13  
RULES OF PROFESSIONAL ETHICS AND CONDUCT

**193A—13.1(542) Guiding interpretative principles.** The public places trust and confidence in CPAs and LPAs and the services they provide; consequently, licensees have a duty to conduct themselves in a manner that will be beneficial to the public and that fosters such trust and confidence. The rules of professional ethics and conduct identify seven fundamental principles of conduct that are intended to govern licensees' professional performance whether they are practicing in a CPA firm, LPA firm, industry, not-for-profit organization, or a government, education or other setting. These principles, with the exception of independence, apply to all services and activities performed by licensees in all aspects of their professional conduct. Independence is a unique principle that applies only to those professional services where it is required in accordance with professional standards. Users of the licensee's services draw confidence from the knowledge that the licensee is bound to a framework which requires continued dedication to professional excellence and commitment to ethical behavior that will not be subordinated to personal gain.

**13.1(1) Public interest.**

*a.* The grant of a license indicates that an individual has met the criteria established by Iowa Code chapter 542 and the board to perform services in a manner that protects the public interest. The licensee must, therefore, have a keen consciousness of the public interest. The public consists of clients, credit grantors, governments, employers, investors, the business and financial community, and others who use the services of licensees.

*b.* Because the licensee is seen as a representative of the profession by those who retain or use the licensee's services, the licensee shall avoid conduct that might conflict with the public interest or erode public respect for, and confidence in, the profession.

**13.1(2) Integrity.**

*a.* Integrity is a character trait demonstrated by acting honestly and candidly and by not knowingly misrepresenting facts, accommodating deceit, or subordinating ethical principles. Acting with integrity is essential to maintaining credibility and public trust.

*b.* A licensee shall act with integrity in the performance of all professional activities in whatever capacity performed.

**13.1(3) Objectivity.**

*a.* Objectivity is a distinguishing feature of the accounting profession and is critical to maintaining the public's trust and confidence. It is a state of mind that imposes the obligation to be impartial and free of bias that may result from conflicts of interest or subordination of judgment. Objectivity requires a licensee to exercise an appropriate level of professional skepticism in carrying out all professional activities.

*b.* A licensee shall maintain objectivity in the performance of all professional activities in whatever capacity performed.

**13.1(4) Due care.**

*a.* Due care imposes the obligation to perform professional activities with concern for the best interest of those for whom the activities are performed and consistent with the profession's responsibility to the public. It is essential to preserving the public's trust and confidence. Due care requires the licensee to discharge professional responsibilities with reasonable care and diligence and to adequately plan and supervise all professional activities for which the licensee is responsible.

*b.* A licensee shall act with due care in the performance of all professional activities in whatever capacity performed.

**13.1(5) Competence.**

*a.* Competence is derived from a combination of education and experience. It begins with a mastery of the common body of knowledge, skills, and abilities and requires a commitment to lifelong learning and professional improvement. A licensee shall possess a level of competence, sound

## ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

professional judgment, and proficiency to ensure that the quality of the licensee's activities meets the high level of professionalism required by these principles.

*b.* A licensee shall be competent in the performance of all professional activities, in whatever capacity performed, and comply with applicable professional standards.

**13.1(6) Confidentiality.**

*a.* A licensee has an obligation to maintain and respect the confidentiality of information obtained in the performance of all professional activities. Maintaining such confidentiality is vital to the proper performance of the licensee's professional activities.

*b.* This obligation continues after the termination of the relationship between the licensee and the client or employer and extends to information obtained by the licensee in professional relationships with prospective clients and employers.

*c.* This principle shall not be construed to prohibit a licensee from disclosing information as required to meet professional, regulatory or other legal obligations.

**13.1(7) Independence.**

*a.* Independence, where required by professional standards, is essential to establishing and maintaining the public's faith and confidence in, and reliance on, information on which the licensee reported.

*b.* A licensee in the practice of public accounting shall be independent in fact and appearance when engaged to provide services where independence is required by professional standards. Independence in fact is the state of mind that permits a licensee to perform an attest service without being affected by influences that compromise professional judgment, thereby allowing the licensee to act with integrity and exercise objectivity and professional skepticism. Independence in appearance is the avoidance of circumstances that would cause a reasonable and informed third party, having knowledge of all relevant information, to conclude that the integrity, objectivity or professional skepticism of a licensee had been compromised.

**193A—13.2(542) Scope.**

**13.2(1)** The following rules of professional ethics and conduct have been adopted by the board as authorized by Iowa Code chapter 542, in particular, sections 542.4(9) "e" through "p" and "t." These rules complement the grounds for discipline set out in 193A—Chapter 14. These rules cover a broad range of behavior and do not enumerate every possible unethical act or act of misconduct.

**13.2(2)** In the interpretation and enforcement of the rules of professional ethics and conduct, the board may give consideration, but not necessarily dispositive weight, to relevant interpretations, rulings and opinions issued by other state boards of accountancy and by appropriately authorized committees on ethics of professional organizations.

**193A—13.3(542) Applicability.**

**13.3(1)** The rules of professional ethics and conduct which follow rest upon the premise that the reliance of the public in general and of the business community in particular on sound financial reporting and on the implication of professional competence inherent in the authorized use of a legally restricted title relating to the practice of public accountancy imposes on persons engaged in such practice certain obligations both to their clients and to the public. These obligations, which the rules of professional ethics and conduct are intended to enforce where necessary, include the obligation to maintain independence of thought and action and a continued commitment to learning and professional improvement, to observe applicable generally accepted accounting principles and generally accepted auditing standards, to promote public interest through sound and informative financial reporting, to hold the affairs of clients in confidence, and to maintain high standards of personal conduct in all professional activities in whatever capacity performed.

**13.3(2)** Acceptance of a certificate as a CPA or a license as an LPA to practice public accounting involves acceptance by the CPA or LPA of the obligations set forth in subrule 13.3(1) and accordingly a duty to abide by the rules of professional ethics and conduct.

## ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

**13.3(3)** The rules of professional ethics and conduct have application to all professional services performed by all CPAs and LPAs whether or not they are engaged in the practice of public accountancy, except where the wording of a rule clearly indicates that the applicability is more limited.

**13.3(4)** A CPA or LPA who is engaged in the practice of public accountancy outside the United States will not be subject to discipline by the board for departing, with respect to such foreign practice, from any of the rules, so long as the CPA's or LPA's conduct is in accordance with the standards of professional conduct applicable to the practice of public accountancy in the country in which the CPA or LPA is practicing. However, even in such a case, if a CPA's or LPA's name is associated with financial statements in such manner as to imply that the CPA or LPA is acting as an independent public accountant and under circumstances that would entitle the reader to assume that United States practices are followed, the CPA or LPA will be expected to comply with subrules 13.4(3) (engagement standards) and 13.4(16) (accounting principles).

**13.3(5)** A CPA or LPA may be held responsible for compliance with the rules of professional ethics and conduct by all persons associated with the accountant in the practice of public accounting who are either under the accountant's supervision or are licensees, partners or shareholders in the accountant's practice.

**13.3(6)** CPAs and CPA firms exercising a practice privilege in Iowa or for a client with a home office in Iowa are subject to the professional standards set forth in this chapter.

**193A—13.4(542) Rules applicable to all CPAs and LPAs.**

**13.4(1) *Integrity, objectivity and conflicts of interest.***

*a.* A CPA or LPA shall not knowingly misrepresent facts and, when engaged in the performance of professional services, shall not subordinate judgment to others or allow professional judgment and objectivity to be impaired by self-interest or by a conflict of interest between the licensee and a client or between clients. In tax practice, a licensee may resolve doubt in favor of the client as long as there is reasonable support for that position.

*b.* When offering or rendering accounting or related financial, tax, or management advice, a CPA or LPA shall be objective and shall not place the CPA's or LPA's own financial interests or the financial interests of a third party ahead of the legitimate financial interests of the client or the public in any context in which a client or the public can reasonably expect objectivity from one using the CPA or LPA title.

*c.* When faced with a conflict of interest that may impair professional judgment and objectivity, the licensee shall decline or cease the engagement, take steps to remove the conflict or, when reasonably feasible and appropriate under the circumstances and consistent with independence requirements, disclose the conflict or potential conflict and secure from all clients informed consent to proceed with the engagement. In no event, however, shall a licensee proceed with an engagement through informed consent when the nature of the conflict impairs the licensee's objectivity whether or not the client consents.

*d.* A conflict of interest may arise, for instance, when a licensee represents multiple clients whose interests are adverse to each other. Whether a licensee can provide competent, diligent, and objective representation to clients whose interests are or may be adverse to each other's interests or the interests of the licensee, with informed consent, will depend on the factual circumstances of the engagement. Licensees are cautioned that, when in doubt as to whether informed consent will effectively address an actual or potential conflict of interest, the most prudent course is to decline or cease the engagement and to advise one or more of the multiple clients to seek alternative professional representation.

**13.4(2) *Professional competencies and compliance with applicable technical standards.*** A CPA or LPA who accepts a professional engagement implies that the CPA or LPA has the necessary competence to complete the engagement according to professional standards. All CPAs and LPAs shall comply with the following general standards as interpreted by bodies designated by the American Institute of Certified Public Accountants and must justify any departure.

*a. Professional competence.* A CPA or LPA shall undertake only those engagements which the CPA, LPA or firm can reasonably expect to complete with professional competence. Competence relates

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both to knowledge of the profession's standards, techniques and the technical subject matter involved and to the capability to exercise sound judgment in applying such knowledge to each engagement.

*b. Due professional care.* A CPA or LPA shall exercise due professional care in the performance of an engagement.

*c. Planning and supervision.* A CPA or LPA shall adequately plan and supervise an engagement.

*d. Sufficient relevant data.* A CPA or LPA shall obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to an engagement.

**13.4(3) Engagement standards.** Unless they have complied with applicable generally accepted engagement standards, CPAs and LPAs shall not permit their names to be associated with financial statements. The board will consider the American Institute of Certified Public Accountants Professional Standards, Public Company Accounting Oversight Board, International Accounting Standards Board, Statements on Auditing Standards, and Statements on Standards for Accounting and Review Services as sources of interpretations of generally accepted engagement standards.

**13.4(4) Discreditable conduct.** A CPA or LPA shall not commit any act that reflects adversely on the CPA's or LPA's fitness to engage in the practice of public accountancy. The board may consider discipline by any other agency or jurisdiction when determining probable cause to take action against a CPA or LPA for acts discreditable. Conduct discreditable to the public accounting profession is further defined in 193A—subrule 14.3(12).

**13.4(5) Requirements of governmental bodies, commissions, or other regulatory agencies.**

*a.* Many governmental bodies, commissions, or other regulatory agencies have established requirements, such as audit standards, guides, rules and regulations, that CPAs are required to follow in preparation of financial statements or related information, such as management's discussion or analysis, and in performing attest or similar services for entities subject to the jurisdiction of the governmental bodies, commissions, or regulatory agencies. For example, the Securities and Exchange Commission, Government Accountability Office, office of auditor of state, state insurance division and other regulatory agencies have established such requirements.

*b.* A CPA shall not prepare financial statements or related information for the purposes of reporting to such bodies, commissions, or regulatory agencies, unless the CPA agrees to follow the requirements of such organizations in addition to generally accepted auditing standards, where applicable, unless the CPA discloses in the financial statements or the accountant's report that such requirements were not followed.

**13.4(6) Confidentiality.** A CPA or LPA shall not, without the consent of the client, disclose any confidential information pertaining to the client obtained in the course of performing professional services. This rule does not:

*a.* Relieve a CPA or LPA of any obligations under subrules 13.4(3) (engagement standards) and 13.4(16) (accounting principles); or

*b.* Affect in any way a CPA's or LPA's obligation to comply with a validly issued subpoena or summons enforceable by order of a court; or

*c.* Prohibit disclosures in the course of a peer review of a CPA's or LPA's professional services; or

*d.* Preclude a CPA or LPA from responding to any inquiry made by the board or any investigative or disciplinary body established by law or formally recognized by the board. Members of the board and its peer reviewers, staff and other agents shall not disclose any confidential information which comes to their attention from a CPA or LPA in disciplinary proceedings or otherwise in carrying out their responsibilities, except that they may furnish such information to an investigative or disciplinary body.

**13.4(7) Records.**

*a. Definitions.*

*"Client-provided records"* means all documents or written or electronic material provided to the licensee, or obtained by the licensee in the course of the licensee's representation of the client, that preexisted the retention of the licensee by the client.

*"Client records prepared by the licensee"* means accounting or other records (tax returns, general ledgers, subsidiary journals, and supporting schedules such as detailed employee payroll records and depreciation schedules) that the licensee was engaged to prepare for the client.

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“*Licensee’s working papers*” means, but is not limited to, supporting records, audit programs, analytical review schedules, and statistical sampling results, analyses, and schedules prepared by the client at the request of the licensee.

“*Supporting records*” means information not reflected in the client’s books and records that are otherwise not available to the client with the result that the client’s financial information is incomplete. For example, supporting records include adjusting, closing, combining, or consolidating journal entries (including computations supporting such entries) that are produced by the licensee during an engagement (for example, an audit).

*b. Furnishing client records.*

(1) A CPA or LPA shall furnish within a reasonable time of a client’s or former client’s request:

1. All client-provided records, including any accounting or other records belonging to, or obtained from or on behalf of, the client which the CPA or LPA removed from the client’s premises or received for the client’s account, including a copy of all disclosures required by subrule 13.4(19). The CPA or LPA may make and retain copies of such documents when they form the basis for work done by the CPA or LPA.

2. All client records prepared by the CPA or LPA and supporting records to the extent that such records would ordinarily constitute part of the client’s books and records and are not otherwise available to the client or easily reconstructed by the client or successor CPA or LPA. Examples of such records include depreciation schedules and LIFO inventory work papers. Whether a particular record falls into this category is a mixed question of law and fact. When requested by a client or former client, the CPA or LPA has the burden to demonstrate that a particular record does not fall within this category.

(2) A “reasonable time” for furnishing clients or former clients the records described in paragraph 13.4(7) “a” is dependent upon the facts and circumstances. A CPA or LPA shall strive to be as responsive as the situation requires in light of the possible adverse consequence of delay to the client or former client. As a general rule, the CPA or LPA shall provide such records within 30 days of a written request.

**13.4(8) *Records retention.*** A CPA or LPA shall comply with all professional standards on records retention applicable to particular engagements including, but not limited to, standards adopted by recognized standards-setting bodies such as the American Institute of Certified Public Accountants, the Public Company Accounting Oversight Board, the Comptroller General of the United States, the Auditing Standards Board, the Internal Revenue Service, or other applicable regulatory body.

**13.4(9) *Nonpayment of fees.***

*a. General rule.* A CPA or LPA shall not withhold the records described in paragraph 13.4(7) “b” from a client or former client based on nonpayment of fees. However, if a CPA or LPA has already issued a tax return, report or other record to a client or former client, the CPA or LPA may, but is not required to, request payment of outstanding fees prior to providing a second copy of such records.

*b. Copy expenses.* A licensee may, but is not required to, charge the actual cost of furnishing electronic or paper copies of records if consistent with the engagement arrangements with the client.

*c. Incomplete engagement.* Nothing in this subrule requires a licensee to complete an engagement if, under the engagement arrangement, completion is contingent upon payment of fees. For example, if a client engages a licensee to complete a tax return and the completion of the engagement is contingent upon payment of fees, the licensee is not required to complete the engagement and furnish the client records prepared by the licensee or associated supporting records if the client does not pay as agreed. In that event, the licensee is only required to return to the client those records constituting client-provided records. If, however, the licensee completes the engagement and furnishes the client a tax return to file or files the tax return with taxing authorities, the licensee is required to comply with paragraph 13.4(9) “a” whether or not fully paid.

**13.4(10) *Cooperation with board inquiry.*** A CPA or LPA shall, when requested, respond to communications from the board within 30 days of the mailing of such communications by certified mail.

**13.4(11) *Violation of tax laws.*** A CPA or LPA shall not violate any tax laws in handling the CPA’s or LPA’s personal business affairs, or the business affairs of an employer or client, or the business affairs of any company owned by the CPA or LPA.

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**13.4(12) Reporting convictions, judgments, and disciplinary actions.** In addition to any other reporting requirement in Iowa Code chapter 542 or these rules, a CPA or LPA shall notify the board within 30 days of:

*a.* Imposition upon the CPA or LPA of discipline including, but not limited to, censure, reprimand, sanction, probation, civil penalty, fine, consent decree or order, or suspension, revocation or modification of a license, certificate, permit or practice rights by:

(1) The SEC, Public Company Accounting Oversight Board, or IRS (by the Director of Practice); or

(2) Another state board of accountancy for cause other than failure to pay a professional fee by the due date or failure to meet the continuing education requirements of another state board of accountancy; or

(3) Any other federal or state agency regarding the CPA's or LPA's conduct while rendering professional services; or

(4) Any foreign authority or credentialing body that regulates the practice of accountancy;

*b.* Occurrence of any matter that must be reported by the CPA or LPA to the Public Company Accounting Oversight Board pursuant to Sarbanes-Oxley Section 102(b)(2)(f) and Public Company Accounting Oversight Board rules and forms adopted pursuant thereto;

*c.* Any judgment, award or settlement of a civil action or arbitration proceeding in which the CPA or LPA was a party if the matter included allegations of gross negligence, violation of specific standards of practice, fraud, or misappropriation of funds in the practice of accounting; provided, however, licensed firms shall notify the board regarding civil judgments, settlements or arbitration awards directly involving the firm's practice of public accounting in this state; or

*d.* Criminal charges, deferred prosecution or conviction or plea of no contest to which the CPA or LPA is a defendant if the crime is:

(1) Any felony under the laws of the United States or any state of the United States or any foreign jurisdiction; or

(2) Any crime, including a misdemeanor, if an essential element of the offense is dishonesty, deceit or fraud, as more fully described in Iowa Code section 542.5, subsection 2.

**13.4(13) Firm's duty to report.** The CPA or LPA designated by each firm as responsible for the proper licensure of the firm or registration of an office of the firm shall report any matter reportable under this rule to which a nonlicensee owner with a principal place of business in this state is a party.

**13.4(14) Advertising.** A CPA or LPA shall not use or participate in the use of any form of public communication having reference to professional services that contains a false, fraudulent, misleading, deceptive or unfair statement or claim. A false, fraudulent, misleading, deceptive or unfair statement or claim includes, but is not limited to, a statement or claim which:

*a.* Contains a misrepresentation of fact; or

*b.* Is likely to mislead or deceive because it fails to make full disclosure of relevant facts; or

*c.* Contains any testimonial or laudatory statement, or other statement or implication that the CPA's or LPA's professional services are of exceptional quality; or

*d.* Is intended to likely create false or unjustified expectations of favorable results; or

*e.* Implies educational or professional attainments or licensing recognition not supported in fact; or

*f.* States or implies that the CPA or LPA has received formal recognition as a specialist in any aspect of the practice of public accountancy, if this is not the case; or

*g.* Represents that professional services can or will be competently performed for a stated fee when this is not the case or makes representations with respect to fees for professional services that do not disclose all variables affecting the fees that will in fact be charged; or

*h.* Contains other representations or applications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

**13.4(15) Misleading firm names.**

*a.* A firm name is misleading within the meaning of Iowa Code section 542.13 if, among other things:

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- (1) The firm name implies the existence of a corporation when the firm is not a corporation.
- (2) The firm name implies the existence of a partnership when there is not a partnership ( e.g., “Smith & Jones, CPAs” or “Smith and Jones, LPAs”).
- (3) The CPA firm name includes the name of a person who is not a CPA if the title “CPAs” or “Certified Public Accountants” is included in the firm name.
- (4) The LPA firm name includes the name of a person who is not an LPA if the title “LPAs” or “Licensed Public Accountants” is included in the firm name.
- (5) The firm name contains any wording that would be a violation of subrule 13.4(14) (advertising).
  - b. Names of one or more past partners or shareholders may be included in the firm name of a partnership or corporation or its successor, and a partner surviving the death or withdrawal of all other partners may continue to practice under a partnership name for up to two years after becoming a sole practitioner.

**13.4(16) Accounting principles.** A CPA or LPA shall not state in the CPA’s or LPA’s report on financial statements that the financial statements are presented in conformity with generally accepted accounting principles if such financial statements contain any departure from such accounting principles which has a material effect on the financial statements taken as a whole, unless the CPA or LPA can demonstrate that by reason of unusual circumstances the financial statements would otherwise have been misleading. In such cases, the accountant’s report must describe the departure, the approximate effects thereof, if practicable, and the reasons why compliance with the principle(s) would result in a misleading statement. The board will consider the pronouncements issued by the Financial Accounting Standards Board and its predecessor entities as sources of interpretations of generally accepted accounting principles.

**13.4(17) Forecasts.** A CPA or LPA shall not in the performance of professional services permit the CPA’s or LPA’s name to be used in conjunction with any forecast of future transactions in a manner which may lead to the belief that the CPA or LPA vouches for the achievability of the forecast.

**13.4(18) Competence.** A CPA or LPA shall not undertake any engagement for the performance of professional services which the CPA or LPA or the CPA’s or LPA’s firm cannot reasonably expect to complete with due professional competence, including compliance, where applicable, with subrules 13.4(3) (engagement) and 13.4(16) (accounting principles). A CPA or LPA who accepts a professional engagement implies that the CPA or LPA has the necessary competence to complete the engagement according to professional standards, applying the CPA’s or LPA’s knowledge and skill with reasonable care and diligence, but the CPA or LPA does not assume a responsibility for infallibility of knowledge or judgment.

**13.4(19) Commissions.** A CPA or LPA may accept a commission subject to the prohibitions set forth in Iowa Code section 542.13(15) and the restrictions set forth in these rules.

a. A CPA or LPA engaged in the practice of public accounting must act in the best interests of the client and shall not allow integrity, objectivity or professional judgment to be impaired by the self-interest a commission-based fee may create.

b. A CPA or LPA who anticipates receiving a commission in connection with the recommendation, referral or sale of a product or service must establish such procedures as are reasonably necessary to avoid the prohibitions set forth in Iowa Code section 542.13(15).

c. A CPA or LPA engaged in the practice of public accounting who is paid or expects to be paid a commission shall disclose that fact to any person or entity to which the CPA or LPA recommends, refers or sells a product or service to which the commission relates.

d. To ensure full and effective disclosure, a CPA or LPA shall substantially adhere to the following guidelines when recommending, referring or selling a product or service to which a commission relates:

- (1) The disclosure shall be in writing, signed and dated by the person to whom a product or service is recommended, referred or sold, and a copy shall be provided to the client.
- (2) The disclosure shall be made at or prior to the time the product or service is recommended, referred or sold.
- (3) The disclosure shall be legible, clear and conspicuous, and on a separate form.

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(4) A copy of the disclosure shall be retained by the CPA or LPA for as long as the CPA or LPA deems appropriate to the transaction; however, the board recommends a minimum of three years.

(5) In the event of a continuing engagement or series of related transactions involving similar products or services, one written disclosure may cover more than one recommendation, referral or sale as long as the disclosure is provided at least annually and is not misleading.

*e.* This rule does not prohibit payments for the purchase of all, or a material part, of an accounting practice, or retirement payments to persons formerly engaged in the practice of public accountancy, or payments to heirs or estates of such persons.

**13.4(20) Contingent fees.** A CPA or LPA may accept contingent fees as defined in Iowa Code section 542.3(9) subject to the prohibitions set forth in Iowa Code section 542.13(15) and restrictions set forth in these rules.

**13.4(21) Solicitation.** A CPA or LPA shall not by any direct personal communication solicit an engagement to perform professional services:

*a.* If the communication would violate subrule 13.4(14) (advertising) if it were a public communication; or

*b.* By the use of coercion, duress, compulsion, intimidation, threats, overreaching, or harassing conduct; or

*c.* If the solicitation communication contains proposals which would improperly disclose confidential information or violate a professional standard established in this chapter.

**13.4(22) Discrimination and harassment in employment practices.** Whenever a CPA or LPA is determined by a court of competent jurisdiction to have violated any of the antidiscrimination laws of the United States or any state or municipality thereof, including those related to sexual and other forms of harassment, or has waived or lost the CPA's or LPA's right of appeal after a hearing by an administrative agency, the CPA or LPA will be presumed to have committed an act discreditable to the profession.

**13.4(23) Preparation of financial statements or records.** A CPA or LPA shall not:

*a.* Make, or permit or direct another to make, materially false or misleading entries in the financial statements or records of an entity;

*b.* Fail to correct an entity's financial statements that are materially false or misleading when the CPA or LPA has the authority to record an entry; or

*c.* Sign, or permit or direct another to sign, a document containing materially false or misleading information.

**13.4(24) Solicitation or disclosure of CPA examination questions and answers.** A CPA or LPA who solicits or knowingly discloses a Uniform CPA Examination question(s) or answer(s) without the written authorization of the American Institute of Certified Public Accountants shall be considered to have committed an act discreditable to the profession.

**13.4(25) Falsely reporting continuing professional education (CPE).** A CPA or LPA shall be considered to have committed an act discreditable to the profession when the CPA or LPA falsely reports CPE credits during the CPA's or LPA's required reporting renewal or board CPE audit.

**13.4(26) Mandatory ethics continuing professional education.** Every CPA certificate holder or LPA license holder shall complete a minimum of four hours of continuing professional education devoted to ethics and rules of professional conduct during the three-year period ending December 31, prior to the July 1 annual renewal date. This requirement is more fully described in 193A—subrule 10.7(2).

**193A—13.5(542) Rules applicable to CPAs and LPAs who use the titles in offering or rendering products or services to clients.**

**13.5(1) Use of title.**

*a. Certified public accountant.* Only a person who holds an active, unexpired certificate and who complies with the requirements of 193A—Chapter 5, Licensure Status and Renewal of Certificates and Licenses, and Chapter 10, Continuing Education, or a person lawfully exercising a practice privilege under Iowa Code section 542.20 may use or assume the title “certified public accountant” or the

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abbreviation “CPA” or any other title, designation, words, letters, abbreviation, sign, card or device tending to indicate that such person is a certified public accountant.

*b. Licensed public accountant.* Only a person holding a license as a licensed public accountant shall use or assume the title “licensed public accountant” or the abbreviation “LPA” or any other title, designation, words, letters, abbreviations, sign, card, or device tending to indicate that such person is a licensed public accountant.

**13.5(2) Forms of practice.**

*a. Certified public accountant firms.* A sole proprietorship, corporation, partnership, limited liability company, or any other form of organization shall apply for a permit to practice under Iowa Code section 542.7 and these rules as a firm of certified public accountants in order to use the title “CPAs” or “CPA firm,” as more fully described in 193A—Chapter 7.

*b. Licensed public accounting firms.* A sole proprietorship, corporation, partnership, limited liability company, or any other form of organization shall apply for a permit to practice under Iowa Code section 542.8 and these rules as a firm of licensed public accountants in order to use the title “LPAs” or “LPA firm,” as more fully described in 193A—Chapter 8.

**13.5(3) Acting through others.** A CPA or LPA shall not permit others to carry out on the CPA’s or LPA’s behalf, either with or without compensation, acts which, if carried out by the CPA or LPA, would violate the rules of professional ethics and conduct.

**193A—13.6(542) Audit, review and other attest services.**

**13.6(1) Definitions.**

“Attest” or “attest service” means providing any of the following services:

1. An audit or other engagement to be performed in accordance with the statements on auditing standards.
2. A review of a financial statement to be performed in accordance with the statements on standards for accounting and review services.
3. An examination of prospective financial information to be performed in accordance with the statements on standards for attestation engagements.
4. Any engagement to be performed in accordance with the auditing standards of the Public Company Accounting Oversight Board.

The standards specified in the definition of “attest” are those standards adopted by the board, by rule, by reference to the standards developed for general application by the American Institute of Certified Public Accountants, the Public Company Accounting Oversight Board, or other recognized national accountancy organization.

“Attest engagement team” means the team of individuals participating in attest service, including those who perform concurring or second partner reviews. The “attest engagement team” includes all employees and contractors retained by the firm who participate in attest service, irrespective of their functional classification.

“Audit” means an examination of financial statements by a CPA, conducted in accordance with generally accepted auditing standards accompanied by the CPA’s opinion as to whether the statements conform with generally accepted accounting principles or, if applicable, with another comprehensive basis of accounting.

“Review” means to perform inquiry and analytical procedures that permit a CPA to determine whether there is a reasonable basis for expressing limited assurance that there are no material modifications that should be made to financial statements in order for them to be in conformity with generally accepted accounting principles or, if applicable, with another comprehensive basis of accounting.

**13.6(2) Practice privilege.** All audit, review, and other attest services performed in Iowa or for a client with a home office in Iowa must be performed through a CPA firm that holds an active Iowa firm permit to practice. Unless Iowa certification is specifically required by a governmental body or client, the individual CPAs performing such attest services may either hold an active Iowa CPA certificate or

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exercise a practice privilege as more fully described in Iowa Code section 542.20. LPAs and LPA firms are not authorized to perform attest services.

**13.6(3) Professional skepticism.** A CPA shall not subordinate the CPA's professional judgment to a non-CPA. Professional judgment requires auditors to exercise professional skepticism, which is an attitude that includes a questioning mind and a critical assessment of evidence. Auditors use the knowledge, skills, and experience called for by their profession to diligently perform, in good faith and with integrity, the gathering of evidence and the objective evaluation of the sufficiency, competency, and relevancy of evidence. Since evidence is gathered and evaluated throughout the assignment, professional skepticism shall be exercised throughout the assignment.

**13.6(4) Independence.** A CPA or CPA firm shall not issue a report on financial statements of a client in such a manner as to imply that the CPA is acting as an independent public accountant with respect thereto unless the CPA is independent with respect to such client. Independence will be considered to be impaired if, for example:

*a.* During the period of the professional engagement, or at the time of expressing an opinion, a CPA:

(1) Had, or was committed to acquire, any direct or material indirect financial interest in the client; or was a trustee of any trust or executor or administrator of any estate if such trust or estate had, or was committed to acquire, any direct or material indirect financial interest in the client; or

(2) Had any joint, closely held business investment with the client or any officer, director or principal stockholder which was material to the CPA; or

(3) Had any loan to or from the client or any officer, director or principal stockholder thereof other than loans of the following kinds made by a financial institution under normal lending procedures, terms and requirements: loans which are not material in relation to the net worth of the CPA; home mortgages; and other secured loans, except those secured solely by a guarantee of the CPA.

*b.* During the period covered by the financial statements, during the period of the professional engagement, or at the time of expressing an opinion, the licensee:

(1) Was connected with the client as a promoter, underwriter or voting trustee, a director or officer or in any capacity equivalent to that of a member of management or of an employee; or

(2) Was a trustee for any pension or profit-sharing trust of the client.

The foregoing examples are not intended to be all-inclusive.

**13.6(5) Professional judgment.** A CPA shall not, in the performance of audit, review or other attest services, knowingly misrepresent facts, subordinate judgment to others, or allow professional judgment and objectivity to be impaired by self-interest or by a conflict of interest between the licensee and a client or between clients.

**13.6(6) Retention period of attest documentation and working papers.** Unless otherwise required by applicable law, a CPA or CPA firm shall retain attest documentation and attest working papers for seven years, measured by the report date. If the CPA or CPA firm is notified within the seven-year period of a board investigation or disciplinary proceeding, criminal investigation or proceeding, or other governmental investigation or proceeding, which stems from or relates to the documents at issue, such attest documentation and attest working papers shall not be destroyed until the firm has been notified in writing that the investigation or proceeding has been closed or otherwise fully resolved or until seven years from the report date, whichever period is longer.

**13.6(7) Peer review required.** As a condition of renewal of a permit to practice as a CPA firm, the firm shall undergo, at least once every three years, a peer review conducted under the provisions outlined in 193A—Chapter 11 and Iowa Code section 542.7.

**13.6(8) Failure to follow standards, procedures or other requirements in governmental audits.** Engagements for audits of governmental grants, governmental units or other recipients of governmental moneys typically require that such audits be in compliance with government audit standards, guides, procedures, statutes, rules, and regulations, in addition to generally accepted auditing standards. If a CPA has accepted such an engagement and undertakes an obligation to follow specified government audit standards, guides, procedures, statutes, rules and regulations, in addition to generally accepted auditing standards, the CPA is obligated to follow such requirements.

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**193A—13.7(542) Compilation.**

**13.7(1) *Who can perform.*** Only a CPA licensed under Iowa Code section 542.6 or 542.19, an LPA licensed under Iowa Code section 542.8, or a CPA exercising a practice privilege under Iowa Code section 542.20 shall issue a report in standard form upon a compilation of financial information or otherwise provide compilation services in Iowa or for a client with a home office in Iowa. (Refer to rule 193A—6.4(542).)

**13.7(2) *Peer review.*** All individuals described in 193A—subrule 6.4(1) shall satisfy peer review requirements, individually or through a peer review of a CPA or LPA firm holding a permit to practice pursuant to Iowa Code section 542.7 or 542.8 or a CPA firm exercising a practice privilege under Iowa Code section 542.20.

**13.7(3) *Mandatory financial statement presentation continuing professional education.*** In each renewal period in which compilation reports are issued, every CPA certificate holder or LPA license holder who is responsible for supervising compilation services or who signs or authorizes someone to sign the accountant's compilation report on the financial statements on behalf of a firm shall complete, as a condition of certificate or license renewal, a minimum of eight hours of continuing education devoted to financial statement presentation every three years, such as courses covering the Statements on Standards for Accounting and Review Services (SSARS) and accounting and auditing updates. This requirement is more fully described in 193A—subrule 10.7(1).

**13.7(4) *Compilation standards.***

*a.* A compilation shall be performed by a person or persons having adequate technical training and proficiency to compile prospective financial statements.

*b.* Due professional care shall be exercised in the performance of the compilation and the preparation of the report.

*c.* The work shall be adequately planned, and assistants, if any, shall be properly supervised.

*d.* Applicable compilation procedures shall be performed as a basis for reporting on the compiled financial statements.

*e.* The report based on the licensee's compilation shall include the following:

(1) An identification of the financial statements presented by the responsible party;

(2) A statement that the licensee has compiled the financial statements in accordance with standards established by the American Institute of Certified Public Accountants;

(3) The manual or printed signature of the licensee's firm;

(4) The date of the compilation report.

**13.7(5) *Compilation standards for prospective financial statements.***

*a.* Applicable compilation procedures shall be performed as a basis for reporting on the compiled prospective financial statements.

*b.* In addition to the four items included in paragraph 13.7(4) "e," the report based on the licensee's compilation shall include the following:

(1) A statement that a compilation is limited in scope and does not enable the licensee to express an opinion or any other form of assurance on the prospective financial statements or the assumptions;

(2) A caveat that the prospective results may not be achieved;

(3) A statement that the licensee assumes no responsibility to update the report for events and circumstances occurring after the date of the report.

**193A—13.8(542) Rules applicable to tax practice.**

**13.8(1)** CPAs, LPAs, and persons who are not CPAs or LPAs may perform tax services in Iowa. The rules of professional ethics and conduct in this chapter and, more specifically, with respect to tax services, this rule shall apply to CPAs and LPAs who are licensed in Iowa and to CPAs exercising a practice privilege in Iowa whenever such persons inform the client or prospective client that they are a CPA or LPA. Clients may be so informed in a number of ways, including oral or written representations, the display of a CPA certificate or LPA license, or use of the CPA or LPA title in advertising, telephone or Internet directories, letterhead, business cards or E-mail. Clients and prospective clients who select a tax professional holding oneself out as a CPA or LPA have the right to expect compliance with these

## ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

rules. A licensee shall not render services in the area of taxation unless the licensee has complied with Statements on Responsibilities in Tax Practice (SRTP), Internal Revenue Service Treasury Department Circular 230, Iowa department of revenue rules, and the Iowa Code.

**13.8(2) Professional judgment—tax position.** The licensee may resolve doubt in favor of the licensee's client as long as there is reasonable support for the client's tax return position. The licensee shall in good faith believe that the client's tax return position is warranted in existing law or can be supported by a good-faith argument for an extension, modification, or reversal of existing law. The licensees shall in good faith believe that:

*a.* The position has a realistic possibility of being sustained administratively or judicially on its merits if challenged.

*b.* The position is appropriately disclosed.

*c.* The taxpayer is advised regarding potential penalty consequences of the tax return position.

*d.* In addition to a duty to the taxpayer, the licensee has a duty to the tax system.

**13.8(3) Licensees shall provide the following form and content of advice to taxpayers:**

*a.* Establish the relevant background facts.

*b.* Consider the reasonableness of the assumptions and representations.

*c.* Apply the pertinent authorities to the relevant facts.

*d.* Consider the business purpose and economic substance of the transaction, if relevant to the tax consequences of the transaction.

*e.* Arrive at a conclusion supported by the authorities.

**13.8(4) Before signing as preparer, a licensee shall make a reasonable effort to obtain from the taxpayer the information necessary to provide appropriate answers to all questions on a tax return.**

*a.* The licensee must exercise due diligence in preparing, or assisting in the preparation of, approving, and filing tax returns.

*b.* A licensee shall perform due diligence in determining the correctness of oral or written representations made by the client.

**13.8(5) Contingent fee.**

*a.* A licensee may charge a contingent fee for services rendered in connection with the examination of, or challenge to:

(1) An original tax return, or

(2) An amended return or claim for refund or credit where the amended return or claim for refund or credit was filed within 120 days of the taxpayer's receiving a written notice of the examination of, or a written challenge to, the original tax return.

*b.* A licensee may charge a contingent fee for services rendered in connection with a claim for credit or refund filed solely in connection with the determination of statutory interest or penalties assessed by the Internal Revenue Service or other governmental agency, or in a judicial proceeding.

*c.* A licensee may charge a contingent fee for services rendered in connection with any judicial proceeding arising under the Internal Revenue Service.

**13.8(6) Return of client's records.**

*a.* At the request of a client, a licensee must promptly return any and all records of the client that are necessary for the client to comply with the client's tax obligations.

*b.* Records of the client include all documents, written or electronic, provided to the licensee, or obtained by the licensee in the course of the licensee's representation of the client, that preexisted the retention of the licensee by the client.

**13.8(7) Conflict of interest.**

*a.* A licensee shall not represent a client if the representation involves a conflict of interest. A conflict of interest exists if:

(1) The representation of one client will be directly adverse to another client, or

(2) There is significant risk that the representation of one or more clients will be materially limited by the licensee's responsibilities to another client, a former client, or a third person, or by a personal interest of the licensee.

## ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

*b.* Notwithstanding the existence of a conflict of interest under paragraph “*a*” of this subrule, the licensee may represent a client if:

(1) The licensee reasonably believes that the licensee will be able to provide competent and diligent representation to each affected client;

(2) The representation is not prohibited by law; and

(3) Each affected client waives the conflict of interest and gives informed consent, confirmed in writing by each affected client, at the time the existence of the conflict of interest is known by the licensee. Copies of consents must be retained for at least 36 months from the date of the conclusion of the representation of the affected clients.

**193A—13.9(542) Consulting, advisory and other accounting services.****13.9(1) Introduction.**

*a.* Consulting services that licensees provide to their clients have evolved from advice on accounting-related matters to a wide range of services involving diverse technical disciplines, industry knowledge, and consulting skills. Most licensees, including those who provide audit and tax services, also provide business and management consulting services to their clients.

*b.* Consulting services differ fundamentally from the licensee’s function of attesting to the assertions of other parties. In a consulting service, the licensee develops the findings, conclusions, and recommendations presented. The nature and scope of work are determined solely by the agreement between the licensee and the client. Generally, the work is performed only for the use and benefit of the client.

**13.9(2) Definitions.**

“*Advisory services*” means the development and presentation of findings, conclusions, and recommendations for client consideration and decision making.

“*Business valuation*” means the act or process of determining the value of a business enterprise or ownership interest therein.

“*Consulting services*” means professional services that employ the practitioner’s technical skills, education, observations, experience, and knowledge of the consulting process.

**13.9(3)** CPAs, LPAs, and persons who are not CPAs or LPAs may perform management or financial advisory services, financial investment or planning services, business valuation, and financial consulting services in Iowa. Some advisory or consulting services require licensure by bodies other than the board, such as insurance or securities licenses issued by the division of insurance. The rules of professional ethics and conduct in this chapter and, more specifically, with respect to advisory and consulting services, this rule shall apply to CPAs and LPAs who are licensed in Iowa and to CPAs exercising a practice privilege in Iowa whenever such persons inform the client or prospective client that they are a CPA or LPA. Clients may be so informed in a number of ways, including oral or written representations, the display of a CPA certificate or LPA license, or use of the CPA or LPA title in advertising, telephone or Internet directories, letterhead, business cards, or E-mail. Clients and prospective clients who select an advisory or consulting professional holding oneself out as a CPA or LPA have the right to expect compliance with these rules. A licensee shall comply with the applicable standards for the consulting, advisory and other accounting services to be provided to the licensee’s client(s), such as Statements on Standards for Valuation Services, Statements on Standards for Consulting Services, Statements on Responsibilities in Personal Financial Planning Practice, the Iowa securities Act, the Iowa securities and regulated industries bureau, and the Iowa Code.

**13.9(4)** The consulting process requires the licensee to develop the findings, determine the conclusions, and present the recommendations. The nature and scope of work are determined by the agreement between the licensee and client.

**13.9(5)** Licensees shall follow these additional general standards for consulting services:

*a. Client interest.* The licensee shall serve the client interest by seeking to accomplish the objectives established by the understanding with the client while maintaining integrity and objectivity.

*b. Understanding with client.* The licensee shall establish with the client an oral or written understanding about the responsibilities of the parties and the nature, scope, and limitations of services

## ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

to be performed and shall modify the understanding when circumstances require a significant change during the engagement.

*c. Communication with client.* The licensee shall inform the client of (1) conflicts of interest that may occur pursuant to interpretations of Rule 102 of the American Institute of Certified Public Accountants Code of Professional Conduct, (2) significant reservations concerning the scope or benefits of the engagement, and (3) significant engagement findings or events.

**13.9(6)** Performance of consulting services for an attest client does not, in and of itself, impair independence. Licensees and their firms performing attest services for a client shall comply with applicable independence standards, rules and regulations issued by the American Institute of Certified Public Accountants, the board, and other applicable regulatory agencies.

**13.9(7)** Licensees providing client service involving financial planning or the recommendation or sale of financial products or services may need to be licensed by applicable federal, state or local regulatory bodies.

These rules are intended to implement Iowa Code chapters 272C and 542.

**ARC 8842B****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(11) and 189A.13, the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 76, “Meat and Poultry Inspection,” Iowa Administrative Code.

The proposed amendments update references to federal regulations in order to retain federal recognition of the state meat and poultry program. Adoption by reference of the federal regulations codifies existing industry practice.

Any interested persons may make written comments or suggestions on these proposed amendments on or before 4:30 p.m. on July 6, 2010. Written comments should be sent to Margaret Thomson, Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319; or faxed to (515)281-6236. E-mail comments may be sent to [Margaret.Thomson@IowaAgriculture.gov](mailto:Margaret.Thomson@IowaAgriculture.gov).

No waiver provision is included in the proposed amendments; however, the Department’s general waiver rule would apply.

These amendments are intended to implement Iowa Code chapter 189A.

The following amendments are proposed.

ITEM 1. Amend rule 21—76.1(189A), introductory paragraph, as follows:

**21—76.1(189A) Federal Wholesome Meat Act regulations adopted.** Part 301 of Title 9, Chapter III, of the Code of Federal Regulations, revised as of ~~July 24, 2008~~ January 1, 2009, is hereby adopted in its entirety by reference; and in addition thereto, the following subsections shall be expanded to include:

ITEM 2. Amend rule 21—76.2(189A) as follows:

**21—76.2(189A) Federal Wholesome Meat Act regulations adopted.** Part 303, Part 304, Part 305, Part 306, Parts 308 through 320, Part 329, Part 416, Part 417, Part 424, Part 430, ~~and Part 441 and Part 442~~ of Title 9, Chapter III, of the Code of Federal Regulations, revised as of ~~July 24, 2008~~ January 1,

## AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

2009, are hereby adopted in their entirety by reference. Part 307 except Sections 307.5 and 307.6 and Part 325 except Sections 325.3 and 325.12 of Title 9, Chapter III, of the Code of Federal Regulations, revised as of ~~July 24, 2008~~ January 1, 2009, are hereby adopted in their entirety by reference. Part 500 of Title 9, Chapter III, of the Code of Federal Regulations, revised as of ~~July 24, 2008~~ January 1, 2009, is adopted by reference, except that references in Sections 500.5, 500.6, 500.7, and 500.8 to the federal Uniform Rules of Practice are not adopted.

ITEM 3. Amend rule 21—76.3(189A), introductory paragraph, as follows:

**21—76.3(189A) Federal Poultry Products Inspection Act regulations adopted.** Part 381, Title 9, Chapter III, of the Code of Federal Regulations, revised as of ~~July 24, 2008~~ January 1, 2009, is hereby adopted in its entirety with the following exceptions: 381.96, 381.97, 381.99, 381.101, 381.102, 381.104, 381.105, 381.106, 381.107, 381.128, Subpart R, Subpart T, Subpart V, Subpart W; and in addition thereto, the following subsections shall be expanded to include:

ITEM 4. Amend rule 21—76.4(189A) as follows:

**21—76.4(189A) Inspection required.** Every establishment except as provided in Section 303.1(a), (b), (c) and (d) of Title 9, Chapter III, Subchapter A, of the Code of Federal Regulations, revised as of ~~July 24, 2008~~ January 1, 2009, in which slaughter of livestock or poultry, or the preparation of livestock products or poultry products is maintained for transportation or sale in commerce, shall be subject to the inspection and other requirements of those parts of Title 9, Chapter III, Subchapter A, of the Code of Federal Regulations, revised as of ~~July 24, 2008~~ January 1, 2009, enumerated in rules 21—76.1(189A), 21—76.2(189A) and 21—76.3(189A).

This rule is intended to implement Iowa Code sections 189A.4 and 189A.5.

ITEM 5. Amend rule 21—76.13(189A) as follows:

**21—76.13(189A) Voluntary inspections of exotic animals.** Every person wishing to obtain voluntary inspection of exotic animals shall comply with the regulations adopted in this rule.

Part 352 of Title 9, Chapter III, of the Code of Federal Regulations, revised as of ~~July 24, 2008~~ January 1, 2009, is hereby adopted in its entirety by reference.

This rule is intended to implement Iowa Code chapter 189A.

ITEM 6. Amend rule 21—76.14(189A) as follows:

**21—76.14(189A) Federal Wholesome Meat Act regulations adopted for the regulation of farm deer.**

1. No change.
2. All federal regulations adopted in 21—76.2(189A), except Part 303 and Part 307.4(c) of Title 9, Chapter III, of the Code of Federal Regulations, revised as of ~~July 24, 2008~~ January 1, 2009.

This rule is intended to implement Iowa Code chapters 170 and 189A.

**ARC 8846B**

## **DENTAL BOARD[650]**

### **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 Dental Board hereby gives Notice of Intended Action to amend Chapter 11, “Licensure to Practice Dentistry or Dental Hygiene,” Chapter 13,

## DENTAL BOARD[650](cont'd)

“Special Licenses,” Chapter 25, “Continuing Education,” and Chapter 27, “Standards of Practice and Principles of Professional Ethics,” Iowa Administrative Code.

Item 1 of the amendments specifies that applications are considered active for 180 days after receipt. An applicant who does not provide all requested materials or who does not meet the requirements for a license, permit, registration, or reinstatement within 180 days must submit a new application and fee.

Items 2 through 6 require applicants for licensure or for a faculty permit to submit the results of a self-query of the National Practitioners Data Bank (NPDB) and the Healthcare Integrity and Protection Data Bank (HIPDB).

Item 7 of the amendments requires applicants for a faculty permit to successfully complete the jurisprudence examination administered by the Board.

Item 8 of the amendments eliminates the requirement that Board sponsors submit attendance records for continuing education courses. Continuing education providers must provide proof of attendance to course attendees and make records available at the request of the Board.

Item 9 of the amendments clarifies that an applicant for reinstatement of an inactive license must provide proof of current CPR certification to place the license on active status.

Item 10 of the amendments clarifies acceptable billing practices for a dentist.

Items 11 and 12 of the amendments clarify that it is considered unethical and unprofessional conduct to prohibit a patient from filing a complaint with the Board or cooperating with a Board investigation and to enter into an agreement in which a patient agrees not to file a complaint with the Board.

These amendments are subject to waiver at the sole discretion of the Board in accordance with 650—Chapter 7. However, rules in 650—Chapter 27 are not subject to waiver pursuant to 650—27.12(17A,147,153,272C).

Any interested person may make written comments or suggestions on the proposed amendments on or before July 6, 2010. Such written comments should be directed to Jennifer Hart, Executive Officer, Iowa Dental Board, 400 SW 8th Street, Suite D, Des Moines, Iowa 50309-4687. E-mail may be sent to [Jennifer.Hart@iowa.gov](mailto:Jennifer.Hart@iowa.gov).

Also, there will be a public hearing on July 6, 2010, beginning at 10 a.m. in the Board Conference Room, 400 SW 8th Street, Suite D, Des Moines, Iowa. 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 have special requirements, such as those related to hearing or mobility impairments, should contact the Board and advise of specific needs.

These amendments were approved at the April 6, 2010, regular meeting of the Iowa Dental Board.

These amendments are intended to implement Iowa Code sections 153.33 and 153.34.

The following amendments are proposed.

ITEM 1. Amend rule 650—11.1(147,153) as follows:

**650—11.1(147,153) Applicant responsibilities.** An applicant for dental or dental hygiene licensure bears full responsibility for each of the following:

1. and 2. No change.

3. Submitting complete application materials. An application for a license, permit, or registration or reinstatement of a license or registration will be considered active for 180 days from the date the application is received. If the applicant does not submit all materials, including a completed fingerprint packet, within this time period, or if the applicant does not meet the requirements for the license, permit, registration or reinstatement, the application shall be considered incomplete. An applicant whose application is filed incomplete must submit a new application and application fee.

ITEM 2. Amend paragraph **11.2(2)“f”** as follows:

*f.* A statement disclosing and explaining any disciplinary actions, investigations, complaints, malpractice claims, judgments, settlements, or criminal charges, including the results of a self-query of the National Practitioners Data Bank (NPDB) and the Healthcare Integrity and Protection Data Bank (HIPDB).

## DENTAL BOARD[650](cont'd)

ITEM 3. Amend paragraph **11.3(2)“g”** as follows:

*g.* A statement disclosing and explaining any disciplinary actions, investigations, malpractice claims, complaints, judgments, settlements, or criminal charges, including the results of a self-query of the National Practitioners Data Bank (NPDB) and the Healthcare Integrity and Protection Data Bank (HIPDB).

ITEM 4. Amend paragraph **11.5(2)“i”** as follows:

*i.* A statement disclosing and explaining any disciplinary actions, investigations, complaints, malpractice claims, judgments, settlements, or criminal charges, including the results of a self-query of the National Practitioners Data Bank (NPDB) and the Healthcare Integrity and Protection Data Bank (HIPDB).

ITEM 5. Amend paragraph **11.6(2)“g”** as follows:

*g.* A statement disclosing and explaining any disciplinary actions, investigations, complaints, malpractice claims, judgments, settlements, or criminal charges, including the results of a self-query of the National Practitioners Data Bank (NPDB) and the Healthcare Integrity and Protection Data Bank (HIPDB).

ITEM 6. Amend paragraph **13.2(2)“e”** as follows:

*e.* A statement disclosing and explaining any disciplinary actions, investigations, complaints, malpractice claims, judgments, settlements, or criminal charges, including the results of a self-query of the National Practitioners Data Bank (NPDB) and the Healthcare Integrity and Protection Data Bank (HIPDB).

ITEM 7. Adopt the following **new** paragraph **13.2(2)“j”**:

*j.* Evidence of successful completion of the jurisprudence examination administered by the Iowa dental board.

ITEM 8. Amend subrule 25.4(3) as follows:

**25.4(3)** The person or organization sponsoring continuing education activities shall make a written record of the Iowa licensees or registrants in attendance ~~and send a signed copy of such attendance record to the board office upon completion of the activity, but in no case later than July 1 of even-numbered years, maintain the written record for a minimum of five years, and submit the record upon the request of the board. The report shall be sent to the Iowa Board of Dental Examiners, 400 S.W. 8th Street, Suite D, Des Moines, Iowa 50309-4687.~~ The sponsor of the continuing education activity shall also provide proof of attendance and the number of credit hours awarded to the licensee or registrant who participates in the continuing education activity.

ITEM 9. Adopt the following **new** paragraph **25.9(2)“e”**:

*e.* Evidence that the applicant possesses a current certificate in a nationally recognized course in cardiopulmonary resuscitation. The course must include a clinical component.

ITEM 10. Adopt the following **new** subrules 27.7(8) and 27.7(9):

**27.7(8)** A dentist shall not bill or collect money for services not rendered.

**27.7(9)** A dentist shall not bill or draw on a patient's line of credit prior to services being rendered.

ITEM 11. Adopt the following **new** subrule 27.9(5):

**27.9(5)** Prohibiting a person from filing or interfering with a person's filing a complaint with the board is considered unethical and unprofessional conduct.

ITEM 12. Adopt the following **new** subrule 27.9(6):

**27.9(6)** A licensee shall not enter into any agreement with a patient that states the patient will not file a complaint with the board.

**ARC 8849B****ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]****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 15.104 and 15.106, the Iowa Department of Economic Development (IDED) proposes amendments to Chapter 104, “Targeted Industries Internship Program,” Iowa Administrative Code.

The current rule defines an “Iowa student” as a student of one of the Iowa community colleges, private colleges, or institutions of higher learning under the control of the state Board of Regents.

The proposed amendments intend to incorporate 2010 Iowa Acts, Senate File 2076, which expands the definition of “Iowa student” to allow Iowa high school graduates attending college outside the state to participate in the program.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on July 6, 2010. Interested persons may submit written comments to Alana Anderson, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)725-3196.

A public hearing will be held Tuesday, July 6, 2010, from 2 to 3 p.m. in the Southwest Conference Room, First Floor, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309.

These amendments are also Adopted and Filed Emergency and are published herein as **ARC 8848B**. The content of that submission is incorporated by reference.

These amendments are intended to implement 2009 Iowa Code Supplement section 15.411 as amended by 2010 Iowa Acts, Senate File 2076.

**ARC 8851B****ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]****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 15.104 and 15.106, the Iowa Department of Economic Development proposes to adopt new Chapter 114, “Iowa Innovation Council,” Iowa Administrative Code.

These proposed rules implement a new Iowa innovation council authorized by 2010 Iowa Acts, House File 2076. The rules describe the purpose of the council, voting member selection and approval procedures, council operations, council deliverables, and Department administration provisions.

Public comments concerning the proposed new chapter will be accepted until 4:30 p.m. on July 6, 2010. Interested persons may submit written or oral comments by contacting Mark Laurenzo, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)725-3191; or E-mail at [mark.laurenzo@iowa.gov](mailto:mark.laurenzo@iowa.gov).

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

The Department will hold a public hearing on July 6, 2010, from 8:30 to 10 a.m. to receive comments on these rules. The public hearing will be held in the Main Conference Room, Second Floor, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa.

These rules were also Adopted and Filed Emergency and are published herein as **ARC 8850B**. The content of that submission is incorporated by reference.

These rules are intended to implement 2010 Iowa Acts, House File 2076.

## **ARC 8845B**

### **ENVIRONMENTAL PROTECTION COMMISSION[567]**

#### **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 455B.133, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 23, “Emission Standards for Contaminants,” Chapter 24, “Excess Emission,” and Chapter 28, “Ambient Air Quality Standards,” Iowa Administrative Code.

The primary purpose of the proposed amendments is to update state air quality rules by adopting new federal requirements, including adoption of new national ambient air quality standards (NAAQS) and adoption of new federal air toxics standards. The proposed amendments also provide the option to submit initial excess emission reports by E-mail.

**Item 1** amends the introductory paragraph of subrule 23.1(2), the provisions that adopt by reference the federal new source performance standards (NSPS) contained in 40 CFR Part 60. The NSPS program requires new and existing facilities in a particular industry sector that construct and operate specific equipment to meet uniform standards for air pollutant emissions. NSPS requirements vary depending on the processes, activities or equipment being regulated, and whether the processes, activities or equipment is considered to be new or existing.

This amendment adopts by reference federal amendments to two existing new source performance standards. EPA promulgated amendments to an additional NSPS that the Department is not proposing to adopt, as explained in more detail below.

On April 28, 2009, EPA finalized amendments to the NSPS for nonmetallic mineral processing plants (Subpart OOO). This NSPS affects facilities such as aggregate processing plants or concrete batch plants which commence construction, modification, or reconstruction on or after April 22, 2008. These amendments include new emission limits, additional testing and monitoring requirements, changes to simplify the notification requirements for all affected facilities, changes to definitions, and various clarifications.

The Department estimates that approximately 200 portable and fixed plants are subject to the original NSPS Subpart OOO requirements. However, these facilities are only subject to the requirements in the new federal amendments if the facilities commenced construction, modification or reconstruction after April 22, 2008. The Department is aware of only a few facilities that are affected by the new NSPS requirements at this time. More facilities may become subject to the new requirements in the future. The Department is working with individual facilities regarding the new Subpart OOO requirements as facilities submit permit applications for construction, modification, or reconstruction.

On October 8, 2009, EPA finalized amendments to the NSPS coal preparation and processing plants (40 CFR 60 Subpart Y). This NSPS affects facilities that prepare and process coal, such as electric utilities and industrial operations. The federal amendments include revisions to the emission limits for particulate matter and opacity standards for thermal dryers, pneumatic coal cleaning equipment, and coal handling equipment. The revised limits apply to affected facilities that commence construction, modification, or

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

reconstruction on or after April 28, 2008. The federal amendments also establish a sulfur dioxide (SO<sub>2</sub>) emission limit and a combined nitrogen oxide (NO<sub>x</sub>) and carbon monoxide (CO) emissions limit for thermal dryers. In addition, the federal amendments establish work practice standards to control fugitive coal dust emissions from open storage piles. The SO<sub>2</sub> limit, the NO<sub>x</sub>/CO limit, and the work practice standards apply to affected facilities that commence construction, modification, or reconstruction on or after May 27, 2009.

The Department estimates that approximately 50 facilities are subject to the original Subpart Y requirements. However, only facilities that undergo construction, modification or reconstruction on or after the dates noted above are subject to the new requirements. At this time, the Department has identified only a few facilities that are affected by the new NSPS requirements. More facilities may be subject to the new requirements in the future. The Department is working with individual facilities that may be subject to the new Subpart Y requirements as facilities submit permit applications for construction, modification, or reconstruction.

On October 6, 2009, EPA amended the NSPS and emission guidelines for new hospital and medical waste incinerators (HMIWI) (Subparts Ce and Ec). The Department is not adopting these new federal amendments because Iowa no longer has any operating incinerators affected under HMIWI, and the Department anticipates that no new HMIWI will be constructed in Iowa. Many HMIWI throughout the United States have shut down because less expensive alternative waste disposal options are available. The Department is not required to adopt federal NSPS for which there are no affected facilities and for which there are no affected facilities reasonably expected to exist in the future. If a new HMIWI does locate in Iowa or if a currently exempt facility changes operations to become a newly affected facility, federal NSPS for HMIWI will still apply. At such time, the Department will determine if it is appropriate to adopt the federal NSPS regulations for HMIWI into state rules. The Department is taking additional rule-making action regarding the currently adopted HMIWI regulations, as explained under Item 3 and Item 6.

**Item 2** amends paragraph 23.1(2)“sss” to revise the explanation accompanying the adoption by reference of the NSPS for municipal waste combustors (Subpart Eb). When the Department adopted EPA’s 2006 amendments to this NSPS through a prior rule making, the Department did not at that time modify the explanatory text to be consistent with the federal amendments. The Department is now proposing to modify the text so that it is identical to the current federal regulations.

**Item 3** amends paragraph 23.1(2)“ttt” to add a note rescinding adoption by reference of the federal NSPS regulations for HMIWI (Subpart Ec). As explained above, the state does not have any HMIWI affected under NSPS Subpart Ec, and does not expect to have any affected HMIWI in the future.

**Item 4** amends the introductory paragraph of subrule 23.1(4), the emission standards for hazardous air pollutants for source categories, also known as national emission standards for hazardous air pollutants or NESHAP, to adopt recent amendments that EPA made to 40 CFR Part 63. The NESHAP program requires facilities in a particular industry sector that construct and operate specific equipment to meet uniform standards for hazardous air pollutants (HAP). NESHAP requirements for source sectors vary depending on the processes, activities or equipment being regulated.

The NESHAP affect both new and existing major sources and area sources. Area sources are usually smaller commercial or industrial operations. Specifically, area sources have potential emissions less than 10 tons per year (tpy) of any single hazardous air pollutant (HAP) and less than 25 tpy of any combination of HAP and are classified as minor sources for HAP. Facilities that have potential HAP emissions greater than or equal to these levels are classified as major sources. HAP are sometimes also known as “air toxics.”

This rule making includes adoption of new or amended NESHAP potentially impacting some facilities or businesses that previously had few, if any, air quality requirements. Because of the potential impacts to small businesses and previously unregulated facilities, the Department is developing implementation strategies in conjunction with this proposed rule making. The strategies include cooperative efforts with the University of Northern Iowa, Iowa Air Emissions Assistance Program (UNI); Iowa Department of Economic Development (IDED); the Linn County and Polk County local air quality programs; and other interested associations and organizations to provide outreach and compliance assistance to stakeholders.

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The Department's outreach strategy will be specific to each rule and will depend on a number of factors, including: the estimated number of facilities and small businesses affected, the compliance date of the rule, the requirements of the rule (such as emissions control, work practices standards, etc.), and current level of air quality knowledge (such as air permits or active industry associations). As Department resources allow, outreach may include informational meetings, workshops, fact sheets, guides, and Internet-based tools. It is hoped that this rule making, in conjunction with current and future efforts of the Department and its compliance assistance partners, will result in reductions in air toxic and other air pollutant emissions, while minimizing the regulatory burden to small businesses and other affected facilities.

On March 3, 2010, EPA amended the NESHAP for reciprocating internal combustion engines (RICE) (Subpart ZZZZ) to include requirements to control HAP emissions from certain engines that were not previously covered under the NESHAP. The federal amendments apply to stationary existing diesel engines located at both area sources and major sources that meet specific siting, age and size criteria. In general, existing emergency engines are subject to work practice and management standards. Some larger existing engines and existing nonemergency engines are subject to emission standards, control requirements and compliance testing requirements. Affected facilities have until May 3, 2013, to comply with the new NESHAP requirements.

Existing emergency engines located at area source residential, commercial or institutional facilities are not subject to the NESHAP. Additionally, the federal amendments do not address existing stationary spark ignition (SI) engines, such as gasoline-powered engines. EPA intends to address these SI engines in a later rule making.

The Department estimates that thousands of existing stationary diesel engines may be affected by the NESHAP. However, many of these engines will be subject only to work practice or management standards, such as regular oil changes. The Department expects that owners and operators of engines that will require add-on control or emissions testing will elect to change-out their engines for new, cleaner engines that are manufacturer-certified to meet EPA emissions specifications. Since the NESHAP compliance date is not until May 2013, the Department and its compliance assistance partners will begin working with interested stakeholders in the next one to two years to better characterize the affected facilities and to develop appropriate outreach and compliance assistance strategies.

**Items 5, 6 and 7** amend subrule 23.1(4) by adopting new paragraphs "ev," "fa," "fb," "fc," and "fd" to adopt by reference new NESHAP for new and existing area sources. The Department is proposing to adopt by reference three newly promulgated NESHAP for area sources, as explained in more detail below.

On October 29, 2009, EPA finalized the area source NESHAP for chemical manufacturing (Subpart VVVVVV). This NESHAP affects area sources under several chemical manufacturing sectors, including pharmaceutical production, agricultural chemicals and pesticides manufacturing, and organic chemical manufacturing, that emit one or more of 15 specific HAP. The NESHAP includes management practices and, in some cases, add-on control, to reduce emissions from process vessels, storage tanks, transfer racks, heat exchange systems and wastewater. Existing facilities have until October 29, 2012, to be in compliance with the NESHAP.

The Department estimates that there may be up to 100 facilities subject to this NESHAP. However, many facilities may not be emitting the affected HAP in regulated quantities or may elect to discontinue use prior to the NESHAP compliance date. Many other facilities are already following management practices under other federal standards that are identical or similar to the NESHAP requirements. In the near term, the Department expects to work individually with facilities on NESHAP applicability, particularly as these facilities submit permit applications for review. Over the next six months, the Department and its compliance assistance partners will determine if a more extensive NESHAP outreach strategy is appropriate.

On December 3, 2009, EPA finalized the area source NESHAP for paint and allied products manufacturing (Subpart CCCCCC). This NESHAP affects area sources that manufacture paint, ink or adhesive and that process, use, or generate materials containing chromium, lead, nickel or cadmium, benzene or methyl chloride. Affected facilities are required to operate particulate control equipment

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

to control metal air toxics and must use management practices to control volatile air toxic emissions. Existing facilities have until December 3, 2012, to comply with the NESHAP requirements.

Currently, the Department estimates that 50 facilities may be subject to this NESHAP. However, many facilities may not use, or may elect to discontinue use of, the affected HAP before the NESHAP compliance date. In the near term, the Department expects to work individually with facilities on NESHAP applicability, particularly as these facilities submit permit applications for review. Over the next year, the Department and its compliance assistance partners will determine if a more extensive NESHAP outreach strategy is appropriate.

On January 5, 2010, EPA finalized the area source NESHAP for prepared feeds manufacturing (Subpart DDDDDDD). This NESHAP affects area sources that produce animal feed products and use materials that contain chromium or manganese. Affected facilities must apply management practices in the area of the facility where materials containing chromium or manganese are stored, used or handled. Facilities that produce more than 50 tons per day of feed will also be required to operate control equipment to reduce chromium and manganese emissions from pelleting and pelleting cooling operations. Existing facilities will have until January 5, 2012, to comply with the NESHAP requirements.

The Department estimates that approximately 200 feed mills are currently operating in the state. However, it is expected that many feed mills do not use chromium or manganese materials at the levels regulated by the NESHAP, or will qualify for one of the other exemptions in the NESHAP. Of facilities that are affected, it is expected that many will be subject to only the management practices, which include activities to minimize dust. Over the next year, the Department and its compliance assistance partners will be working closely with interested stakeholders to better characterize the affected facilities and to develop appropriate outreach and compliance assistance strategies.

The Department is not proposing to adopt two other recently promulgated area source NESHAP, the NESHAP for asphalt processing and asphalt roofing manufacturing (Subpart AAAAAAA) and the NESHAP for chemical preparation (Subpart BBBB BBB). Iowa does not have any facilities subject to these NESHAP and is unlikely to have any subject facilities in the future.

**Items 8 and 9** amend paragraph 23.1(5)“b” to rescind the emission guidelines for existing HMIWI. EPA originally promulgated emission guidelines for existing HMIWI in 1997 and the Department adopted these emission guidelines in 1998. At that time, Iowa had two operating HMIWI affected under the emission guidelines. These two HMIWI have since shut down.

The Department is proposing to rescind the existing emission guidelines because the Department is not required to retain federal emission guidelines for which the state has no subject facilities, and for which the Department can reasonably expect not to have any subject facilities in the future. If a currently exempt facility changes operations to become an affected HMIWI, federal standards for existing HMIWI will apply. At such time, the Department will determine if it is appropriate to adopt into state rules the federal emission guidelines for existing HMIWI.

**Item 10** amends subrule 24.1(2), the requirements for oral reporting of excess emissions. The proposed amendment changes the description in this subrule to “initial report of excess emissions” and also adds the option for the owner or operator to submit the required excess emissions information to the Department by electronic mail (E-mail).

In some cases, E-mail will be a more accurate and efficient method for owners and operators to provide these reports. Additionally, Department field staff will be able to receive the report in the field through mobile electronic devices. E-mail reporting will eliminate Department staff time in transcribing the initial report and will enable staff to more efficiently input the information into reports and databases. Since E-mail may not be available or convenient in all cases, owners and operators will still be allowed to make an initial report of excess emissions in person or by telephone.

Owners and operators must still follow up their initial excess emissions report with a written, hard-copy report. The Department is not proposing an E-mail option for written excess emissions reporting at this time due to EPA’s requirements under the federal cross-media electronic reporting rule (CROMERR). CROMERR requires special electronic verification that the Department has not yet

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

established for excess emissions reports. The Department hopes to provide an electronic option for these reports in the future.

**Item 11** amends subrule 24.1(3), the provisions for a written report of excess emissions. The proposed amendment changes the term “oral” report to “initial” report to be consistent with the proposed amendment described in Item 10. The Department is not proposing an E-mail option for written excess emissions reporting at this time due to EPA’s requirements under CROMERR. CROMERR requires special electronic verification that the Department has not yet established for excess emissions reports.

**Item 12** amends rule 567—28.1(455B) to adopt by reference new national ambient air quality standards (NAAQS). On February 9, 2010, EPA strengthened the NAAQS for nitrogen dioxide (NO<sub>2</sub>) by adding a new 1-hour standard to more adequately protect public health and welfare. EPA set the new 1-hour NO<sub>2</sub> standard at the level of 100 parts per billion (ppb). In addition to establishing an averaging time and level, EPA also set a new “form” for the standard. The form is the air quality statistic used to determine if an area meets the standard. The form for the 1-hour NO<sub>2</sub> standard is the 3-year average of the 98th percentile of the annual distribution of daily maximum 1-hour average concentrations. EPA retained, with no change, the current annual average NO<sub>2</sub> standard of 53 ppb.

EPA expects to designate areas as attaining or not attaining the new standard by January 2012 using NO<sub>2</sub> monitoring data from the current community-wide monitoring network. Once the expanded network of NO<sub>2</sub> monitors required under the new standard is fully deployed and three years of data have been collected, EPA intends to redesignate areas in 2016 or 2017, as appropriate, based on the air quality data from the new monitoring network. The Department will need to complete and submit revisions to the state implementation plan (SIP) for NO<sub>2</sub> by January 2013. The SIP revision will include any rule changes necessary to implement the new standard.

Any person may make written suggestions or comments on the proposed amendments on or before July 20, 2010. Written comments should be directed to Christine Paulson, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Windsor Heights, Iowa 50324; fax (515)242-5094; or by E-mail to [christine.paulson@dnr.iowa.gov](mailto:christine.paulson@dnr.iowa.gov).

A public hearing will be held on Monday, July 19, 2010, at 1 p.m. in the conference rooms at the Department’s Air Quality Bureau office located at 7900 Hickman Road, Windsor Heights, Iowa. At the public hearing, comments on the proposed amendments may be submitted orally or in writing. All comments must be received no later than Tuesday, July 20, 2010.

Any person who intends to attend the public hearing and has special requirements, such as those related to hearing or mobility impairments, should contact Christine Paulson at (515)242-5154 to advise of any specific needs.

These amendments are intended to implement Iowa Code section 455B.133.

The following amendments are proposed.

ITEM 1. Amend subrule 23.1(2), introductory paragraph, as follows:

**23.1(2) *New source performance standards.*** The federal standards of performance for new stationary sources, as defined in 40 Code of Federal Regulations Part 60 as amended or corrected through ~~March 20, 2009~~, October 8, 2009, are adopted by reference, except § 60.530 through § 60.539b (Part 60, Subpart AAA), and shall apply to the following affected facilities. The corresponding 40 CFR Part 60 subpart designation is in parentheses. Reference test methods (Appendix A), performance specifications (Appendix B), determination of emission rate change (Appendix C), quality assurance procedures (Appendix F) and the general provisions (Subpart A) of 40 CFR Part 60 also apply to the affected facilities.

ITEM 2. Amend paragraph **23.1(2)“sss”** as follows:

*sss. Municipal waste combustors.* Unless exempted, a municipal waste combustor with a combustion capacity greater than ~~35 megagrams~~ 250 tons per day of municipal solid waste for which construction, modification or reconstruction is ~~completed~~ commenced after September 20, 1994, ~~or for which modification or reconstruction is commenced after June 19, 1996.~~ (Subpart Eb)

ITEM 3. Amend paragraph **23.1(2)“ttt”** as follows:

*ttt. Hospital/medical/infectious waste incinerators.* Unless exempted, a hospital/medical/infectious

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

waste incinerator for which construction is commenced after June 20, 1996, or for which modification is commenced after March 16, 1998. (Subpart Ec)\*

\*As of [insert effective date of these amendments], the adoption by reference of Part 60 Subpart Ec is rescinded.

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

**23.1(4)** *Emission standards for hazardous air pollutants for source categories.* The federal standards for emissions of hazardous air pollutants for source categories, 40 Code of Federal Regulations Part 63 as amended or corrected through ~~December 22, 2008~~, March 3, 2010, are adopted by reference, except those provisions which cannot be delegated to the states. The corresponding 40 CFR Part 63 subpart designation is in parentheses. An earlier date for adoption by reference may be included with the subpart designation in parentheses. 40 CFR Part 63, Subpart B, incorporates the requirements of Clean Air Act Sections 112(g) and 112(j) and does not adopt standards for a specific affected facility. Test methods (Appendix A), sources defined for early reduction provisions (Appendix B), and determination of the fraction biodegraded ( $F_{bio}$ ) in the biological treatment unit (Appendix C) of Part 63 also apply to the affected activities or facilities. For the purposes of this subrule, “hazardous air pollutant” has the same meaning found in 567—22.100(455B). For the purposes of this subrule, a “major source” means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless a lesser quantity is established, or in the case of radionuclides, where different criteria are employed. For the purposes of this subrule, an “area source” means any stationary source of hazardous air pollutants that is not a “major source” as defined in this subrule. Paragraph 23.1(4) “a,” general provisions (Subpart A) of Part 63, shall apply to owners or operators who are subject to subsequent subparts of 40 CFR Part 63 (except when otherwise specified in a particular subpart or in a relevant standard) as adopted by reference below.

ITEM 5. Adopt the following new paragraph **23.1(4)“ev”**:

*ev. Emission standards for hazardous air pollutants for area sources: chemical manufacturing.* This standard applies to chemical manufacturing at new and existing facilities that are area sources for hazardous air pollutant emissions. (Part 63, Subpart VVVVVV)

ITEM 6. Reserve paragraphs **23.1(4)“fa”** and **“fb.”**

ITEM 7. Adopt the following new paragraphs **23.1(4)“fc”** and **“fd”**:

*fc. Emission standards for hazardous air pollutants for area sources: paint and allied products manufacturing.* This standard applies to paint and allied products manufacturing at new and existing facilities that are area sources for hazardous air pollutant emissions. (Part 63, Subpart CCCCCC)

*fd. Emission standards for hazardous air pollutants for area sources: prepared feeds manufacturing.* This standard applies to prepared feeds manufacturing that produces animal feed products (not including feed for cats or dogs) and uses chromium or manganese compounds at new and existing facilities that are area sources for hazardous air pollutant emissions. (Part 63, Subpart DDDDDDD)

ITEM 8. Amend paragraph **23.1(5)“b,”** introductory paragraph, as follows:

*b. Emission guidelines for hospital/medical/infectious waste incinerators (Subpart Ce).* This paragraph contains emission guidelines and compliance times for the control of certain designated pollutants from hospital/medical/infectious waste incinerator(s) (HMIWI) in accordance with Subparts Ce and Ec (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators) of 40 CFR Part 60.\*

\*As of [insert effective date of these amendments], the emission guidelines for hospital/medical/infectious waste incinerators (Subpart Ce) are rescinded.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ITEM 9. Rescind subparagraphs **23.1(5)“b”(1) to (13)**.

ITEM 10. Amend subrule 24.1(2) as follows:

**24.1(2)** ~~Oral~~ *Initial report of excess emissions emission*. An incident of excess emission (other than an incident of excess emission during a period of startup, shutdown, or cleaning) shall be reported to the appropriate regional office of the department within eight hours of, or at the start of the first working day following the onset of the incident. The reporting exemption for an incident of excess emission during startup, shutdown or cleaning does not relieve the owner or operator of a source with continuous monitoring equipment of the obligation of submitting reports required in 567—subrule 25.1(6).

An ~~oral~~ initial report of excess emission is not required for a source with operational continuous monitoring equipment (as specified in 567—subrule 25.1(1)) if the incident of excess emission continues for less than 30 minutes and does not exceed the applicable emission standard by more than 10 percent or the applicable visible emission standard by more than 10 percent opacity.

The ~~oral~~ initial report ~~may~~ shall be made by electronic mail (E-mail), in person, or by telephone and shall include as a minimum the following:

a. to f. No change.

ITEM 11. Amend subrule 24.1(3) as follows:

**24.1(3)** *Written report of excess emission*. A written report of an incident of excess emission shall be submitted as a follow-up to all required ~~oral~~ initial reports to the department within seven days of the onset of the upset condition, and shall include as a minimum the following:

a. to g. No change.

ITEM 12. Amend rule 567—28.1(455B) as follows:

**567—28.1(455B) Statewide standards.** The state of Iowa ambient air quality standards shall be the National Primary and Secondary Ambient Air Quality Standards as published in 40 Code of Federal Regulations Part 50 (1972) and as amended at 38 Federal Register 22384 (September 14, 1973), 43 Federal Register 46258 (October 5, 1978), 44 Federal Register 8202, 8220 (February 9, 1979), 52 Federal Register 24634-24669 (July 1, 1987), 62 Federal Register 38651-38760, 38855-38896 (July 18, 1997), 71 Federal Register 61144-61233 (October 17, 2006), 73 Federal Register 16436-16514 (March 27, 2008), ~~and~~ 73 Federal Register 66964-67062 (November 12, 2008), ~~and~~ 75 Federal Register 6474-6537 (February 9, 2010), except that the annual PM<sub>10</sub> standard specified in 40 CFR Section 50.6(b) shall continue to be applied for purposes of implementation of new source permitting provisions in 567 IAC Chapters 22 and 33. The department shall implement these rules in a time frame and schedule consistent with implementation schedules in federal laws, regulations and guidance documents.

This rule is intended to implement Iowa Code section 455B.133.

**ARC 8853B**

## **HUMAN SERVICES DEPARTMENT[441]**

### **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 239B.4(6) and 249A.4, the Department of Human Services proposes to amend Chapter 41, “Granting Assistance,” and Chapter 75, “Conditions of Eligibility,” Iowa Administrative Code.

These amendments remove requirements for the Department to return to applicant or participant households originals of all documents submitted to the Department as verification during Medicaid or Family Investment Program eligibility determination. This change is proposed in conjunction with the

## HUMAN SERVICES DEPARTMENT[441](cont'd)

implementation of electronic case files and multiple scanning units around the state. Continuing to return all original documents would be a cost to the Department and a poor use of limited staff resources.

The Department will continue to return a limited number of original documents, such as social security cards, birth certificates, drivers' licenses, passports, and alien documentation. Households will be able to request copies of any scanned documents the Department has, such as pay stubs and utility bills.

These amendments do not provide for waivers in specified situations except that the household has the option of making copies of the verification documents and submitting the copies instead of the originals.

Any interested person may make written comments on the proposed amendments on or before July 6, 2010. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments are intended to implement Iowa Code sections 239B.7 and 249A.4.

The following amendments are proposed.

ITEM 1. Amend rule 441—41.27(239B), introductory paragraph, as follows:

**441—41.27(239B) Income.** All unearned and earned income, unless specifically exempted, disregarded, deducted for work expenses, or diverted as defined in these rules, shall be considered in determining initial and continuing eligibility and the amount of the family investment program grant.

1. The determination of initial eligibility is a three-step process. Initial eligibility shall be granted only when (1) the countable gross nonexempt unearned and earned income, exclusive of the family investment program grant, received by the eligible group and available to meet the current month's needs is no more than 185 percent of the standard of need for the eligible group; (2) the countable net unearned and earned income is less than the standard of need for the eligible group; and (3) the countable net unearned and earned income, after applying allowable disregards, is less than the payment standard for the eligible group.

2. The determination of continuing eligibility is a two-step process. Continuing eligibility shall be granted only when (1) countable gross nonexempt income, as described for initial eligibility, does not exceed 185 percent of the standard of need for the eligible group; and (2) countable net unearned and earned income is less than the payment standard for the eligible group.

3. The amount of the family investment program grant shall be determined by subtracting countable net income from the payment standard for the eligible group. Child support assigned to the department in accordance with subrule 41.22(7) and retained by the department as described in subparagraph 41.27(1)“h”(2) shall be considered as exempt income for the purpose of determining continuing eligibility, including child support as specified in paragraph 41.27(7)“q.” Deductions and diversions shall be allowed when verification is provided. ~~The department shall return all verification to the applicant or recipient.~~

ITEM 2. Amend rule 441—75.57(249A), introductory paragraph, as follows:

**441—75.57(249A) Income.** When determining initial and ongoing eligibility for the family medical assistance program (FMAP) and FMAP-related Medicaid coverage groups, all unearned and earned income, unless specifically exempted, disregarded, deducted for work expenses, or diverted as defined in these rules, shall be considered.

1. Unless otherwise specified at rule 441—75.1(249A), the determination of initial eligibility is a three-step process. Initial eligibility shall be granted only when (1) the countable gross nonexempt unearned and earned income received by the eligible group and available to meet the current month's needs is no more than 185 percent of living costs as identified in the schedule of needs at subrule 75.58(2) for the eligible group (Test 1); (2) the countable net earned and unearned income is less than the schedule of living costs as identified in the schedule of needs at subrule 75.58(2) for the eligible group (Test 2); and (3) the countable net unearned and earned income, after applying allowable disregards, is less than the schedule of basic needs as identified at subrule 75.58(2) for the eligible group (Test 3).

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2. The determination of continuing eligibility is a two-step process. Continuing eligibility shall be granted only when (1) countable gross nonexempt income, as described for initial eligibility, does not exceed 185 percent of the living costs as identified in the schedule of needs at subrule 75.58(2) for the eligible group (Test 1); and (2) countable net unearned and earned income is less than the schedule of basic needs as identified in the schedule of needs at subrule 75.58(2) for the eligible group (Test 3).

3. Child support assigned to the department in accordance with 441—subrule 41.22(7) shall be considered unearned income for the purpose of determining continuing eligibility, except as specified at paragraphs 75.57(1) “e,” 75.57(6) “u,” and 75.57(7) “o.” Expenses for care of children or disabled adults, deductions, and diversions shall be allowed when verification is provided. ~~The department shall return all verification to the applicant or member.~~

**ARC 8864B****HUMAN SERVICES DEPARTMENT[441]****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 249A.4, the Department of Human Services proposes to amend Chapter 75, “Conditions of Eligibility,” Iowa Administrative Code.

The proposed amendments provide a clearer explanation of the difference between:

- A Medicaid disability review, which may be required periodically depending on the nature of a member’s disabling condition, and
- A Medicaid disability redetermination, which is required when a member reaches the age of 18 to apply adult disability criteria.

In most cases, disability is determined by the Social Security Administration. These policies apply when the Department is responsible for independent disability determinations for applicants and members.

These amendments do not provide for waivers in specified situations because all members should be subject to the same policy regarding disability reviews and redeterminations. The Department has an exception to policy process in rule 441—1.8(17A,217) that may be pursued should a member feel that exceptional circumstances justify a waiver of policy.

Any interested person may make written comments on the proposed amendments on or before July 6, 2010. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments are intended to implement Iowa Code section 249A.4.

The following amendments are proposed.

ITEM 1. Amend subrule 75.20(4) as follows:

**75.20(4) ~~Redeterminations~~ Reviews of disability.** In connection with any independent determination of disability, the department will determine whether reexamination of the member’s ~~medical condition~~ disability will be ~~necessary~~ required for periodic ~~redeterminations~~ of eligibility reviews. When ~~reexamination~~ a disability review is required, the member or the member’s authorized representative shall complete and submit the same forms as required in paragraph 75.20(2) “b.”

ITEM 2. Adopt the following **new** subrule 75.20(6):

**75.20(6) Disability redeterminations for members who attain age 18.** If a member is eligible based on an independent determination of disability made under the standards applicable to persons under 18

## HUMAN SERVICES DEPARTMENT[441](cont'd)

years of age, the department shall redetermine the member's disability after the member attains the age of 18 years. The member's disability shall be redetermined:

- a. Using the standards applicable to persons who are 18 years of age or older, and
- b. Regardless of whether a review of the member's disability would otherwise be due.

**ARC 8865B****HUMAN SERVICES DEPARTMENT[441]****Notice of Termination**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby terminates rule-making proceedings under the provisions of Iowa Code section 17A.4(1)"b" for proposed rule making relating to Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 7, 2010, as **ARC 8648B**. The Notice was published to solicit comments on an amendment Adopted and Filed Emergency and published on the same date as **ARC 8647B**. That filing increased the reimbursement rate for family planning clinics, based on legislative direction in 2009 Iowa Acts, chapter 182, section 32(1)(o).

New legislation in 2010 Iowa Acts, House File 2526, section 33(p), has set a different reimbursement rate for family planning clinics for state fiscal year 2011. Therefore, the Department is not proceeding with further rule making on **ARC 8648B**.

**ARC 8840B****HUMAN SERVICES DEPARTMENT[441]****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 514I.5, the Department of Human Services proposes to amend Chapter 86, "Healthy and Well Kids in Iowa (HAWK-I) Program," Iowa Administrative Code.

The proposed amendments provide for a one-month grace period for each monthly premium owed for a HAWK-I enrollee. This change is being made to comply with the Children's Health Insurance Program Reauthorization Act (CHIPRA), Public Law 111-03. The Centers for Medicare and Medicaid Services (CMS) has clarified that the grace period shall be the month for which the premium is owed.

This policy may result in the furnishing of coverage even though the family has not paid the premium, creating an unpaid premium balance. Currently, the premium for a month of HAWK-I coverage is due to the Department on the tenth day of the month before the coverage month. If the payment is not received by the due date, the case is canceled and coverage is not provided for the following month. Under the proposed amendments, families will receive a notice of the intended disenrollment if the premium is not received by the due date, but the effective date of disenrollment will be the last day of the coverage month, not the month when the premium was due. If the premium payment is received after the timely notice is issued but before the last calendar day of the coverage month, the child's coverage will be reinstated. If the premium is not received postmarked on or before the last calendar day of the coverage month, the child will be disenrolled effective with the last day of the coverage month.

If the premium payment is not received and the child is disenrolled, an obligation for the unpaid premium will be established for the parent, for the responsible person who applied for the child, or for the child when the child applies as a child living independently from the parents. The obligation will

## HUMAN SERVICES DEPARTMENT[441](cont'd)

remain in effect for 24 months. If the person owing an unpaid premium reapplies and a child for whom the person is applying establishes HAWK-I eligibility for any month in the 24-month period, the unpaid premium must be paid before the child will be enrolled in a health or dental plan.

The proposed amendments also make the following changes:

- Allow averaging of self-employment income records for two or three years if that figure is more representative of anticipated earnings than the records from the previous year alone.
- Provide that a new application form is not required when a child moves between the supplemental dental-only program and full medical and dental coverage.
- Move the due date for HAWK-I premiums from the tenth calendar day of the month to the fifth calendar day of the month before the month of coverage.
- Clarify that when a child is losing health insurance, the earliest start date of a HAWK-I enrollment period shall be the first day of the month following the month in which the health insurance ends if that date is later than the first day of the month following the month in which the application was received (the normal effective date).

These amendments do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before July 6, 2010. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments are intended to implement Iowa Code chapter 514I.

The following amendments are proposed.

ITEM 1. Amend subparagraph **86.2(2)“c”(3)** as follows:

(3) Self-employment income shall be verified using business records or income tax returns from the previous year if they are representative of anticipated earnings. If business records or tax returns from the previous year are not representative of anticipated earnings, an average of the business records or tax returns from the previous two or three years may be used if that average is representative of anticipated earnings.

ITEM 2. Adopt the following **new** paragraph **86.3(6)“c”**:

c. A new application shall not be required when a child moves between supplemental dental-only coverage as specified in rule 441—86.20(514I) and full medical and dental coverage.

ITEM 3. Amend subrule 86.5(1), introductory paragraph, as follows:

**86.5(1) Initial application.** Coverage for ~~children~~ a child who ~~are~~ is determined eligible for the HAWK-I program on the basis of an initial application for either HAWK-I or Medicaid shall be effective the first day of the month following the month in which the application is filed, regardless of the day of the month the application is filed, or when a plan becomes available in the applicant's county of residence. However, when the child does not meet the provisions of paragraph 86.2(4)“a,” coverage shall be effective the first day of the month following the month in which health insurance coverage is lost. Also, a one-month waiting period shall be imposed for a child who is subject to a monthly premium pursuant to paragraph 86.8(2)“c” when the child's health insurance coverage ended in the month of application. EXCEPTIONS: A waiting period shall not be imposed if any of the following conditions apply:

ITEM 4. Amend subrule 86.7(3) as follows:

**86.7(3) Nonpayment of premiums.** The child shall be canceled from the program as of the first day of the month in which premiums are not paid in accordance with the provisions of subrules 86.8(3), 86.8(4) and 86.8(5).

ITEM 5. Amend subrules 86.8(3) to 86.8(6) as follows:

**86.8(3) Due date.**

a. *Payment upon initial application.* “Initial application” means the first program application or a subsequent application that is not a renewal. Upon approval of an initial application, the first month

## HUMAN SERVICES DEPARTMENT[441](cont'd)

for which a premium is due is the third month following the month of decision. The due date of the first premium shall be the ~~tenth~~ fifth day of the second month following the month of decision.

*b. Payment upon renewal.* “Renewal” means any application used to establish ongoing eligibility, without a break in coverage, for any enrollment period subsequent to an enrollment period established by an initial application.

(1) Upon approval of a renewal, the first month for which a premium is due is the first month of the enrollment period. The premium for the first month of the enrollment period shall be due by the ~~tenth~~ fifth day of the month before the month of coverage or the tenth business day following the date of decision, whichever is later.

(2) All premiums due must be paid before the child will be enrolled for coverage. When the premium is received, the third-party administrator shall notify the health and dental plans of the enrollment.

*c. Subsequent payments.* All subsequent premiums are due by the ~~tenth~~ fifth day of each month for the next month’s coverage and must be postmarked no later than the last day of the month before the month of coverage. ~~Failure to pay the premium by the last day of the month before the month of coverage shall result in cancellation from the program.~~ Premiums may be paid in advance (e.g., on a quarterly or semiannual basis) rather than a monthly basis.

*d. Holiday or weekend.* When the premium due date falls on a holiday or weekend, the premium shall be due on the first business day following the due date.

**86.8(4) *Reinstatement Grace period.*** ~~A child may be reinstated once per enrollment period when the family fails to pay the premium by the last day of the month for the next month’s coverage. A grace period shall be allowed on any monthly premium not received as prescribed in paragraph 86.8(3) “c.” The grace period shall be the coverage month for which the premium is due.~~

*a.* Failure to submit a premium by the last calendar day of the grace period shall result in disenrollment.

*b.* If the premium is subsequently received, coverage will be reinstated if the premium was postmarked or otherwise paid ~~in the calendar month immediately following disenrollment.~~

(1) In the grace period, or

(2) In the 14 calendar days following the grace period.

**86.8(5) *Method of premium payment.*** Premiums may be submitted in the form of cash, personal checks, ~~automatic bank account withdrawals~~ electronic funds transfers (EFT), or other methods established by the third-party administrator.

**86.8(6) *Failure to pay premium.*** Failure to pay the premium in accordance with subrules 86.8(3) and 86.8(5) shall result in cancellation from the program unless the ~~reinstatement~~ grace period provisions of subrule 86.8(4) apply. Once a child is canceled from the program due to nonpayment of premiums, the family must reapply for coverage.

ITEM 6. Adopt the following **new** subrule 86.8(8):

**86.8(8) *Unpaid premiums.*** Before the child can regain coverage under the program, unpaid premiums owed for coverage received in accordance with subrule 86.8(4) within the past 24 months must be paid in full.

*a.* Failure to pay the unpaid premiums shall result in denial of the application. EXCEPTION: The unpaid premium obligation shall be reduced to zero if upon reapplication a premium would not be assessed because the household’s income is less than 150 percent of the federal poverty level.

*b.* If no reapplication is filed within 24 months of failing to pay a premium, the debt shall be expunged and shall no longer be owed.

ITEM 7. Adopt the following **new** paragraph **86.20(3)“f”**:

*f.* The provisions of subrules 86.8(3) to 86.8(6) and 86.8(8) apply to premiums specified in this subrule.

**ARC 8841B****HUMAN SERVICES DEPARTMENT[441]****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 514I.5, the Department of Human Services proposes to amend Chapter 86, “Healthy and Well Kids in Iowa (HAWK-I) Program,” Iowa Administrative Code.

The proposed amendments extend the period within which a new enrollee may request to switch from one HAWK-I health or dental plan to another. The amendments extend this period from the current 30 days following the date the health or dental plan was notified of the person’s initial enrollment to 90 days following the date of that notification. The enrollee will be allowed to switch plans during this period regardless of the reason for requesting the change and regardless of whether the enrollee chose the plan or was referred to it.

The amendments also provide that an enrollee will be allowed to switch plans at any time for cause, as defined by federal regulations. Reasons included in the definition of “cause” include moving out of the plan’s service area, being unable to obtain needed services from the plan, poor quality of care, lack of access to covered services, and lack of access to providers experienced in treating the enrollee’s health care needs. Currently, an enrollee is allowed to change plans only when there is a substantial change in the plan’s provider panel.

These changes are being made to comply with Public Law 111-03, the Children’s Health Insurance Program Reauthorization Act (CHIPRA), which requires states to follow Medicaid managed care regulations in the administration of their Children’s Health Insurance Plans.

These amendments do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before July 6, 2010. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments are intended to implement Iowa Code chapter 514I.

The following amendments are proposed.

ITEM 1. Amend subrule 86.6(2) as follows:

**86.6(2) *Period of enrollment.*** Once enrolled in a health or dental plan, the child shall remain enrolled in the selected health or dental plan for a period of 12 months ~~unless:~~

~~a. *Exceptions.* There is a substantial change in the provider panel of the health or dental plan originally chosen, as determined by the board. A substantial change means, but is not limited to, loss of a contracted hospital or provider group. When there is another participating health or dental plan available in the child’s county of residence, the child may disenroll from the current health or dental plan and enroll in the other health or dental plan. A child may be enrolled in a plan for less than 12 months if:~~

~~b. (1) The child is disenrolled in accordance with the provisions of rule 441—86.7(514I). If a child is disenrolled from the health or dental plan and subsequently reapplies before the end of the original 12-month enrollment period, the child shall be enrolled in the health or dental plan from which the child was originally disenrolled unless the provisions of subrule 86.7(1) apply.~~

~~e. (2) The child is added to an existing enrollment. When a family requests to add an eligible child, the child shall be enrolled for the months remaining in the current enrollment period.~~

~~(3) A request to change plans is accepted in accordance with paragraphs 86.6(2)“b” and “c.”~~

~~b. *Request to change plan.* An enrollee may ask to change the health or dental plan:~~

## HUMAN SERVICES DEPARTMENT[441](cont'd)

(1) Within 90 days following the date the initial enrollment was sent to the health or dental plan regardless of the reason for the plan change or whether the original health or dental plan was selected by the applicant or was assigned in accordance with subrule 86.6(3).

(2) At any time for cause. "Cause" as defined at 42 CFR 438.56(d)(2) as amended to May 13, 2010, includes, but is not limited to:

1. The enrollee moves out of the plan's service area.
2. Because of moral or religious objections, the plan does not cover the services the enrollee seeks.
3. The enrollee needs related services (for example, a cesarean section and a tubal ligation) to be performed at the same time, not all related services are available within the network, and the enrollee's primary care provider or another provider determines that receiving the services separately would subject the enrollee to unnecessary risk.
4. Other reasons, including but not limited to, poor quality of care, lack of access to services covered under the contract, or lack of access to providers experienced in dealing with the enrollee's health care needs.

c. Response to request.

(1) If the enrollee has not requested to change health or dental plans within 90 days following the date the initial enrollment was sent to the health or dental plan and it is determined that cause does not exist, the request to change plans shall be denied.

(2) All approved changes shall be made prospectively and shall be effective on the first day of the month following the month in which the request was made.

ITEM 2. Rescind paragraphs **86.6(3)"a"** and **"b."**

**ARC 8863B**

**HUMAN SERVICES DEPARTMENT[441]**

**Amended Notice of Intended Action**

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends the Notice of Intended Action published in the Iowa Administrative Bulletin on May 19, 2010, as **ARC 8757B**. The Notice proposed amendments to Chapter 118, "Child Care Quality Rating System," Iowa Administrative Code.

The Department has scheduled a public hearing for the purpose of receiving comments on these proposed amendments. The hearing will be held on Friday, July 9, 2010, from 10 a.m. to 12 noon in First Floor Southeast Conference Rooms 1 and 2, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa.

Persons with disabilities who require assistive services or devices to observe or participate should contact the Bureau of Policy Coordination at (515)281-8440 in advance of the scheduled date to request that appropriate arrangements be made.

The due date for written comments on the proposed amendments has been extended to July 9, 2010. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Iowa Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

**ARC 8862B****LABOR SERVICES DIVISION[875]****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 88.5, the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 10, “General Industry Safety and Health Rules,” and Chapter 26, “Construction Safety and Health Rules,” Iowa Administrative Code.

The proposed amendments adopt by reference changes to federal occupational safety and health standards pertaining to hexavalent chromium and steel erection. These amendments require that employers in general industry and construction notify employees of hexavalent chromium exposure determinations regardless of whether the permissible exposure limit was exceeded. These amendments also add a note to the occupational safety and health standards for construction that notifies the public of a requirement enforced by the Federal Highway Administration (FHWA). The U.S. Department of Labor added the note to the occupational safety and health standards for construction because the FHWA requirement enhances the integrity of structural steel, thus improving employee safety.

The principal reasons for adoption of these amendments are to implement legislative intent, protect the safety and health of Iowa workers, and make Iowa’s regulations current and consistent with federal regulations. Pursuant to Iowa Code subsection 88.5(1)“a” and 29 CFR 1953.5, Iowa must adopt changes to the federal occupational safety and health standards.

Written data, views, or arguments to be considered in adoption shall be submitted no later than July 7, 2010, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to [kathleen.uehling@iwd.iowa.gov](mailto:kathleen.uehling@iwd.iowa.gov).

A public hearing will be held on July 7, 2010, at 9 a.m. in the Capitol View Room at Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa. The public will be given the opportunity to make oral statements and submit documents. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should telephone (515)281-5915 in advance to arrange access or other needed services.

No variance provisions are included in these rules. Variances procedures are set forth in 875—Chapter 5.

These amendments are intended to implement Iowa Code section 88.5.

The following amendments are proposed.

ITEM 1. Amend rule **875—10.20(88)** by inserting the following at the end thereof:  
75 Fed. Reg. 12685 (March 17, 2010)

ITEM 2. Amend rule **875—26.1(88)** by inserting the following at the end thereof:  
75 Fed. Reg. 12685 (March 17, 2010)  
75 Fed. Reg. 27429 (May 17, 2010)

**ARC 8861B****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 105.4, the Iowa Plumbing and Mechanical Systems Board hereby gives Notice of Intended Action to adopt new Chapter 33, “Plumbing and Mechanical Systems Board—Contested Cases,” Iowa Administrative Code.

The proposed rules in Chapter 33 describe the requirements that a licensee must follow to file a contested case and the proceedings that the Iowa Plumbing and Mechanical Systems Board will conduct as the proceedings apply to a contested case. These rules also provide details concerning decisions, appeals and recovery of hearing fees and expenses.

Consideration will be given to all written suggestions or comments on the proposed rules on or before July 6, 2010. Such written comments should be directed to Cindy Houlson, Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. Comments may be sent by fax to (515)281-4529 or by E-mail to [choulson@idph.state.ia.us](mailto:choulson@idph.state.ia.us).

Also, there will be a public hearing on July 6, 2010, from 11 a.m. to 1 p.m., 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 rules. The hearing will originate from the Iowa Communications Network (ICN) and will be accessible over the ICN from the following locations:

- Morningside College, Room 780, 1501 Morningside Avenue, Sioux City
- Public Library, 400 Willow Avenue, Council Bluffs
- Public Library, Meeting Room C, 415 Commercial Street, Waterloo
- Public Library Information Center, Kelison Room, 2950 Learning Campus Drive, Bettendorf
- Lucas State Office Building, ICN Room, Sixth Floor, 321 E. 12th Street, Des Moines
- Mason City National Guard Armory, 1160 19th Street SW, Mason City
- Crestwood High School, Room 45, 1000 4th Avenue East, Cresco
- Trinity Hospital, Room 113, 802 Kenyon Road, Fort Dodge
- University of Iowa, 2222 Old Highway 218 S, Iowa City

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

These rules are intended to implement Iowa Code chapters 17A, 105 and 272C.

The following amendment is proposed.

Adopt the following **new** 641—Chapter 33:

## CHAPTER 33

## PLUMBING AND MECHANICAL SYSTEMS BOARD—CONTESTED CASES

**641—33.1(17A,105,272C) Scope and applicability.** This chapter applies to contested case proceedings conducted by the plumbing and mechanical systems board.

**641—33.2(17A,105,272C) Definitions.** Except where otherwise specifically defined by law:

“*Board*” means the plumbing and mechanical systems board as established pursuant to 2009 Iowa Code Supplement section 105.3.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

“*Contested case*” means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under Iowa Code section 17A.10A.

“*Executive officer*” means the executive officer for the plumbing and mechanical systems board.

“*Issuance*” means the date of mailing of a decision or order, or date of delivery if service is by other means, unless another date is specified by rule or in the order.

“*License*” means a license, registration, certificate, permit or other form of practice permission required by Iowa Code chapter 105.

“*Party*” means the state of Iowa, as represented by the assistant attorney general assigned to prosecute the case on behalf of the public interest, the respondent, or an intervenor.

“*Presiding officer*” means the board, a panel of board members, or a panel of nonboard member specialists as provided in Iowa Code subsections 272C.6(1) and (2) in a disciplinary contested case.

**641—33.3(17A) Time requirements.**

**33.3(1)** Time shall be computed as provided in Iowa Code subsection 4.1(34).

**33.3(2)** For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

**641—33.4(17A,272C) Probable cause.** In the event the board finds there is probable cause for taking disciplinary action against a licensee, the board shall order a contested case hearing commenced by the filing and service of a statement of charges.

**641—33.5(17A,272C) Informal settlement.** The board, board staff or a board committee may attempt to informally settle a disciplinary case before filing a statement of charges and notice of hearing. If the board and the licensee agree to a settlement of the case, a statement of charges shall be filed simultaneously with a consent order. The statement of charges and consent order may be separate documents or may be combined in one document. By electing to sign a consent order, the licensee waives all rights to a hearing and all attendant rights. The consent order shall have the force and effect of a final disciplinary order entered in a contested case and is an open record. Matters not involving licensee discipline which may culminate in a contested case may also be settled through consent order. Procedures governing settlement after notice of hearing is served are described in rule 641—33.23(272C).

**641—33.6(17A) Statement of charges.**

**33.6(1) Legal review.** Every statement of charges prepared by the board shall be reviewed by the office of the attorney general before it is filed.

**33.6(2) Delivery.** Delivery of the statement of charges constitutes the commencement of the contested case proceeding. Delivery may be executed by:

- a. Personal service as provided in the Iowa Rules of Civil Procedure; or
- b. Certified mail, return receipt requested; or
- c. Publication as provided in the Iowa Rules of Civil Procedure.

**33.6(3) Contents.** The statement of charges shall contain the following information:

- a. A statement by the board showing that there is probable cause to file the statement of charges;
- b. A statement of the time, place, and nature of the hearing;
- c. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- d. A reference to the particular sections of the statutes and rules involved;
- e. A short and plain statement of the matters asserted. This statement shall contain sufficient detail to give the respondent fair notice of the allegations so the respondent may adequately respond to the charges, and to give the public notice of the matters at issue;
- f. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the board or the state and of parties' counsel where known;

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

- g.* Reference to the procedural rules governing conduct of the contested case proceeding;
- h.* Reference to the procedural rules governing informal settlement;
- i.* Identification of the presiding officer as the board, a panel of board members, or a panel of nonboard member specialists as provided in Iowa Code subsections 272C.6(1) and (2); and
- j.* A statement requiring the respondent to submit an answer pursuant to subrule 33.13(2) within 20 days after service of the statement of charges.

**641—33.7(17A) Requests for contested case proceeding.** Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the board action in question. The request for a contested case proceeding shall state the name and address of the requester; identify the specific board action which is disputed; describe issues of material fact in dispute; and, where the requester is represented by a lawyer, identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved. If the board grants the request, the board shall issue a notice of hearing. If the board denies the request, the board shall issue a written order specifying the basis for the denial.

**641—33.8(105) Legal representation.** Following the filing of a statement of charges, the office of the attorney general shall be responsible for the legal representation of the public interest in all proceedings before the board. The assistant attorney general assigned to prosecute a contested case before the board shall not represent the board in that case but shall represent the public interest.

**641—33.9(17A,105,272C) Presiding officer in a disciplinary contested case.** The presiding officer in a disciplinary contested case shall be the board, a panel of not less than three board members who are licensed under Iowa Code chapter 105, or a panel of nonboard member specialists as provided in Iowa Code subsections 272C.6(1) and (2). The board or a panel of board members when acting as presiding officer may request that an administrative law judge perform certain functions as an aid to the board or board panel, such as ruling on prehearing motions, conducting the prehearing conference, ruling on evidentiary objections at hearing, assisting in deliberation, or drafting the written decision for review by the board or board panel. Decisions of the administrative law judge serving in this capacity are subject to the interlocutory appeal provisions of rule 641—33.29(17A).

**641—33.10(17A) Presiding officer in a nondisciplinary contested case.**

**33.10(1)** A nondisciplinary contested case includes license denial proceedings. Any party in a nondisciplinary contested case, including an appeal of a denial of licensure, who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies or describes the presiding officer as the board.

**33.10(2)** The board may deny the request only upon a finding that one or more of the following apply:

- a.* There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.
- b.* An administrative law judge with the qualifications identified in subrule 33.10(4) is unavailable to hear the case within a reasonable time.
- c.* The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.
- d.* The demeanor of the witnesses is not likely to be dispositive in resolving the disputed factual issues.
- e.* Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.
- f.* The request was not timely filed.
- g.* The request is not consistent with a specified statute.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

**33.10(3)** The board shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge with the qualifications identified in subrule 33.10(4), the parties shall be notified at least 10 days prior to hearing if a qualified administrative law judge will not be available.

**33.10(4)** An administrative law judge assigned to act as presiding officer in a nondisciplinary contested case shall possess a juris doctorate degree.

**33.10(5)** Except as otherwise provided by a provision or law, all rulings by an administrative law judge acting as presiding officer in a nondisciplinary contested case are subject to appeal to the board. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies. Such appeals must be filed within 10 days of the date of the issuance of the challenged ruling but no later than the time for compliance with the order or the date of the hearing, whichever occurs first.

**33.10(6)** Unless otherwise provided by law, when reviewing a proposed decision of an administrative law judge in a nondisciplinary contested case upon appeal, the board shall possess the powers and shall comply with the provisions of this chapter which apply to presiding officers.

**641—33.11(17A) Disqualification.**

**33.11(1)** A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a.* Has a personal bias or prejudice concerning a party or a representative of a party;
- b.* Has personally investigated, prosecuted, or advocated, in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties (if the licensee elects to appear before the board in the investigative process pursuant to rule 641—34.7(17A), the licensee waives this provision);
- c.* Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated, in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;
- d.* Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e.* Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;
- f.* Has a spouse or relative within the third degree of relationship who:
  - (1) Is a party to the case, or an officer, director or trustee of a party;
  - (2) Is a lawyer in the case;
  - (3) Is known to have an interest that could be substantially affected by the outcome of the case; or
  - (4) Is likely to be a material witness in the case; or
- g.* Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

**33.11(2)** The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include:

- a.* General direction and supervision of assigned investigators;
- b.* Unsolicited receipt of information which is relayed to assigned investigators;
- c.* Review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding; or
- d.* Exposure to factual information while performing other board functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case.

**33.11(3)** Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrule 33.27(9).

**33.11(4)** By electing to participate in an appearance before the board pursuant to rule 641—34.7(17A), the licensee waives any objection to a board member’s participating as a decision

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

maker in a contested case proceeding on the grounds that the board member “personally investigated” the matter under this provision.

**33.11(5)** In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information from the records by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

**641—33.12(17A) Consolidation—severance.**

**33.12(1) Consolidation.** The presiding officer may consolidate any or all matters at issue in two or more contested cases where:

- a. The matters involve common parties or common questions of fact or law;
- b. Consolidation would expedite and simplify consideration of the issues involved; and
- c. Consolidation would not adversely affect the rights of any of the parties to those proceedings.

**33.12(2) Severance.** The presiding officer may, for good cause shown, order any contested case proceeding or portions thereof severed.

**641—33.13(17A) Pleadings.**

**33.13(1) Pleadings.** Pleadings may be required by rule, by the statement of charges, or by order of the presiding officer.

**33.13(2) Answer.** An answer shall be filed within 20 days of service of the statement of charges.

a. An answer shall:

- (1) Identify on whose behalf it is filed;
- (2) Set forth the name, address and telephone number of the person filing the answer, the person on whose behalf it is filed, and the attorney, if any, representing that person;
- (3) Specifically admit, deny, or otherwise answer all material allegations of the statement of charges; and
- (4) Set forth any facts deemed necessary to show an affirmative defense and contain as many additional defenses as the respondent may claim.

b. Any allegation in the statement of charges not denied in the answer is considered admitted.

c. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

**33.13(3) Amendments.** Any notice of hearing or statement of charges may be amended before a responsive pleading has been filed. Otherwise, a party may amend a pleading only with the consent of the other parties or at the discretion of the presiding officer who may impose terms or grant a continuance.

**641—33.14(17A) Service and filing.**

**33.14(1) Service—when requested.** Except where otherwise provided by law, every document filed in a contested case proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as prosecutor for the state, simultaneously with its filing. Except for the original statement of charges and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

**33.14(2) Service—how made.** Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person’s last-known address. Service by mail is completed upon mailing, except where otherwise specifically provided by statute, rule, or order.

**33.14(3) Filing—when required.** After the statement of charges, all documents in a contested case proceeding shall be filed with the board. All documents that are required to be served upon a party shall be filed simultaneously with the board.

**33.14(4) Filing—when made.** Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the Plumbing and Mechanical Systems Board, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075; delivered to an established courier service

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for immediate delivery to that office; or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

**33.14(5) Proof of mailing.** Proof of mailing includes:

- a. A legible United States Postal Service postmark on the envelope, or
- b. A certificate of service, or
- c. A notarized affidavit, or
- d. A certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Plumbing and Mechanical Systems Board, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075, and to the names and addresses of the parties listed below by depositing the same in (a United States Post Office mailbox with correct postage properly affixed or state interoffice mail).

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature)

**641—33.15(17A) Discovery.**

**33.15(1)** Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules, by order of the presiding officer, or by agreement of the parties, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

**33.15(2)** Any motion relating to discovery shall allege that the moving party has previously made a good faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within 10 days of the filing of the motion unless the time is shortened as provided in subrule 33.15(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

**33.15(3)** Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

**641—33.16(17A,272C) Subpoenas in a contested case.**

**33.16(1)** Subpoenas issued in a contested case may compel the attendance of witnesses at deposition or hearing and may compel the production of books, papers, records, or other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at deposition or hearing or may be issued separately. Subpoenas shall be issued by the executive officer or designee upon written request. In the case of a request for a subpoena of mental health records, the request must confirm compliance with the following conditions prior to the issuance of the subpoena:

- a. The nature of the issues in the case reasonably justifies the issuance of the requested subpoena;
- b. Adequate safeguards have been established to prevent unauthorized disclosure;
- c. An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and
- d. An attempt was made to notify the patient to secure an authorization from the patient for the release of the records at issue.

**33.16(2)** A request for a subpoena shall include the following information, as applicable, unless the subpoena is requested in order to compel testimony or documents for rebuttal or impeachment purposes:

- a. The name, address, and telephone number of the person requesting the subpoena;
- b. The name and address of the person to whom the subpoena shall be directed;
- c. The date, time, and location at which the person shall be commanded to attend and give testimony;
- d. Whether the testimony is requested in connection with a deposition or hearing;
- e. A description of the books, papers, records, or other real evidence requested;
- f. The date, time, and location for production, or inspection and copying; and

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*g.* In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 33.16(1) have been satisfied.

**33.16(3)** Each subpoena shall contain, as applicable:

- a.* The caption of the case;
- b.* The name, address, and telephone number of the person who requested the subpoena;
- c.* The name and address of the person to whom the subpoena is directed;
- d.* The date, time, and location at which the person is commanded to appear;
- e.* Whether testimony is commanded in connection with a deposition or hearing;
- f.* A description of the books, papers, records, or other real evidence the person is commanded to produce;
- g.* The date, time, and location for production, or inspection and copying;
- h.* The time within which a motion to quash or modify the subpoena must be filed;
- i.* The signature, address, and telephone number of the board executive officer or designee;
- j.* The date of issuance; and
- k.* A return of service.

**33.16(4)** Unless a subpoena is requested in order to compel testimony or documents for rebuttal or impeachment purposes, the executive officer or designee shall mail the subpoena to the requesting party, with a copy to the opposing party. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena.

**33.16(5)** Any person who is aggrieved or adversely affected by compliance with the subpoena, or any party to the contested case, who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified and may be accompanied by legal briefs or factual affidavits.

**33.16(6)** Upon receipt of a timely motion to quash or modify a subpoena, the board may request an administrative law judge to hold a hearing and issue a decision, or the board may conduct the hearing and issue a decision. Oral argument may be scheduled at the discretion of the board or the administrative law judge. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

**33.16(7)** A person who is aggrieved by a ruling of an administrative law judge and who desires to challenge that ruling must appeal the ruling to the board by serving on the board's executive director, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge.

**33.16(8)** If the person contesting the subpoena is not a party to the contested case, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is a party to the contested case, the board's decision is not final for purposes of judicial review until there is a final decision in the contested case.

**641—33.17(17A) Motions.**

**33.17(1)** No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

**33.17(2)** Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on the motion.

**33.17(3)** The presiding officer may schedule oral argument on any motion. If the board requests that an administrative law judge issue a ruling on a prehearing motion, the ruling is subject to interlocutory appeal pursuant to rule 641—33.29(17A).

**33.17(4)** Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least five days prior to the date of the hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the board or an order of the presiding officer.

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**33.17(5) Motions for summary judgment.** Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

*a.* Motions for summary judgment must be filed and served at least 20 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 10 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served.

*b.* The time fixed for hearing or nonoral submission shall be not less than 15 days after the filing of the motion, unless a shorter time is ordered by the presiding officer.

*c.* A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 641—33.32(17A,272C) and appeal pursuant to rule 641—33.30(17A,272C).

**641—33.18(17A) Withdrawals.** A party requesting a contested case proceeding may withdraw that request prior to the hearing upon written notice filed with the board and served on all parties. Unless otherwise ordered by the board, a withdrawal shall be with prejudice.

**641—33.19(17A) Intervention.**

**33.19(1) Motion.** A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

**33.19(2) When filed.** Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

**33.19(3) Grounds for intervention.** The movant shall demonstrate that:

*a.* Intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties;

*b.* The movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and

*c.* The interests of the movant are not adequately represented by existing parties.

**33.19(4) Effect of intervention.** If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

**641—33.20(17A) Telephone proceedings.** The presiding officer may, on the officer's own motion or as requested by a party, order hearings or argument to be held by telephone conference or other electronic means in which all parties have an opportunity to participate. The presiding officer will determine the location of the parties and witnesses for telephone or other electronic hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen. Disciplinary hearings will generally not be held by telephone or electronic means in the absence of consent by all parties, but the presiding officer may permit any witness to testify by telephone. Parties shall disclose at or before the prehearing conference if any witness will be testifying by telephone. Objections, if any, shall be filed with the board and served on all parties at least three business days in advance of hearing.

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**641—33.21(17A) Prehearing conferences.**

**33.21(1)** Any party may request a prehearing conference. Prehearing conferences shall be conducted by the executive officer or designee, who may request the assistance of an administrative law judge. A written request for prehearing conference or an order for prehearing conference on the executive officer's own motion shall be filed not less than ten days prior to the hearing date. A prehearing conference shall be scheduled not less than five business days prior to the hearing date. The executive officer shall set a prehearing conference in all licensee disciplinary cases and provide notice of the date and time in the notice of hearing. Written notice of the prehearing conference shall be given by the executive officer to all parties. For good cause the executive officer may permit variances from this rule.

**33.21(2)** The parties at a prehearing conference shall be prepared to discuss the following subjects, and the executive officer or administrative law judge may issue appropriate orders concerning:

*a.* The possibility of settlement.  
*b.* The entry of a scheduling order to include deadlines for completion of discovery.  
*c.* Stipulations of law or fact.  
*d.* Stipulations on the admissibility of evidence.  
*e.* Submission of expert or other witness lists. Witness lists may be amended subsequent to the prehearing conference within the time limits established by the executive officer or administrative law judge at the prehearing conference. Any such amendments must be served on all parties. Witnesses not listed on the final witness list may be excluded from testifying unless there was good cause for the failure to include their names.

*f.* Submission of exhibit lists. Exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the executive director or administrative law judge at the prehearing conference. Other than rebuttal exhibits, exhibits that are not listed on the final exhibit list may be excluded from admission into evidence unless there was good cause for the failure to include them.

*g.* Stipulations for waiver of any provision of law.

*h.* Identification of matters which the parties intend to request to be officially noticed.

*i.* Consideration of any additional matters which will expedite the hearing.

**33.21(3)** Prehearing conferences may be conducted by telephone unless otherwise ordered.

**641—33.22(17A) Continuances.**

**33.22(1)** Unless otherwise provided, applications for continuance shall be filed with the board at least seven days before the date scheduled for hearing. If the application for continuance is not contested, the executive officer or designee shall issue the appropriate order. If the application for continuance is contested, the matter shall be heard by the board or delegated by the board to an administrative law judge.

**33.22(2)** A written application for continuance shall:

*a.* Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;

*b.* State the specific reasons for the request for continuance; and

*c.* Be signed by the requesting party or the party's representative.

**33.22(3)** An oral application for continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer.

**33.22(4)** No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The board may waive notice of such requests for a particular case or an entire class of cases.

**33.22(5)** The board or administrative law judge may require documentation of any grounds for continuance. In determining whether to grant a continuance, the board or administrative law judge may consider:

*a.* Prior continuances;

*b.* The interests of all parties;

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- c. The public interest;
- d. The likelihood of informal settlement;
- e. The existence of an emergency;
- f. Any objection;
- g. Any applicable time requirements;
- h. The existence of a conflict in the schedules of counsel, parties, or witnesses;
- i. The timeliness of the request; and
- j. Other relevant factors.

**641—33.23(272C) Settlement agreements.**

**33.23(1)** Settlement negotiations after the notice of hearing is served may be initiated by the licensee or other respondent, the prosecuting attorney, the board's executive officer, or the board chair or chair's designee.

**33.23(2)** The board chair or chair's designee shall have authority to negotiate on behalf of the board but shall not have the authority to bind the board to a particular terms of settlement.

**33.23(3)** The respondent is not obligated to participate in settlement negotiations. The respondent's initiation or consent to settlement negotiations constitutes a waiver of notice and opportunity to be heard during the settlement negotiation pursuant to Iowa Code section 17A.17 and rule 641—33.27(17A). Thereafter, the prosecuting attorney is authorized to discuss informal settlement with the board chair or chair's designee, and the designated board member is not disqualified from participating in the adjudication of the contested case.

**33.23(4)** Unless designated to negotiate, no member of the board shall be involved in settlement negotiation until a written consent order is submitted to the full board for approval. No informal settlement shall be submitted to the full board unless it is in final written form executed by the respondent. By signing the proposed consent order, the respondent authorizes the prosecuting attorney or executive officer to have ex parte communications with the board related to the terms of the settlement. If the board fails to approve the consent order, it shall be of no force and effect to either party and shall not be admissible at hearing. Upon rejecting a proposed consent order, the board may suggest alternative terms of settlement, which the respondent is free to accept or reject.

**33.23(5)** If the board and respondent agree to a consent order, the consent order shall constitute the final decision of the board. By electing to resolve a contested case through consent order, the respondent waives all rights to a hearing and attendant rights. A consent order in a licensee disciplinary case shall have the force and effect of a final disciplinary order entered in a contested case and may be published as provided in subrule 33.30(1).

**641—33.24(17A) Hearing procedures.** The presiding officer shall be in control of the proceedings and shall have the authority to administer oaths and to admit or exclude testimony or other evidence and shall rule on all motions and objections. The board may request that an administrative law judge assist the board by performing any of these functions.

**33.24(1) Examination of witnesses.** All witnesses shall be sworn or affirmed by the presiding officer or the court reporter, and shall be subject to cross-examination. Board members and the administrative law judge have the right to examine witnesses at any stage of a witness's testimony. The presiding officer may limit questioning in a manner consistent with law.

**33.24(2) Public hearing.** The hearing shall be open to the public unless a licensee or licensee's attorney requests in writing that a licensee disciplinary hearing be closed to the public.

**33.24(3) Record of proceedings.** Oral proceedings shall be recorded either by mechanical or electronic means or by certified shorthand reporters. Oral proceedings or any part thereof shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party. The recording or stenographic notes of oral proceedings or the transcription shall be filed with and maintained by the board for at least five years from the date of decision.

**33.24(4) Order of proceedings.** Before testimony is presented, the record shall show the identities of any board members present, the identity of the administrative law judge, the identities of the primary

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parties and their representatives, and the fact that all testimony is being recorded. In contested cases initiated by the board, such as licensee discipline, hearings shall generally be conducted in the following order, subject to modification at the discretion of the board:

*a.* The presiding officer or designee may read a summary of the charges and answers thereto and other responsive pleadings filed by the respondent prior to the hearing.

*b.* The assistant attorney general representing the state's interest before the board may make a brief opening statement, which may include a summary of charges and the names of any witnesses and documents to support such charges.

*c.* Each respondent shall be offered the opportunity to make an opening statement, including the names of any witnesses the respondent(s) desires to call in defense. A respondent may elect to make the opening statement just prior to the presentation of evidence by the respondent(s).

*d.* The presentation of evidence on behalf of the state.

*e.* The presentation of evidence on behalf of the respondent(s).

*f.* Rebuttal evidence on behalf of the state, if any.

*g.* Rebuttal evidence on behalf of the respondent(s), if any.

*h.* Closing arguments first on behalf of the state, then on behalf of the respondent(s), and then on behalf of the state, if any.

The order of proceedings shall be tailored to the nature of the contested case. In license reinstatement hearings, for example, the respondent will generally present evidence first because the respondent is obligated to present evidence in support of the respondent's application for reinstatement pursuant to rule 641—33.40(17A,272C). In license denial hearings, the state will generally first establish the basis for the board's denial of licensure, but thereafter the applicant has the burden of establishing the conditions for licensure pursuant to rule 641—33.36(17A,105,272C).

**33.24(5) *Decorum.*** The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

**33.24(6) *Immunity.*** The presiding officer shall have authority to grant immunity from disciplinary action to a witness, as provided by Iowa Code section 272C.6(3), but only upon the unanimous vote of all members of the board hearing the case. The official record of the hearing shall include the reasons for granting the immunity.

**33.24(7) *Sequestering witnesses.*** The presiding officer, on the officer's own motion or upon the request of a party, may sequester witnesses.

#### **641—33.25(17A) Evidence.**

**33.25(1)** The presiding officer shall rule on the admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

**33.25(2)** Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

**33.25(3)** Evidence in the proceeding shall be confined to the issues as to which the parties required notice prior to the hearing unless a party waives the party's right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

**33.25(4)** The party seeking admission of an exhibit must provide the opposing party with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents shall be provided to opposing parties. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

**33.25(5)** Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection must be timely and shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

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**33.25(6)** Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

**33.25(7)** Irrelevant, immaterial and unduly repetitious evidence should be excluded. A finding will be based upon the kind of evidence upon which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based on hearsay or other types of evidence which may or would be inadmissible in a jury trial.

**641—33.26(17A) Default.**

**33.26(1)** If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

**33.26(2)** Where appropriate and not contrary to law, any party may move for default against a party who has failed to appear after proper service.

**33.26(3)** Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final board action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by subrule 33.30(2). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

**33.26(4)** The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

**33.26(5)** Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

**33.26(6)** "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under the Iowa Rules of Civil Procedure.

**33.26(7)** A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 641—33.29(17A).

**33.26(8)** If a motion to vacate is granted and no interlocutory appeal has been taken, the presiding officer shall issue another statement of charges and the contested case shall proceed accordingly.

**33.26(9)** A default decision may provide either that the default is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 641—33.33(17A).

**641—33.27(17A) Ex parte communication.**

**33.27(1)** Prohibited communications. Unless requested for the disposition of ex parte matters specifically authorized by statute, following issuance of the statement of charges, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. Nothing in this provision is intended to preclude board members from communicating with other board members or members of the board staff, other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 33.11(2), prosecuting, or advocating in, either the case

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under consideration or a pending factually related case involving the same parties, as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

**33.27(2)** Prohibitions on ex parte communications commence with the issuance of the statement of charges in a contested case and continue for as long as the case is pending before the board.

**33.27(3)** Written, oral, or other forms of communication are “ex parte” if made without notice and opportunity for all parties to participate.

**33.27(4)** To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 641—33.14(17A) and may be supplemented by telephone, facsimile, electronic mail, or other means of notification. When permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

**33.27(5)** Persons who jointly act as a presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

**33.27(6)** The executive officer or other persons may be present during deliberations as long as the executive officer or other person is not disqualified from participating pursuant to rule 641—33.11(17A).

**33.27(7)** Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 641—33.22(17A).

**33.27(8)** Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the contested case process must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified.

*a.* If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order.

*b.* If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

**33.27(9)** Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment, unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

**33.27(10)** The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the board. Violation of ex parte communications prohibitions by board personnel shall be reported to the board and the board’s executive officer for possible sanctions, including censure, suspension, dismissal, or other disciplinary action.

**641—33.28(17A) Recording costs.** Upon request, the board shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

**641—33.29(17A) Interlocutory appeals.** Upon written request of a party or on its own motion, the board may review an interlocutory order of the executive officer, administrative law judge, or hearing panel. Any request for interlocutory review must be filed within 14 days of issuance of the challenged

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order, but no later than the time for compliance with the order or the date of the hearing, whichever is first. In determining whether to do so, the board shall consider:

1. The extent to which its granting the interlocutory appeal would expedite final resolution of the case; and
2. The extent to which review of that interlocutory order by the board at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy.

**641—33.30(17A,272C) Decisions.**

**33.30(1) Final decisions.** When a quorum of the board presides over the reception of the evidence at the hearing, its decision is a final decision. A majority of the members shall constitute a quorum. Final decisions shall be served on the parties in accordance with subrule 33.14(2). Final decisions of the board, including consent agreements and consent orders, are public documents, are available to the public, and may be disseminated by the board and others as provided in Iowa Code chapter 22.

**33.30(2) Proposed panel decisions.**

*a. Panel of specialists.* When a panel of three specialists presides over the hearing, the panel shall issue a proposed decision which shall include findings of fact but shall not include conclusions of law or any recommendation for or against the licensee discipline. A proposed decision of a panel of specialists, together with a transcript of the proceedings and the exhibits presented, shall be reviewed by the board within 30 days of the date the proposed decision was issued.

*b. Panel of board members.* When a panel of three or more board members presides over the hearing, the panel shall issue a proposed decision which shall include proposed findings of fact, conclusions of law, and the order. A proposed panel decision shall be reviewed by the board within 30 days of the date the proposed panel decision was issued. A proposed panel decision becomes a final decision without further proceedings unless appealed in accordance with paragraph 33.30(2)“c.”

*c. Appeal of proposed panel decisions.* A proposed panel decision pursuant to paragraph 33.30(2)“a” or paragraph 33.30(2)“b” may be appealed to the full board by either party by serving on the executive officer, either in person or by certified mail, a notice of appeal within 30 days after service of the proposed decision on the appealing party. The notice of appeal shall specify the party initiating the appeal, the proposed decision or order appealed from, the specific findings or conclusions to which exception is taken and any other exceptions to the decision or order, the relief sought, and the grounds for relief.

(1) Following receipt of a notice of appeal, the board shall enter an order establishing a schedule for submission of briefs and oral argument. The parties shall serve their briefs on the board and shall furnish an additional copy to each party by first-class mail. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding.

(2) Oral argument shall be heard by the board unless waived by both parties. The time granted each party for oral argument shall be established by the board.

(3) The record on appeal shall be the entire record made before the hearing panel or administrative law judge.

*d. Confidentiality.* At no time prior to the release of the final decision by the board shall a proposed decision be made public or distributed to any person other than the parties.

*e. Requests to present additional evidence.* A party may request the taking of additional evidence after the issuance of a proposed decision only by establishing that:

- (1) The evidence is material; and
- (2) The evidence arose after the completion of the original hearing; or
- (3) Good cause exists for failure to present the evidence at the original hearing; and
- (4) The party has not waived the right to present additional evidence.

A written request to present additional evidence must be filed with the notice of appeal or by a nonappealing party within 14 days of service of the notice of appeal. The board may remand a case to the hearing panel for further hearing or may itself preside at the taking of additional evidence.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

**641—33.31(17A,272C) Client notification.** Within 15 days (or such other time period specifically ordered by the board) of the licensee's receipt of the board's final decision, whether entered by consent or following hearing, which suspends or revokes a license or accepts a voluntary surrender of a license to resolve a disciplinary case, the licensee shall notify in writing all current clients of the fact that the license has been suspended, revoked or voluntarily surrendered. Such notice shall advise clients to obtain alternative professional services. Within 30 days of receipt of the board's final order, the licensee shall file with the board copies of the notices sent. Compliance with this requirement shall be a condition for an application for reinstatement.

**641—33.32(17A,272C) Application for rehearing.**

**33.32(1) Who may file.** Any party to a contested case proceeding may file an application for rehearing from a final order.

**33.32(2) Content of application.** The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the board decision on the existing record and whether, on the basis of grounds enumerated in paragraph 33.30(2) "e" and rule 641—33.31(17A,272C), the applicant requests an opportunity to submit additional evidence.

**33.32(3) Filing deadline.** The application shall be filed with the board within 20 days after issuance of the final decision.

**33.32(4) Notice to other parties.** A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein.

**33.32(5) Additional evidence.** A request that additional evidence be considered on rehearing shall be governed by paragraph 33.30(2) "e."

**33.32(6) Disposition.** Any application for rehearing shall be deemed denied unless the board grants the application within 20 days after its filing.

**33.32(7) Only remedy.** Application for rehearing is the only procedure by which a party may request that the board reconsider a final board decision.

**33.32(8) Proceedings.** If the board grants an application for rehearing, the board may set the application for oral argument or for hearing if additional evidence will be received. If additional evidence will not be received, the board may issue a ruling without oral argument or hearing. The board may, on the request of a party or on its own motion, order or permit the parties to provide written argument on one or more designated issues. The board may be assisted by an administrative law judge in all proceedings related to an application for rehearing.

**641—33.33(17A) Stays of board actions.**

**33.33(1) When available.**

*a.* Any party to a contested case proceeding may petition the board for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the board. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The board may rule on the stay or authorize the administrative law judge to do so.

*b.* Any party to a contested case proceeding may petition the board for a stay or other temporary remedies, pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

**33.33(2) When granted.** In determining whether to grant a stay, the presiding officer or board shall consider the factors listed in Iowa Code section 17A.19(5) "c."

**33.33(3) Vacation.** A stay may be vacated by the issuing authority upon application of the board or any other party.

**641—33.34(17A) No factual dispute contested cases.** If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached,

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

**641—33.35(17A) Emergency adjudicative proceedings.**

**33.35(1) *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 board may issue a written order in compliance with Iowa Code section 17A.18A to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the board by emergency adjudicative order. Before issuing an emergency adjudicative order, the board shall consider factors including, but not limited to, the following:

- a. Whether there has been a sufficient factual investigation to ensure that the board 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 person 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 board is necessary to avoid the immediate danger.

**33.35(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 and the board's decision to take immediate action. The order is an open record.

b. The written emergency adjudicative order shall be immediately delivered to the person 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 board.
- (3) Certified mail to the last address on file with the board.
- (4) Facsimile, which may be used as the sole method of delivery if the person required to comply with the order has filed a written request that board orders be sent by facsimile and has provided a facsimile number for that purpose.

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

**33.35(3) *Oral notice.*** Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order is issued, the board shall make reasonable immediate efforts to contact by telephone the person who is required to comply with the order.

**33.35(4) *Completion of proceedings.*** After the issuance of an emergency adjudicative order, the board shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

a. Issuance of a written emergency adjudicative order shall include notification of the date on which board proceedings are scheduled for hearing.

b. After issuance of an emergency adjudicative order, continuance of further board proceedings to a later date will be granted only in compelling circumstances upon written application unless the person required to comply with the order is the party requesting the continuance.

**641—33.36(17A,105,272C) License denial.** If the board denies an application for a license, the board or its staff shall send written notice to the applicant by regular first-class mail identifying the factual and legal basis for denying the application. If the board denies an application to renew an existing license, the provisions of rule 641—33.37(17A,105,272C) shall apply.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

**33.36(1)** An applicant who is aggrieved by the denial of an application for licensure and who desires to contest the denial must request a hearing before the board within 30 calendar days of the date the notice of denial is mailed. A request for hearing must be in writing and is deemed made on the date of the United States Postal Service nonmetered postmark or the date of personal service to the board office. The request for hearing shall specify the factual or legal errors that the applicant contends were made by the board, must identify any factual disputes upon which the applicant desires an evidentiary hearing, and may provide additional written information or documents in support of licensure. If a request for hearing is timely made, the board shall promptly issue a notice of hearing on the grounds asserted by the applicant.

**33.36(2)** Subject to subrule 33.10(1), the board may act as presiding officer at the contested case hearing, may hold the hearing before a panel of three board members, or may request that an administrative law judge act as the presiding officer and render a proposed decision. A proposed decision by a panel of board members or an administrative law judge is subject to appeal or review by the board pursuant to subrule 33.30(2).

**33.36(3)** License denial hearings are contested cases open to the public. Evidence supporting the denial of the license may be presented by an assistant attorney general. While each party shall have the burden of establishing the affirmative of matters asserted, the applicant shall have the ultimate burden of persuasion as to the applicant's qualification for licensure.

**33.36(4)** The presiding officer, after a hearing on the license denial, may grant or deny the application for licensure. If denied, the presiding officer shall state the reasons for denial of the license and may state conditions under which the application for licensure might be granted, if applicable.

**33.36(5)** The notice of license denial, request for hearing, notice of hearing, record at hearing, and order are open records and available for inspection and copying in accordance with Iowa Code chapter 22. Copies may be provided to the media, collateral organizations, and other persons or entities.

**33.36(6)** Judicial review of a final order of the board denying licensure may be sought in accordance with the provisions of Iowa Code section 17A.19 which are applicable to judicial review of any agency's final decision in a contested case.

**641—33.37(17A,105,272C) Denial of application to renew license.** If the board denies a timely and sufficient application to renew a license, a notice of hearing shall be issued to commence a contested case proceeding.

**33.37(1)** Hearings on denial of an application to renew a license shall be conducted according to the procedural rules applicable to contested cases. Evidence supporting the denial of the license may be presented by an assistant attorney general. The provisions of subrules 33.36(2) and 33.36(4) to 33.36(6) shall generally apply, although license denial hearings which are in the nature of disciplinary actions will be subject to all laws and rules applicable to such hearings.

**33.37(2)** Pursuant to Iowa Code section 17A.18(2), an existing license shall not terminate or expire if the licensee has made timely and sufficient application for renewal until the last day for seeking judicial review of the board's final order denying the application, or a later date fixed by order of the board or the reviewing court.

**33.37(3)** Within the meaning of Iowa Code section 17A.18(2), a timely and sufficient renewal application shall be:

- a.* Received by the board in paper or electronic form, or postmarked with a nonmetered United States Postal Service postmark on or before the date the license is set to expire or lapse;
- b.* Signed by the licensee if the application is submitted in paper form or certified as accurate if submitted electronically;
- c.* Fully completed; and
- d.* Accompanied with the required fee. The fee shall be deemed unacceptable if, for instance, the amount is incorrect, the fee was not included with the application, the credit card number provided by the applicant is incorrect, the date of expiration of a credit card is omitted or incorrect, the attempted credit card transaction is rejected, or the applicant's check is returned for insufficient funds.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

**33.37(4)** The administrative processing of an application to renew an existing license shall not prevent the board from subsequently commencing a contested case to challenge the licensee's qualifications for continued licensure if grounds exist to do so.

**641—33.38(105,272C) Recovery of hearing fees and expenses.** The board may assess the licensee certain fees and expenses relating to a disciplinary hearing only if the board finds that the licensee has violated a statute or rule enforced by the board. Payment shall be made directly to the Plumbing and Mechanical Systems Board.

**33.38(1)** The board may assess the following costs under this rule:

*a.* For conducting a disciplinary hearing, an amount not to exceed \$75.

*b.* All applicable costs involved in the transcript of the hearing or other proceedings in the contested case including, but not limited to, the services of the court reporter at the hearing, transcription, duplication, and postage or delivery costs. In the event of an appeal to the full board from a proposed decision, the appealing party shall timely request and pay for the transcript necessary for use in the board appeal process. The board may assess the transcript cost against the licensee pursuant to Iowa Code section 272C.6(6) or against the requesting party pursuant to Iowa Code section 17A.12(7), as the board deems equitable under the circumstances.

*c.* All normally accepted witness expenses and fees for a hearing or the taking of depositions, as incurred by the state of Iowa. These costs shall include, but not be limited to, the cost of an expert witness and the cost involved in telephone testimony. The costs for lay witnesses shall be guided by Iowa Code section 622.69. The cost for expert witnesses shall be guided by Iowa Code section 622.72. Mileage costs shall not be guided by Iowa Code section 625.2. The provisions of Iowa Code section 622.74 regarding advance payment of witness fees and the consequences of failure to make such payment are applicable with regard to any witness who is subpoenaed by either party to testify at hearing. Additionally, the board may assess travel and lodging expenses for witnesses at a rate not to exceed the rate applicable to state employees on the date the expense is incurred.

*d.* All normally applicable costs incurred by the state of Iowa involved in depositions including, but not limited to, the service of the court reporter who records the deposition, transcription, duplication, and postage or delivery costs. When a deposition of an expert witness is taken, the deposition cost shall include a reasonable expert witness fee. The expert witness fee shall not exceed the expert's customary hourly or daily rate, and shall include the time spent in travel to and from the deposition but exclude time spent in preparation for the deposition.

**33.38(2)** When imposed at the board's discretion, hearing fees (not exceeding \$75) shall be assessed in the final disciplinary order. Costs and expenses assessed pursuant to this rule shall be calculated and, when possible, entered into the final disciplinary order specifying the amount to be reimbursed and the time period in which the amount assessed must be paid by the licensee.

*a.* When it is impractical or not possible to include in the disciplinary order the exact amount of the assessment and time period in which to pay in a timely manner, or if the expenditures occur after the disciplinary order is issued, the board, by majority vote of the members present, may assess through separate order the amount to be reimbursed and the time period in which payment is to be made by the licensee.

*b.* If the assessment and the time period are not included in the disciplinary order, the board shall have until the end of the sixth month after the date the state of Iowa paid the expenditures to assess the licensee for such expenditures. In order for the board to rely on this provision, however, the final disciplinary order must notify the licensee that fees and expenses will be assessed once known.

**33.38(3)** Any party may object to the fees, costs, or expenses assessed by the board by filing a written objection within 20 days of the issuance of the final disciplinary decision, or within 10 days of any subsequent order establishing the amount of the assessment. A party's failure to timely object shall be deemed a failure to exhaust administrative remedies. Orders which impose fees, costs, or expenses shall notify the licensee of the time frame in which objections must be filed in order to exhaust administrative remedies.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

**33.38(4)** Fees, costs, and expenses assessed by the board pursuant to this rule shall be allocated to the expenditure category in which the disciplinary procedure or hearing was incurred. The fees, costs, and expenses shall be considered repayment of receipts as defined in Iowa Code section 8.2.

**33.38(5)** The failure to comply with payment of the assessed costs, fees, and expenses within the time specified by the board shall constitute a violation of an order of the board, shall be grounds for discipline, and shall be considered prima facie evidence of a violation of Iowa Code section 272C.3(2)(a). However, no action may be taken against the licensee without the opportunity for hearing as provided in this chapter.

**641—33.39(17A) Judicial review.** Judicial review of the board's decision may be sought in accordance with the terms of Iowa Code chapter 17A.

**33.39(1)** Consistent with Iowa Code section 17A.19(3), if a party does not file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the issuance of the board's final decision. The board's final decision is deemed issued on the date it is mailed or the date of delivery if service is by other means, unless another date is specified in the order.

**33.39(2)** If a party files a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the application for rehearing is denied or deemed denied. An application for rehearing is denied or deemed denied as provided in subrule 33.32(6).

**641—33.40(17A,272C) Reinstatement.**

**33.40(1)** The term "reinstatement," as used in this rule, includes both the reinstatement of a suspended license and the issuance of a new license following the revocation or voluntary surrender of a license.

**33.40(2)** Any person whose license has been revoked or suspended by the board, or who voluntarily surrendered a license in a disciplinary proceeding, may apply to the board for reinstatement in accordance with the terms of the order of revocation or suspension, or order accepting the voluntary surrender.

**33.40(3)** Unless otherwise provided by law, if the order of revocation or suspension did not establish terms upon which reinstatement might occur, or if the license was voluntarily surrendered, an initial application for reinstatement may not be made until at least one year has elapsed from the date of the order or the date the board accepted the voluntary surrender of a license.

**33.40(4)** All proceedings for reinstatement shall be initiated by the respondent, who shall file with the board an application for reinstatement of the respondent's license. Such application shall be docketed in the original case in which the license was revoked, suspended, or relinquished. All proceedings upon the petition for reinstatement, including the matters preliminary and ancillary thereto, shall be subject to the same rules of procedure as other cases before the board.

**33.40(5)** An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis of revocation, suspension or voluntary surrender of the respondent's license no longer exists and that it will be in the public interest for the license to be reinstated. Compliance with rule 641—33.31(17A,272C) must also be established. The burden of proof to establish such facts shall be on the respondent.

**33.40(6)** An order of reinstatement shall be based upon a decision which incorporates findings of fact and conclusions of law and must be based upon the affirmative vote of not fewer than a majority of the board. This order shall be published as provided for in subrule 33.30(1).

These rules are intended to implement Iowa Code chapters 17A, 105 and 272C.

**ARC 8855B****PUBLIC SAFETY DEPARTMENT[661]****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 2009 Iowa Code Supplement section 100D.5, the State Fire Marshal hereby gives Notice of Intended Action to adopt new Chapter 276, “Licensing of Fire Protection System Installers and Maintenance Workers,” Iowa Administrative Code.

During its 2008 session, the Iowa General Assembly enacted Iowa Code chapter 100D, which establishes a new licensing program for fire protection system installers and maintenance workers within the Fire Marshal Division of the Department of Public Safety. This law was amended during the 2009 session by 2009 Iowa Acts, House File 400, and again in 2010 by 2010 Iowa Acts, Senate File 2355.

Administrative rules to implement the requirements of 2009 Iowa Code Supplement chapter 100D were first proposed in a Notice of Intended Action published in the Iowa Administrative Bulletin on September 23, 2009, as **ARC 8153B**. Numerous comments were received regarding the rules as proposed in that Notice, and a variety of difficulties in implementing the law as written at that time were identified. Consequently, the previous rule making was put on hold and the Notice of Intended Action was allowed to expire so that legislative action could take place during the 2010 session of the Iowa General Assembly to address these concerns. The enactment of 2010 Iowa Acts, Senate File 2355, was the result.

The rules proposed herein provide for the establishment and administration of the licensing program, including licensing requirements, license fees, insurance and bonding requirements, disciplinary action against licensees, application forms, examination procedures, and procedures for reporting violations of these rules.

A public hearing on these proposed rules will be held on July 6, 2010, at 9 a.m. in the First Floor Conference Room (Room 125), State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319. The building and conference room are fully accessible. Persons may present their views orally or in writing at the public hearing. Persons who wish to make oral presentations at the public hearing should contact the Agency Rules Administrator, Iowa Department of Public Safety, State Public Safety Headquarters Building, Des Moines, Iowa 50319, by mail; by telephone at (515)725-6185; or by electronic mail to [admrule@dps.state.ia.us](mailto:admrule@dps.state.ia.us), at least one day prior to the public hearing.

Any written comments or information regarding these proposed rules may be directed to the Agency Rules Administrator by mail or electronic mail at the addresses indicated by 4:30 p.m. on July 6, 2010, or submitted at the public hearing.

The rules proposed herein are subject to the general waiver provisions which apply to rules of the Fire Marshal.

These rules are intended to implement 2009 Iowa Code Supplement chapter 100D as amended by 2010 Iowa Acts, Senate File 2355.

The following amendment is proposed.

Adopt the following new 661—Chapter 276:

CHAPTER 276  
LICENSING OF FIRE PROTECTION SYSTEM INSTALLERS  
AND MAINTENANCE WORKERS

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

**661—276.1(100D) Establishment of program.** There is established within the fire marshal division a fire protection system installer and maintenance worker licensing program. The program is established pursuant to 2009 Iowa Code Supplement chapter 100D as amended by 2010 Iowa Acts, Senate File 2355.

**276.1(1) Licensing required.** A person shall not act as a fire protection system installer and maintenance worker without being currently licensed as a fire protection system installer and maintenance worker by the fire marshal, except for the following as provided in 2009 Iowa Code Supplement section 100D.11 as amended by 2010 Iowa Acts, Senate File 2355:

*a.* A person licensed as a professional engineer pursuant to Iowa Code chapter 542B who is providing consultation or develops plans or other work concerning the installation or design of fire protection systems shall not be required to be licensed pursuant to this chapter.

*b.* A person whose work on fire protection systems is limited to routine maintenance shall not be required to be licensed pursuant to this chapter.

*c.* A person who is licensed as a plumber pursuant to Iowa Code chapter 105 and whose work is within the scope of that license shall not be required to be licensed pursuant to this chapter.

*d.* A person who is working as an apprentice fire protection system installer and maintenance worker under the direct supervision of a responsible managing employee or under the direct supervision of a licensed fire sprinkler installer and maintenance worker who is on site while the work is being performed shall not be required to be licensed pursuant to this chapter. For purposes of this rule, “direct supervision” means that the person supervising the person performing the work shall be on the job site while the work being supervised is performed.

*e.* A person who demolishes fire protection system components shall not be required to be licensed pursuant to this chapter when the work involves the demolition of a complete fire protection system or if the work results in a fire protection system’s being placed out of service. If a fire protection system has been placed out of service, work required to place it into service must be performed by a person licensed to perform such work pursuant to this chapter. A person who demolishes a fire protection system or components thereof shall comply with any local ordinance, statute or administrative rule which requires notification to a local fire authority or the state fire marshal.

*f.* A person who is a responsible managing employee of a fire extinguishing system contractor certified pursuant to Iowa Code chapter 100C shall not be required to be licensed pursuant to this chapter.

**276.1(2) Endorsement.** The license of each installer and maintenance worker shall carry an endorsement for one or more of the following:

*a.* Automatic sprinkler system installation and maintenance;

*b.* Special hazards fire suppression system installation and maintenance;

*c.* Installation of preengineered dry chemical or wet agent fire protection systems;

*d.* Maintenance of preengineered dry chemical or wet agent fire protection systems;

*e.* Installation of preengineered water-based fire protection systems in one- and two-family dwellings;

*f.* Maintenance of preengineered water-based fire protection systems in one- and two-family dwellings;

*g.* Any combination thereof.

Any person acting as a fire protection system installer and maintenance worker shall do so only in relation to systems covered by the endorsements on the person’s license.

**276.1(3) Length of licensure.** Licensure shall normally be for two years and shall expire on December 31 of the year following the issuance of the license. A license which is effective on a date other than January 1 shall be effective on the date on which the license is issued and shall expire on December 31 of the year following the year in which the license is issued. The fee for licenses issued for less than a full two-year period shall be prorated on the basis of the number of quarters for which the license shall be in effect.

**276.1(4) Inquiries.** Inquiries regarding the fire protection system installer and maintenance worker licensing program may be addressed to:

Fire Protection System Installer and Maintenance Worker Licensing Program  
Fire Marshal Division

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Iowa Department of Public Safety  
215 East 7th Street  
Des Moines, Iowa 50319

Inquiries may be addressed by electronic mail to [fesccp@dps.state.ia.us](mailto:fesccp@dps.state.ia.us); by telephone to (515)725-6145; or by facsimile to (515)725-6172.

**661—276.2(100D) Definitions.** The following definitions apply to rules 661—276.1(100D) through 661—276.6(100D):

*“Apprentice fire protection system installer and maintenance worker”* means a person, other than a trainee, who is registered in an apprenticeship program approved by the United States Department of Labor and who is engaged in learning the fire protection system industry trade under the direct supervision of a responsible managing employee of a certified fire extinguishing system contractor or licensed fire sprinkler installer and maintenance worker.

*“Department”* means the department of public safety.

*“Fire extinguishing system contractor”* means a person(s) engaging in or representing oneself to the public as engaging in the activity or business of layout, installation, repair, service, alteration, addition, testing, maintenance, or maintenance inspection of automatic fire extinguishing systems in this state, as defined in Iowa Code section 100C.1, and who is certified pursuant to Iowa Code chapter 100C.

*“Fire protection system”* means a sprinkler, standpipe, hose system, special hazard system, dry system, foam system, or any water-based fire protection system, whether engineered or preengineered and whether manually or automatically activated, used for fire protection purposes which may include an integrated system of underground and overhead piping and which may be connected to a water source.

*“Fire protection system installation”* means to set up or establish a fire protection system for use in an indicated space.

*“Fire protection system installer and maintenance worker”* means a person who, having the necessary qualifications, training, experience, and technical knowledge, conducts fire protection system installation and maintenance and who is licensed by the department to install or maintain the types of fire protection systems endorsed on the person’s license.

*“Fire protection system maintenance”* means to provide repairs, including all inspections and tests, required to keep a fire protection system and its component parts in an operative condition at all times and the replacement of the system or its component parts when they become undependable or inoperable.

*“Listed”* means equipment, materials, or services included in a list published by a nationally recognized independent testing organization concerned with evaluation of products or services that maintains periodic inspection of the production of listed equipment or materials or periodic evaluation of services and whose listing states that either the equipment, material, or service meets appropriate designated standards or has been tested and found suitable for a specified purpose.

*“Preengineered fire protection system”* means a fire protection system that has a predetermined flow rate, nozzle pressure, and quantity of extinguishing agent.

*“Responsible managing employee”* means an owner, partner, officer, or manager employed full-time by a fire extinguishing system contractor, who meets the requirements for a responsible managing employee established in Iowa Code chapter 100C and 661—Chapter 275.

*“Routine maintenance”* means the repair or replacement of existing fire protection system components of the same size and type, for which no changes in configuration are made. “Routine maintenance” does not mean any new installation or any expansion or extension of any existing fire protection system, nor does it mean inspection and testing.

*“Temporary license”* means a license issued to a fire sprinkler protection system installer and maintenance worker who is licensed or certified in another state and who will perform work in Iowa only within areas covered by a disaster emergency proclamation issued by the governor pursuant to Iowa Code section 29C.6.

*“Trainee”* means a person who is engaged in learning the fire protection system industry trade under the direct supervision of a responsible managing employee or a licensed fire protection system installer

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

and maintenance worker who is not a trainee. "Trainee" does not mean a person who is an apprentice fire protection system installer and maintenance worker.

**661—276.3(100D) Licensing requirements.** A fire protection system installer and maintenance worker shall meet all of the following requirements in order to receive a license from the fire marshal and shall continue to meet all requirements throughout the period of licensure. A licensee shall notify the fire marshal, in writing on a form designated by the fire marshal, within 30 calendar days if the licensee fails to meet any requirement for licensure.

**276.3(1) Liability insurance.** Each licensee, other than a trainee, shall maintain general and complete operations liability insurance covering any work that the licensee is authorized to perform pursuant to any endorsements on the license in the following amounts: \$500,000 per person, \$1,000,000 per occurrence, and \$1,000,000 property damage.

*a.* The carrier of any insurance coverage maintained to meet this requirement shall notify the fire marshal 30 days prior to the effective date of cancellation or reduction of the coverage.

*b.* The licensee shall cease work immediately if the insurance coverage required by this subrule is no longer in force and other insurance coverage meeting the requirements of this subrule is not in force. A licensee shall not initiate any work which requires licensure pursuant to this chapter or to 2009 Iowa Code Supplement chapter 100D as amended by 2010 Iowa Acts, Senate File 2355, which cannot reasonably be expected to be completed prior to the effective date of the cancellation of the insurance coverage required by this subrule and of which the licensee has received notice, unless new insurance coverage meeting the requirements of this subrule has been obtained and will be in force upon cancellation of the prior coverage.

EXCEPTION: A licensee is not required to maintain insurance coverage provided that the licensee's employer maintains insurance coverage equivalent to the requirements of this subrule.

**276.3(2) Compliance.** Each licensee shall maintain compliance with all other applicable provisions of law related to operation in the state of Iowa and in any political subdivision in which the licensee is performing work.

**276.3(3) Training and experience requirements.** An applicant for a license shall meet the following training and experience requirements:

*a.* For endorsement for automatic sprinkler system installation and maintenance, the applicant shall show evidence of the following:

(1) Satisfactory completion of an apprenticeship program in fire sprinkler installation and maintenance approved by the United States Department of Labor, including four years of employment as an apprentice fire protection system installer and maintenance worker, and

(2) A passing score on either the United Association Star Fire Sprinkler Mastery Exam or on another examination administered by a nationally recognized third-party testing organization and approved as equivalent by the state fire marshal.

EXCEPTION: Prior to August 1, 2012, an applicant who was employed as a fire protection system installer as of July 1, 2008, may receive endorsement for automatic sprinkler system installation and maintenance upon submitting evidence of completion of 8500 hours of employment as a fire protection system installer and maintenance worker and any of the following:

1. Satisfactory completion of an apprenticeship program in fire sprinkler installation and maintenance of four or more years in duration, approved by the United States Department of Labor.

2. Passing the United Association Star Fire Sprinkler Mastery Exam or another examination administered by a nationally recognized third-party testing organization and approved as equivalent by the state fire marshal.

3. Certification by the National Institute for Certification in Engineering Technologies in Automatic Sprinkler System Layout at Level I, or another form of certification or testing administered by a nationally recognized organization and approved as equivalent by the state fire marshal.

*b.* For endorsement for special hazards fire protection system installation and maintenance, the applicant shall show evidence of the following:

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

(1) Satisfactory completion of an apprenticeship program in installation and maintenance of special hazards fire protection systems approved by the United States Department of Labor, and

(2) Certification by the National Institute for Certification in Engineering Technologies in Special Hazards Protection Systems at Level I, or another form of certification or testing by a nationally recognized organization approved as equivalent by the state fire marshal.

EXCEPTION 1: If the state fire marshal determines that no appropriate apprenticeship program is readily available, the fire marshal may allow the substitution of documentation of 8500 hours or more of employment in installation and maintenance of special hazards systems in lieu of meeting the apprenticeship requirement. Credit for such work experience obtained on or after [insert effective date of these rules] shall be awarded only for work performed as an apprentice fire protection system installer and maintenance worker or as a licensed fire protection system installer and maintenance worker trainee.

EXCEPTION 2: Prior to August 1, 2012, an applicant who was employed as a fire protection system installer as of July 1, 2008, may receive endorsement for special hazards fire protection system installation and maintenance upon submitting evidence of having completed 8500 hours of employment as a fire protection system installer and maintenance worker and either of the following:

1. Satisfactory completion of an apprenticeship program in installation and maintenance of special hazards fire protection systems of four or more years in duration, approved by the United States Department of Labor.

2. Certification by the National Institute for Certification in Engineering Technologies in Special Hazards Systems Installation and Maintenance at Level I, or another form of certification or testing administered by a nationally recognized organization and approved as equivalent by the state fire marshal.

c. For endorsement for installation or maintenance of preengineered dry chemical or wet agent fire protection systems, the applicant shall show evidence of the following:

(1) To be endorsed as a preengineered kitchen fire extinguishing system installer, the applicant shall have successfully completed training and an examination verified by a preengineered system manufacturer, an agent of a preengineered system manufacturer, or an organization that is approved by the state fire marshal. Completion of training and examination which would qualify the applicant for equivalent endorsement as a responsible managing employee of a certified fire extinguishing system contractor shall be deemed to meet the requirement of this subparagraph.

(2) To be endorsed as a preengineered kitchen fire extinguishing system maintenance worker, the applicant shall have successfully completed training by the applicant's employer or the system's manufacturer and passed a written or online examination for preengineered kitchen fire extinguishing system maintenance that is approved by the state fire marshal. Completion of training and examination which would qualify the applicant for equivalent endorsement as a responsible managing employee of a certified fire extinguishing system contractor shall be deemed to meet the requirement of this subparagraph.

(3) To be endorsed as a preengineered industrial fire extinguishing system installer, the applicant shall possess a training and examination certification from a preengineered system manufacturer, an agent of a preengineered system manufacturer, or an organization that is approved by the state fire marshal. Completion of training and examination which would qualify the applicant for equivalent endorsement as a responsible managing employee of a certified fire extinguishing system contractor shall be deemed to meet the requirement of this subparagraph.

(4) To be endorsed as a preengineered industrial fire extinguishing system maintenance worker, the applicant shall have been trained by the applicant's employer and passed a written or online examination for preengineered industrial fire extinguishing system maintenance that is approved by the state fire marshal. Completion of training and examination which would qualify the applicant for equivalent endorsement as a responsible managing employee of a certified fire extinguishing system contractor shall be deemed to meet the requirement of this subparagraph.

d. For endorsement for installation of preengineered water-based fire protection systems in one- and two-family dwellings, the applicant shall show evidence of satisfactory completion of any training required by the manufacturer for installation of any system that the applicant will install. Completion of training and examination which would qualify the person for equivalent endorsement as a responsible

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

managing employee of a certified fire extinguishing system contractor shall be deemed to meet this requirement.

**276.3(4) Continuing education.** A license may be renewed only if the licensee has completed 16 or more hours of continuing education in subjects related to the license and its endorsements. The continuing education must consist of courses approved by the fire marshal and have been completed by the licensee during the two years prior to the effective date of the renewal.

**276.3(5) Temporary license requirements.** A person may be issued a temporary license upon submission of an application to the state fire marshal with proof of equivalent licensure or certification in another state, accompanied by the applicable fee. The state fire marshal may require the submission of any documentation of licensure or certification in another state that the state fire marshal deems necessary. A temporary license may be used only in an area which is or has been within the past 180 days subject to a disaster emergency proclamation issued by the governor pursuant to Iowa Code section 29C.6. A temporary license shall be in effect for 90 days from the date of issuance and may be renewed once for an additional 90 days.

**661—276.4(100D) Application and fees.**

**276.4(1) Application.** Any person seeking licensure as a fire protection system installer and maintenance worker shall submit a completed application form to the fire marshal. The application shall be filed no later than 30 days prior to the date on which licensure is required or on which an existing license expires. An application form may be obtained from the fire marshal or from the Web site of the fire protection system installer and maintenance worker licensing program. The application form shall be submitted with all required attachments and the required license fee established in subrule 276.4(2). An application shall not be considered complete unless all required information is submitted, including required attachments and fees, and shall not be processed until it is complete.

NOTE: The Web site for the fire protection system installer and maintenance worker program is [insert Web address at time of adoption of rules].

**276.4(2) License fee.**

a. The fee for a permanent or provisional license, except for a trainee license, shall be \$250. If an application is denied, all except \$25 of the fee may be refunded if the applicant applies to the fire marshal for a refund. No refund of the license fee shall be made if the license is revoked or if the denial of the license is based on the applicant's knowingly including false or misleading information on the application. If an application for a license provides for more than one endorsement as provided in subrule 276.1(2), there shall be an additional fee of \$25 for each endorsement beyond the first.

b. The fee for a trainee license shall be \$100.

c. The fee for a temporary license shall be \$50. A temporary license may be renewed once; the renewal fee shall be \$50.

**276.4(3) Payment.** The license fee shall be submitted by draft, check, or money order in the applicable amount payable to the Iowa Department of Public Safety. The memo portion of the check should have the following notation: "Fire Protection System Installer and Maintenance Worker Licensing Program."

**276.4(4) Amended license.**

a. The fee for issuance of an amended license is \$25. The fee shall be submitted with a request for an amended license. A licensee shall request and the fire marshal shall issue an amended license for any of the following reasons:

- (1) A change in employer;
- (2) A change in insurance coverage; or
- (3) A change in any other material information included in or with the initial or renewal application.

A change of address is a material change. However, if the request for an amended license is solely for a change of business address, the former address of the business is in an area subject to a disaster emergency proclamation issued by the governor pursuant to Iowa Code section 29C.6, and the relocation occurs as a result of flooding or storm damage or other conditions which form a basis for the issuance

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

of the disaster emergency proclamation, the fee shall not apply, although an amended license shall be issued.

*b.* Other changes in the information required in the application form, including renewal of insurance coverage with a new expiration date, shall be reported to the fire marshal but shall not require issuance of an amended license or payment of the amended license fee.

**276.4(5) Attachments.** Required attachments to the application for a license include, but are not limited to, the following:

*a.* Documentation verifying that the applicant has in force the insurance coverage required by subrule 276.3(1). The documentation shall include an acknowledgment that the applicant's or employer's insurance coverage extends to any work performed by the licensee within the scope of licensure pursuant to this chapter. The documentation may consist of a letter from the insurance carrier, a copy of the insurance certificate with an endorsement showing the required information, or a signed statement from the applicant's employer attesting that the employer has insurance coverage in effect equivalent to the coverage required by subrule 276.3(1).

*b.* If the application requests licensure based on work experience, the applicant shall attach a notarized affidavit attesting that the applicant has the required experience.

NOTE: An applicant may contact the fire protection system installer and maintenance worker licensing program for assistance with the wording of the affidavit.

**661—276.5(100D) Complaints.**

**276.5(1)** Complaints regarding the performance of any licensed fire protection system installer and maintenance worker; failure of a licensee to meet any of the requirements established in 2009 Iowa Code Supplement chapter 100D as amended by 2010 Iowa Acts, Senate File 2355, or this chapter or any other provision of law; or persons operating as fire protection system installers and maintenance workers without licensure may be filed with the fire marshal. Complaints should be addressed as follows:

Fire Protection System Installer and Maintenance Worker Licensing Program  
Fire Marshal Division  
Iowa Department of Public Safety  
215 East 7th Street  
Des Moines, Iowa 50319

**276.5(2)** Complaints may be submitted by electronic mail to [fesccp@dps.state.ia.us](mailto:fesccp@dps.state.ia.us) or by facsimile to (515)725-6172.

**276.5(3)** Complaints should be as specific as possible and shall clearly identify the licensee or other person against whom the complaint is filed. Complaints shall be submitted in writing. A complaint may be submitted anonymously, but if the name and contact information of the complainant are provided, the complainant will be notified of the disposition of the complaint.

**661—276.6(100D) Denial, suspension, or revocation of certification; civil penalties; appeals.** If a licensee or person who performs work requiring a license violates any provision of these rules or any other provision of law related to work requiring licensure pursuant to this chapter, the fire marshal may deny, suspend or revoke a license or assess a civil penalty to a licensee or to a person who performs work requiring licensure pursuant to this chapter and who is not licensed.

**276.6(1) Denial.** The fire marshal may deny an application for licensure:

*a.* If the applicant makes a false statement on the application form or in any other submission of information required for licensure. "False statement" means providing false information or failing to include material information, such as a previous criminal conviction or action taken by another jurisdiction, when requested on the application form or otherwise in the application process.

*b.* If the applicant fails to meet all of the requirements for licensure established in this chapter.

*c.* If the applicant is currently barred for cause from licensure equivalent to that provided for in this chapter in another jurisdiction.

*d.* If an applicant has previously been barred for cause from operating in another jurisdiction as a fire protection system installer and maintenance worker and if the basis of that action reflects upon

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

the integrity of the applicant in operating as a fire protection system installer and maintenance worker. If an applicant is found to have been previously barred for cause from operating as a fire protection system installer and maintenance worker in another jurisdiction and is no longer barred from doing so, the fire marshal shall evaluate the record of that action with regard to the likelihood that the applicant would operate with integrity as a licensee. If an applicant is denied licensure under this paragraph, the applicant shall be notified of the specific reasons for the denial.

*e.* If the applicant has been convicted of a crime which reflects upon the integrity of the applicant in operating as a fire protection system installer and maintenance worker. If an applicant is found to have a criminal record, the fire marshal shall evaluate that record with regard to the likelihood that the applicant would operate with integrity as a licensee. If an applicant is denied licensure under this paragraph, the applicant shall be notified of the specific reasons for the denial.

**276.6(2) Suspension.** A suspension of a license may be imposed by the fire marshal for any violation of these rules or 2009 Iowa Code Supplement chapter 100D as amended by 2010 Iowa Acts, Senate File 2355, or for a failure to meet any legal requirement to operate as a fire protection system installer and maintenance worker in this state. Failure to provide any notice to the fire marshal as required by these rules shall be grounds for suspension. An order of suspension shall specify the length of the suspension and shall specify that correction of all conditions which were a basis for the suspension is a condition of reinstatement of the license even after the period of the suspension.

**276.6(3) Revocation.**

*a.* A revocation is a termination of a license. A license may be revoked by the fire marshal for repeated violations or for a violation which creates an imminent danger to the safety or health of individuals protected by a fire protection system incorrectly installed by a licensee or when information comes to the attention of the fire marshal which, if known to the fire marshal when the application was being considered, would have resulted in denial of the license.

*b.* A new application for a license from an applicant whose license has previously been revoked shall not be considered for a period of one year after the effective date of the revocation and, in any event, until every condition which was a basis for the revocation has been corrected. The fire marshal may specify in the revocation order a period longer than one year before a new application for a license may be considered. When a new application for a license from a person whose license was previously revoked is being considered, the applicant may be denied a license based upon the same information which was the basis for revocation even after any such period established by the fire marshal has expired.

**276.6(4) Civil penalties.** The fire marshal may impose a civil penalty of up to \$500 per day during which a violation has occurred and for every day until the violation is corrected. A civil penalty may be imposed in lieu of or in addition to a suspension or may be imposed in addition to a revocation. A civil penalty shall not be imposed in lieu of a revocation.

**276.6(5) Suspension or revocation for nonpayment of child support.** The following procedures shall apply to actions taken by the fire marshal on a certificate of noncompliance received from the Iowa department of human services pursuant to Iowa Code chapter 252J:

*a.* The notice required by Iowa Code section 252J.8 shall be served upon the licensee by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the licensee may accept service personally or through authorized counsel.

*b.* The effective date of revocation or suspension of a license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service upon the licensee.

*c.* Licensees shall keep the fire marshal informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J and shall provide the fire marshal with copies, within 7 days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

*d.* All applicable fees for an application or reinstatement must be paid by the licensee before a license will be issued, renewed, or reinstated after the fire marshal has denied the issuance or renewal of a license or has suspended or revoked a license pursuant to Iowa Code chapter 252J.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

*e.* In the event a licensee files a timely district court action following service of a notice pursuant to Iowa Code sections 252J.8 and 252J.9, the fire marshal shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the fire marshal to proceed. For the purpose of determining the effective date of revocation or suspension of the license, the fire marshal shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

*f.* Suspensions or revocations imposed pursuant to this subrule may not be appealed administratively to the fire marshal or within the department of public safety.

NOTE: The procedures established in subrule 276.6(5) implement the requirements of Iowa Code chapter 252J. The provisions of Iowa Code chapter 252J establish mandatory requirements for an agency which administers a licensing program, such as the one established in this chapter, and provide that actions brought under these provisions are not subject to contested case procedures established in Iowa Code chapter 17A but must be appealed directly to district court.

**276.6(6) *Suspension or revocation for nonpayment of debts owed state or local government.*** The following procedures shall apply to actions taken by the fire marshal on a certificate of noncompliance received from the Iowa department of revenue pursuant to Iowa Code chapter 272D.

*a.* The notice required by Iowa Code section 272D.3 shall be served upon the licensee by regular mail.

*b.* The effective date of revocation or suspension of a license, as specified in the notice required by Iowa Code section 272D.3, shall be 20 days following service upon the licensee.

*c.* Licensees shall keep the fire marshal informed of all court actions and centralized collection unit actions taken under or in connection with Iowa Code chapter 272D and shall provide the fire marshal with copies, within 7 days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 272D.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the centralized collection unit.

*d.* All applicable fees for an application or reinstatement must be paid by the licensee before a license will be issued, renewed, or reinstated after the fire marshal has denied the issuance or renewal of a license or has suspended or revoked a license pursuant to Iowa Code chapter 272D.

*e.* In the event the licensee files a timely district court action following service of a notice pursuant to Iowa Code section 272D.8, the fire marshal shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the fire marshal to proceed. For the purpose of determining the effective date of revocation or suspension of the license, the fire marshal shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

*f.* Suspensions or revocations imposed pursuant to this subrule may not be appealed administratively to the fire marshal or within the department of public safety.

NOTE: The procedures established in subrule 276.6(6) implement the requirements of Iowa Code chapter 272D. The provisions of Iowa Code chapter 272D establish mandatory requirements for an agency which administers a licensing program, such as the one established in this chapter, and provide that actions brought under these provisions are not subject to contested case procedures established in Iowa Code chapter 17A but must be appealed directly to district court.

**276.6(7) *Appeals.*** Any denial, suspension, or revocation of a license, or any civil penalty imposed upon a licensee or other person under this rule, other than one imposed pursuant to subrule 276.6(5) or 276.6(6), may be appealed by the licensee or other person within 14 days of receipt of the notice. Appeals of actions taken by the fire marshal under this rule shall be to the commissioner of public safety and shall be treated as contested cases following the procedures established in rules 661—10.301(17A) through 661—10.332(17A).

These rules are intended to implement 2009 Iowa Code Supplement chapter 100D as amended by 2010 Iowa Acts, Senate File 2355.

**ARC 8854B****REGENTS BOARD[681]****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 262.9(3), the Board of Regents hereby gives Notice of Intended Action to amend Chapter 1, “Admission Rules Common to the Three State Universities,” Iowa Administrative Code.

The proposed amendment revises rule 681—1.7(262) to increase University of Iowa application fees for undergraduate international students from \$60 to \$85 and application fees for graduate/professional international students from \$85 to \$100 and proposes a new \$40 fee for nondegree students. The proposed amendment would increase Iowa State University application fees for undergraduate domestic students from \$30 to \$40, graduate domestic students from \$30 to \$40 and graduate international students from \$70 to \$90. A new application fee of \$40 for nondegree students is proposed at the University of Northern Iowa. The fee increases will help offset processing costs. The addition of the new application fees at the University of Iowa and the University of Northern Iowa for nondegree students is necessary because the processing of these applications takes as much time as the processing of applications for degree students.

Any interested person may make written comments on this amendment on or before July 6, 2010, addressed to Marcia Brunson, Board of Regents, State of Iowa, 11260 Aurora Avenue, Urbandale, Iowa 50322-7905; fax (515)281-6420; or E-mail at [mbruns@iastate.edu](mailto:mbruns@iastate.edu).

A waiver provision is not included. The Board has adopted a uniform waiver rule, which may be found at 681—19.18(17A).

This amendment is intended to implement Iowa Code section 262.9(3).

The following amendment is proposed.

Amend rule 681—1.7(262) as follows:

**681—1.7(262) Application fees.** Application fees required for admission to the University of Iowa, Iowa State University and the University of Northern Iowa are as follows:

University of Iowa

Undergraduate domestic student	\$40
Undergraduate international student	<del>\$60</del> <u>\$85</u>
Graduate/professional domestic student	\$60
Graduate/professional international student	<del>\$85</del> <u>\$100</u>
PharmD student	\$100
Re-entry fee	\$20
<u>Nondegree student</u>	<u>\$40</u>

## REGENTS BOARD[681](cont'd)

## Iowa State University

Undergraduate domestic student	\$30 <u>\$40</u>
Undergraduate international student	\$50
Graduate domestic student	<del>\$30</del> <u>\$40</u>
Graduate international student	<del>\$70</del> <u>\$90</u>
Veterinary Medicine	\$60

## University of Northern Iowa

Undergraduate domestic student	\$40
Undergraduate international student	\$50
Graduate domestic student	\$30
Graduate international student	\$50
<u>Nondegree student</u>	<u>\$40</u>

This rule is intended to implement Iowa Code section 262.9(3).

**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:

June 1, 2009 — June 30, 2009	5.00%
July 1, 2009 — July 31, 2009	5.25%
August 1, 2009 — August 31, 2009	5.75%
September 1, 2009 — September 30, 2009	5.50%
October 1, 2009 — October 31, 2009	5.50%
November 1, 2009 — November 30, 2009	5.50%
December 1, 2009 — December 31, 2009	5.50%
January 1, 2010 — January 31, 2010	5.50%
February 1, 2010 — February 28, 2010	5.50%
March 1, 2010 — March 31, 2010	5.75%
April 1, 2010 — April 30, 2010	5.75%
May 1, 2010 — May 31, 2010	5.75%
June 1, 2010 — June 30, 2010	5.75%

**ARC 8858B****UTILITIES DIVISION[199]****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 Iowa Code sections 17A.4, 17A.7, 476.1, 476.1A, 476.1B, and 476.20, and 2010 Iowa Acts, Senate File 2297, the Utilities Board (Board) gives notice that on May 21, 2010, the Board issued an order in Docket No. RMU-2010-0001, In re: Disconnection of Residence with a Deployed Service Member, “Order Commencing Rule Making.” The Board is noticing for public comment proposed amendments to 199 IAC 19.4(476) and 20.4(476). The proposed amendments reflect changes to Iowa Code section 476.20(3) contained in 2010 Iowa Acts, Senate File 2297, which was signed by the Governor on April 27, 2010, and becomes effective on July 1, 2010.

2010 Iowa Acts, Senate File 2297, addressed various veterans and military service issues, among which was a provision amending Iowa Code section 476.20, which deals with disconnection of utility service. 2010 Iowa Acts, Senate File 2297, amends Iowa Code subsection 476.20(3) by adding the following unnumbered paragraph:

The rules established by the board shall provide that a public utility furnishing gas or electricity shall not disconnect service to a residence in which one of the heads of household is a service member deployed for military service, as defined in section 29A.90, prior to a date ninety days after the end of the service member’s deployment, if the public utility is informed of the deployment.

The proposed amendments to 199 IAC 19.4(476) and 20.4(476) reflect these changes, prohibiting disconnection in circumstances outlined by the statute and amending the customer rights and remedies descriptions in Chapters 19 and 20.

The Board notes that 2010 Iowa Acts, Senate File 2297, only addresses disconnection of gas or electric service; there is no forgiveness of the public utility’s charges, and the customer’s liability for the account is unaffected. This is consistent with the long-standing winter disconnection moratorium of Iowa Code section 476.20, which also prohibits disconnection of service in certain situations but does not require forgiveness of the public utility’s charges.

Pursuant to Iowa Code sections 17A.4(1)“a” and “b,” any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before July 6, 2010. The statement should be filed electronically through the Board’s Electronic Filing System (EFS). Instructions for making an electronic filing can be found on the EFS Web site at <http://efs.iowa.gov>. Any person who does not have access to the Internet may file comments on paper pursuant to 199 IAC 14.4(5). An original and ten copies of paper comments shall be filed. Both electronic and written filings shall comply with the format requirements in 199 IAC 2.2(2) and clearly state the author’s name and address and make specific reference to this docket. All paper communications should be directed to the Executive Secretary, Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

A public hearing to receive comments on the proposed amendments will be held at 10 a.m. on July 27, 2010, in the Board’s hearing room at the address listed above. Persons with disabilities who require assistive services or devices to observe or participate should contact the Utilities Board at (515)281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

## UTILITIES DIVISION[199](cont'd)

The Board does not find it necessary to propose a separate waiver provision in this rule making. The Board's general waiver provision in 199 IAC 1.3(17A,474,476,78GA,HF2206) is applicable to these amendments.

These amendments are intended to implement Iowa Code sections 476.1, 476.1A, and 476.1B and section 476.20 as amended by 2010 Iowa Acts, Senate File 2297.

The following amendments are proposed.

ITEM 1. Amend subparagraph **19.4(15)“d”(3)**, summary of customer rights and responsibilities, by adding the following new paragraph “g” to the response to question 6:

g. If one of the heads of household is a service member deployed for military service, utility service cannot be shut off during the deployment or within 90 days after the end of deployment. In order for this exception to disconnection to apply, the utility must be informed of the deployment prior to disconnection. However, you will still owe the utility for service used during this time.

ITEM 2. Adopt the following new subparagraph **19.4(15)“d”(10)**:

(10) Deployment. If the utility is informed that one of the heads of household as defined in Iowa Code section 476.20 is a service member deployed for military service, as defined in Iowa Code section 29A.90, disconnection cannot take place at the residence during the deployment or prior to 90 days after the end of the deployment.

ITEM 3. Amend subrule 19.4(17) as follows:

**19.4(17) When disconnection prohibited.**

a. No disconnection may take place from November 1 through April 1 for a resident who is a head of household and who has been certified to the public utility by the local community action agency as being eligible for either the low-income home energy assistance program or weatherization assistance program.

b. If the utility is informed that one of the heads of household as defined in Iowa Code section 476.20 is a service member deployed for military service, as defined in Iowa Code section 29A.90, disconnection cannot take place at the residence during the deployment or prior to 90 days after the end of the deployment.

ITEM 4. Amend subparagraph **20.4(15)“d”(3)**, summary of customer rights and responsibilities, by adding the following new paragraph “g” to the response to question 6:

g. If one of the heads of household is a service member deployed for military service, utility service cannot be shut off during the deployment or within 90 days after the end of deployment. In order for this exception to disconnection to apply, the utility must be informed of the deployment prior to disconnection. However, you will still owe the utility for service used during this time.

ITEM 5. Adopt the following new subparagraph **20.4(15)“d”(11)**:

(11) Deployment. If the utility is informed that one of the heads of household as defined in Iowa Code section 476.20 is a service member deployed for military service, as defined in Iowa Code section 29A.90, disconnection cannot take place at the residence during the deployment or prior to 90 days after the end of the deployment.

ITEM 6. Amend subrule 20.4(17) as follows:

**20.4(17) When disconnection prohibited.**

a. No disconnection may take place from November 1 through April 1 for a resident who has been certified to the public utility by the local community action agency as being eligible for either the low-income home energy assistance program or weatherization assistance program.

b. If the utility is informed that one of the heads of household as defined in Iowa Code section 476.20 is a service member deployed for military service, as defined in Iowa Code section 29A.90, disconnection cannot take place at the residence during the deployment or prior to 90 days after the end of the deployment.

## ARC 8847B

## AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

## Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 162.16, the Iowa Department of Agriculture and Land Stewardship amends Chapter 67, "Animal Welfare," Iowa Administrative Code.

These amendments clarify that licenses for animal care are not available to applicants who have recent animal cruelty or neglect convictions. This prohibition already clearly applies to licensees.

Pursuant to Iowa Code section 17A.4(3), the Department finds that notice and public participation are impracticable and would result in needless delays.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Department further finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments made effective May 20, 2010, as they confer a benefit upon the public.

These amendments are intended to implement Iowa Code section 162.13.

These amendments became effective May 20, 2010.

The following amendments are adopted.

ITEM 1. Amend rule 21—67.10(162), catchwords, as follows:

**21—67.10(162) Loss of license or denial of license.**

ITEM 2. Amend subrule 67.10(1) as follows:

**67.10(1)** If a licensee has its license revoked or relinquishes its license while a revocation action is pending, the licensee shall not be eligible to reapply for a new license for at least three years from the date of the revocation or relinquishment. If the a licensee has been found in court to have committed an act of animal cruelty or neglect, the licensee shall not be eligible for a new license for at least five years from the date of the revocation or relinquishment. If an applicant has been found in court to have committed an act of animal cruelty or neglect, the applicant shall not be eligible for a license for at least five years from the date of the conviction or guilty plea. The prohibition against relicensure or licensure in this subrule shall include any partnership, firm, corporation, or other legal entity in which the person has a substantial interest, financial or otherwise, and any person who has been or is an officer, agent or employee of the licensee if the person was responsible for or participated in the violation upon which the revocation or conviction was based. The department may waive the three-year bar to relicensure arising from a revocation or relinquishment of a license where a revocation action was pending. Such waiver shall be made on a case-by-case basis. Such a waiver shall only be given if the department finds that the conditions which resulted in the revocation or revocation action have been addressed and there is little likelihood that they will be replicated.

[Filed Emergency 5/20/10, effective 5/20/10]

[Published 6/16/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/16/10.

## ARC 8852B

## ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

## Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development (IDED) hereby amends Chapter 79, "Disaster Recovery Business Rental Assistance Program," Iowa Administrative Code.

The amendments clarify eligibility requirements with respect to lease terms and rescind a self-imposed deadline for expenditures under the program. These amendments allow a business to apply for assistance if it can provide documentation to show that it had a lease in a disaster-damaged space for

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

at least 12 months, even if the lease is a month-to-month lease. The amendments further provide that the amendments are retroactive to awards made on or after March 20, 2009 (the date this program began).

Original rules for this program, adopted by the IDED Board on March 20, 2009, required a business to have a lease or intend to have a lease for 12 months to be eligible for rental assistance. Federal officials have interpreted the rules to require a minimum lease term of one year to be eligible for the program, as opposed to allowing month-to-month lease terms that in sum equal a year or more. The purpose of having a minimum term is to ensure that a rental occurs in a disaster-damaged space for at least a year; that result occurs whether the lease term is one year or a tenant has rented space for 12 consecutive months on a month-to-month term.

Guidance sent out from the state to local program operators and prospective businesses stated the requirements for businesses to be eligible to receive rental assistance. The guidance specified that the eligible businesses included those that entered into one-year leases or that had successfully served 12 consecutive months in a month-to-month lease or some other term lease. Federal officials have determined there is a discrepancy between the rules and the assistance the Department has allowed. Federal officials have advised the Department that this discrepancy could result in disallowance of federal funds for the program.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are impracticable and contrary to the public interest because there is an immediate need to correct a provision that will enable federal funding to eligible businesses in the areas of the state that suffered damage due to the natural disasters in 2008. The public interest in the availability of federal funding to distribute outweighs the benefit of a comment period. The Department also finds that the amendments retroactively confer a substantial benefit to the state and its businesses that were affected by the disasters of 2008 and that no businesses or other parties are adversely affected.

The Department also finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of the amendments should be waived and the amendments be made effective upon filing with the Administrative Rules Coordinator on May 21, 2010. These amendments confer a benefit on the public by allowing more impacted businesses to benefit from disaster funds.

These amendments are intended to implement Iowa Code section 15.109.

These amendments became effective on May 21, 2010.

The following amendments are adopted.

ITEM 1. Amend rule 261—79.3(15) as follows:

**261—79.3(15) Eligible business; application review.**

**79.3(1)** An eligible business is a business that:

- a. Is located in or planning to locate in a business rental space that was physically damaged by the 2008 natural disaster(s), also referred to as disaster-damaged space; and
- b. Has ~~entered into~~ either leased disaster-damaged space for at least 12 months at a market rate or intends to enter or has entered into a minimum one-year, market-rate lease in disaster-damaged space.

**79.3(2)** Applications received from businesses located in or planning to locate in a building in which the only damage incurred was a result of sanitary or storm sewer backup are subject to review by the department to determine eligibility. Factors used by the department to determine eligibility include, but are not limited to, review of insurance claims filed, damage to critical infrastructure and review of prior sanitary or storm sewer backup.

**79.3(3)** Applications received from businesses located in or planning to locate in a building that is zoned residential are subject to review by the department to determine eligibility. Factors used by the department to determine eligibility include, but are not limited to, review of the rental lease agreement, business plan and community comprehensive plan.

ITEM 2. Amend subrule 79.5(1) as follows:

**79.5(1)** *Types of financial assistance available.* An administrative entity shall provide financial assistance to an eligible business in compliance with the terms and conditions described in this rule. An administrative entity may award funds in the form of a forgivable loan to a business that has either

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

leased disaster-damaged space for at least 12 months at a market rate or has entered into a minimum one-year, market-rate lease agreement for disaster-damaged space. A forgivable loan is a loan that will be forgiven if the business remains open for the duration of the six-month period for which rental assistance is awarded.

ITEM 3. Rescind subrule **79.5(3)**.

[Filed Emergency 5/21/10, effective 5/21/10]

[Published 6/16/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/16/10.

**ARC 8848B**

## **ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]**

### **Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development (IDED) hereby amends Chapter 104, "Targeted Industries Internship Program," Iowa Administrative Code.

The rule defined an "Iowa student" as a student of one of the Iowa community colleges, private colleges, or institutions of higher learning under the control of the state Board of Regents. The amendments incorporate changes made to 2009 Iowa Code Supplement section 15.411 by 2010 Iowa Acts, Senate File 2076, which expand the definition of "Iowa student" to allow Iowa high school graduates attending college outside the state to participate in the Targeted Industries Internship Program.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are impractical and contrary to public interest because the changes made by 2010 Iowa Acts, Senate File 2076, were deemed of immediate importance and became effective upon enactment on February 23, 2010.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendments should be waived and the amendments made effective upon filing with the Administrative Rules Coordinator on May 20, 2010. These amendments confer a benefit on the public by allowing students who are graduates of an Iowa high school but who attend institutions of higher learning outside Iowa to be eligible for an internship under the Program.

These amendments are also published herein under Notice of Intended Action as **ARC 8849B** to allow for public comment.

The Iowa Economic Development Board adopted these amendments on May 20, 2010.

These amendments are intended to implement 2009 Iowa Code Supplement section 15.411 as amended by 2010 Iowa Acts, Senate File 2076.

These amendments became effective on May 20, 2010.

The following amendments are adopted.

ITEM 1. Amend rules **261—104.1(82GA, HF829)** to **261—104.13(82GA, HF829)**, parenthetical implementation statutes, as follows:

~~(82GA, HF829 15)~~

ITEM 2. Amend rule **261—104.3(15)**, definition of "Student," as follows:

"Student" means a student of one of the Iowa community colleges, private colleges, or institutions of higher learning under the control of the state board of regents or a student who graduated from high school in Iowa but attends an institution of higher learning outside the state of Iowa.

ITEM 3. Amend subrule 104.5(3) as follows:

**104.5(3)** An applicant must offer the internship to students of Iowa community colleges, private colleges, or institutions of higher learning under the control of the state board of regents or to students who graduated from high school in Iowa but attend an institution of higher learning outside the state of Iowa.

## ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

ITEM 4. Amend rule 261—104.7(15) as follows:

**261—104.7(15) Eligible students.** Students must be within one to two years of graduation and enrolled at one of Iowa's community colleges, private colleges, or institutions of higher learning under the control of the state board of regents. A student as defined in this chapter is eligible for an internship under this rule. The department shall encourage youth who reside in economically distressed areas, youth adjudicated to have committed a delinquent act, and youth transitioning out of foster care to participate in the targeted industries internship program.

ITEM 5. Amend rule 261—104.8(15) as follows:

**261—104.8(15) Ineligible students.** Students who are more than two years from graduation are ineligible. Students who are immediate family members of management employees or board members of the applicant business are ineligible. Students who do not otherwise meet the eligibility requirements described in rule 261—104.7(15) are not eligible.

ITEM 6. Amend **261—Chapter 104**, implementation sentence, as follows:

These rules are intended to implement ~~2007 Iowa Acts, House File 829~~ 2009 Iowa Code Supplement section 15.411 as amended by 2010 Iowa Acts, Senate File 2076.

[Filed Emergency 5/20/10, effective 5/20/10]

[Published 6/16/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/16/10.

## ARC 8850B

### ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

#### Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts new Chapter 114, "Iowa Innovation Council," Iowa Administrative Code.

These rules implement a new Iowa innovation council authorized by 2010 Iowa Acts, House File 2076. The rules describe the purpose of the council, voting member selection and approval procedures, council operations, council deliverables, and Department administration provisions.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are impracticable because of the need for rules to implement new provisions of the law.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the rules should be waived and the rules be made effective July 1, 2010. These rules describe organizational structure of the newly developed council and benefit the public by enabling this newly established council to meet and begin work more quickly.

The Iowa Economic Development Board adopted the rules on May 20, 2010.

These rules are also published herein under Notice of Intended Action as **ARC 8851B** to allow for public comment. This emergency filing permits the Department to implement the new provisions of law.

These rules are intended to implement 2010 Iowa Acts, House File 2076.

These rules shall become effective on July 1, 2010.

The following amendment is adopted.

Adopt the following new 261—Chapter 114:

#### CHAPTER 114 IOWA INNOVATION COUNCIL

**261—114.1(15) Authority.** The authority for establishing rules governing the Iowa innovation council under this chapter is provided in 2010 Iowa Acts, House File 2076, section 4.

## ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

**261—114.2(15) Purpose.** The purpose of the Iowa innovation council is to advise the department on the development and implementation of public policies that enhance innovation and entrepreneurship in the targeted industries.

**261—114.3(15) Definitions.**

“*Board*” means the Iowa economic development board established in Iowa Code section 15.103.

“*Chief technology officer*” means the person appointed pursuant to Iowa Code section 15.117 as amended by 2010 Iowa Acts, House File 2076.

“*Committee*” means the technology commercialization committee created by the board pursuant to Iowa Code section 15.116.

“*Department*” means the Iowa department of economic development.

“*Director*” means the director of the department or the director’s designee.

“*Targeted industry*” means the industries of advanced manufacturing, bioscience, and information technology.

“*Vice chairperson*” means the voting member elected to serve as the council vice chairperson for a one-year term.

**261—114.4(15) Iowa innovation council funding.** The department shall provide assistance to the council with staff and administrative support. The department may expend moneys allocated to the innovation and commercialization fund in order to provide such support. The council shall not have the authority to expend moneys or resources or to execute contracts. The department may accept grant funds on behalf of the council, but the council shall not provide any form of financial assistance awards. Authority for and approval of all financial expenditures and contracts for the council shall be granted solely by the director on behalf of the department.

**261—114.5(15) Executive committee.** In order to effectively carry out the responsibilities of the council, an executive committee within the council will be formed.

**114.5(1) Membership.** The executive committee shall include the chief technology officer, vice chairperson of the council, director of the department, and four members of the council selected by the board who also serve on the technology commercialization committee in order to:

- a. Solicit individuals to become council members, review potential nominees and application materials, review vacancies and resignations, and recommend individuals to the board;
- b. Nominate one of the voting members to serve as vice chairperson;
- c. Approve the formation of work groups, approve work group members and leaders, review activities of the work groups, and report to the council to ensure the coordination of activity of work groups;
- d. Record the official proceedings for the council;
- e. Act on behalf of the council between council meetings;
- f. Issue reports on behalf of the council;
- g. Serve as a sounding board for the chief technology officer in the overall management of the business of the council; and
- h. Review potential conflicts of interest on the part of any member of the council.

**114.5(2) Quorum.** A majority of the members of the executive committee constitutes a quorum. A majority vote of the quorum is required to approve actions of the executive committee.

**261—114.6(15) Council member selection.** The council shall consist of 29 voting members as follows:

**114.6(1)** Twenty members will be selected by the board to serve staggered, two-year terms beginning and ending as provided in Iowa Code section 69.19. Members to be selected will include the following representatives:

- a. Seven shall be representatives from businesses in the targeted industries;
- b. Thirteen shall be individuals who serve on the technology commercialization committee, or other committees of the board, and who have expertise with the targeted industries; and

## ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

*c.* Ten of the members selected shall be executives actively engaged in the management of a business in a targeted industry.

**114.6(2)** Nine members will be appointed by the board and will include the following representatives:

*a.* One member, selected by the governor, who also serves on the Iowa capital investment board created in Iowa Code section 15E.63.

*b.* The director of the department, or the director's designee.

*c.* The chief technology officer appointed pursuant to Iowa Code section 15.117 as amended by 2010 Iowa Acts, House File 2076.

*d.* The person designated as the chief information officer pursuant to Iowa Code section 8A.104, subsection 12, or, if no person has been so designated, the director of the department of administrative services, or the director's designee.

*e.* The president of the state university of Iowa, or the president's designee.

*f.* The president of Iowa state university of science and technology, or the president's designee.

*g.* The president of the university of northern Iowa, or the president's designee.

*h.* Two community college presidents from geographically diverse areas of the state, selected by the Iowa association of community college trustees.

*i.* To be eligible to serve as a designee, a person must have sufficient authority to make decisions on behalf of the organization being represented. A person named as a designee shall not name a designee nor permit a substitute to attend council meetings.

**114.6(3)** Four members of the general assembly will be appointed by the board serving two-year terms in a nonvoting, ex-officio capacity, with two from the senate and two from the house of representatives and not more than one member from each chamber being from the same political party. The two senators shall be designated one member each by the president of the senate after consultation with the majority leader of the senate, and by the minority leader of the senate. The two representatives shall be designated one member each by the speaker of the house of representatives after consultation with the majority leader of the house of representatives, and by the minority leader of the house of representatives.

**261—114.7(15) Member application and review process.** The executive committee will review all council nominees and application materials and recommend the voting members to the board who they believe will add value to and further the purposes of the council.

**261—114.8(15) Voting.** A majority of the members of the council constitutes a quorum. A majority vote of the quorum is required to approve actions of the council and make recommendations, as those recommendations relate to financial expenditures and contract executions.

**261—114.9(15) Meetings and commitment of time.** The chief technology officer is expected to convene four regular meetings of the council, within any period of 12 calendar months beginning on July 1 or January 1, according to a published schedule. The annual meeting of the council will be convened in January at a convenient location in Des Moines. The chief technology officer shall be the chairperson of the council and shall be responsible for convening meetings of the council. The chief technology officer shall not convene a meeting of the council unless the director of the department, or the director's designee, is present at the meeting.

**261—114.10(15) Nonattendance.**

**114.10(1)** Any member serving on the council shall be deemed to have submitted a resignation to the council if either of the following events occurs.

*a.* The member does not attend two or more consecutive regular meetings of the council.

*b.* The member attends less than one-half of the regular council meetings within any period of 12 calendar months beginning on July 1 or January 1.

## ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

**114.10(2)** The requirements of this rule shall supersede the attendance requirements described in Iowa Code section 69.15 only to the extent that statutory construction pursuant to Iowa Code chapter 4 allows.

**261—114.11(15) Responsibilities and deliverables.**

**114.11(1)** The purpose of the council is to advise the department on the development and implementation of public policies that enhance innovation and entrepreneurship in the targeted industries. Such advice may include evaluating Iowa's competitive position in the global economy, reviewing the technology typically utilized in the state's manufacturing sector, assessing the state's overall scientific research capacity, keeping abreast of the latest scientific research and technological breakthroughs and offering guidance as to their impact on public policy, recommending strategies that foster innovation, increase new business formation, and otherwise promote economic growth in the targeted industries, and offering guidance about future developments in the targeted industries.

**114.11(2)** The council will do the following:

- a.* Prepare a report of the expenditures of moneys appropriated and allocated to the department for certain programs authorized pursuant to 2009 Iowa Code Supplement sections 15.411 as amended by 2010 Iowa Acts, House File 2076, and 15.412 relating to the development and commercialization of businesses in the targeted industries.
- b.* Prepare a summary of the activities of the technology commercialization committee and the Iowa innovation council.
- c.* Create a comprehensive strategic plan for implementing specific strategies that foster innovation, increase new business formation, and promote economic growth.
- d.* Review existing programs that relate to the targeted industries and suggest changes to improve efficiency and effectiveness.
- e.* Conduct industry research and prepare reports for the general assembly, the governor, the department, and other policy-making bodies within state government.
- f.* Act as a forum where issues affecting the research community, the targeted industries, and policy makers can be discussed and addressed.

**261—114.12(15) Council work groups.**

**114.12(1)** The council will establish work groups, both standing and temporary, to assist in the execution of responsibilities of the council and to expand the intellectual capacity of the council. Work groups will be directed by a work group leader. Work groups will encourage diversity of talent, the size and geographic location of businesses in the targeted industries, and invite a wider assembly of corporate and university executives, scientists, financial executives, venture investors, and experienced entrepreneurs from across the state.

**114.12(2)** To be eligible to serve as a work group leader, a nominee must be one of the eligible voting members of the council. The executive committee will review and approve the formation of proposed work groups and approve proposed work group members and leaders. The chief technology officer and vice chairperson shall serve as ex-officio members of all work groups established by the council.

**261—114.13(15) Reporting.** The executive committee shall review, comment, and formally submit any and all reports on behalf of the council. The chief technology officer is designated by the board as the signing officer for certain documents. In this capacity, the chief technology officer is authorized to sign correspondence, applications, reports, or other nonfinancial documents produced by the council. The chief technology officer shall serve as a key spokesperson for the council and be responsible for coordinating the communication of information requested by the department in sufficient detail to permit the department to prepare the report required pursuant to 2010 Iowa Acts, House File 2076, section 2, and

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any other reports deemed necessary by the department, the board, the general assembly or the governor's office.

These rules are intended to implement 2010 Iowa Acts, House File 2076.

[Filed Emergency 5/20/10, effective 7/1/10]

[Published 6/16/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/16/10.

**ARC 8844B**

## **ENVIRONMENTAL PROTECTION COMMISSION[567]**

### **Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 455E.9, the Environmental Protection Commission hereby adopts new Chapter 210, "Beautification Grant Program," Iowa Administrative Code.

The purpose of the program is to implement 2010 Iowa Acts, House File 2525, section 24, which provides financial assistance in the form of a grant each year not to exceed \$200,000 to a single eligible entity that meets the eligibility criteria set forth in the legislation. The grant is to be used for the development and implementation of a public education and awareness initiative designed to reduce littering and illegal dumping. In addition, the successful applicant must use the moneys to establish a community partnership grant program designed to support community beautification projects that include the deconstruction, renovation, or removal of derelict buildings.

In order to expedite the effective date of this new chapter and the awarding of the grant authorized by the General Assembly, the Commission has elected to proceed with emergency rule making.

In compliance with Iowa Code section 17A.4(3), the Commission finds that notice and public participation are impracticable due to the immediate need for rule making to administer the program enacted by the Legislature, which becomes effective on July 1, 2010.

The Commission also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendment should be waived and the amendment should be made effective upon filing with the Administrative Rules Coordinator on May 19, 2010, as it confers a benefit to the public by the awarding of the grant as soon as possible after July 1, 2010.

The Commission adopted this amendment on May 18, 2010.

This amendment is intended to implement 2009 Iowa Code Supplement section 455E.11(2)"a"(1) as amended by 2010 Iowa Acts, House File 2525, section 24.

This amendment became effective on May 19, 2010.

The following amendment is adopted.

Adopt the following new 567—Chapter 210:

### **CHAPTER 210 BEAUTIFICATION GRANT PROGRAM**

**567—210.1(455E) Beautification grant program.** A beautification grant program is established in the department, with funds provided pursuant to 2009 Iowa Code Supplement section 455E.11(2)"a"(1) as amended by 2010 Iowa Acts, House File 2525, section 24. Each fiscal year for the fiscal period beginning July 1, 2010, and ending June 30, 2014, not more than \$200,000 will be awarded to one entity that meets the eligibility criteria pursuant to rule 567—210.5(455E).

**567—210.2(455E) Purpose.** The purpose of the program is to provide financial assistance to a single eligible entity for the development and implementation of a public education and awareness initiative designed to reduce littering and illegal dumping. In addition, the successful applicant must use the moneys to establish a community partnership grant program designed to support community beautification projects, including the deconstruction, renovation, or removal of derelict buildings.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

**567—210.3(455E) Role of the department.** The department is responsible for administering the program and for determining how the funds will be disbursed.

**567—210.4(455E) Applications; submission deadlines.** Applications shall be submitted on a form provided by the department. With the exception of the fiscal year commencing July 1, 2010, applications shall be submitted no later than the April 1 that precedes the beginning of the fiscal year for which the funding is requested. For the fiscal year commencing July 1, 2010, applications shall be submitted no earlier than May 19, 2010, and not later than June 30, 2010.

**567—210.5(455E) Eligibility.**

**210.5(1)** To be eligible for the beautification grant program, an applicant must have done all of the following:

- a. Assisted communities and organizations in cleanup and beautification projects;
- b. Conducted research to assist in the understanding of reasons for littering and illegal dumping;
- c. Administered antilittering and beautification education programs; and
- d. Increased public awareness of the costs of littering and illegal dumping.

**210.5(2)** To demonstrate that the applicant meets the eligibility criteria, the application must include documentation that shows how the applicant has conducted activities through past or current initiatives for each listed criterion.

**567—210.6(455E) Evaluation of applications.** The department will evaluate all eligible grant applications submitted in the manner prescribed in the application. In the selection of an applicant for funding, emphasis will be placed on the success and impact of the initiatives set forth in rule 567—210.5(455E) as documented in the application. Eligible applicants must be in compliance with all applicable state and federal statutes and rules.

**567—210.7(455E) Rejection of applications.** The department may reject an application for reasons that include, but are not limited to:

1. The applicant does not meet eligibility requirements pursuant to rule 567—210.5(455E).
2. The applicant does not provide sufficient information requested in the application.
3. The activities proposed in the application are not consistent with the goals of the program.
4. Funds are insufficient to award the grant.
5. The applicant has not met the contractual obligations of previous department grant awards.
6. The department received the application after the deadline set forth in rule 567—210.4(455E).

**567—210.8(455E) Reduced award.** The department reserves the right to offer a grant in an amount less than the amount requested by the applicant if it is determined that the applicant could implement the eligible project at a reduced level of funding and achieve the eligible project objectives and purpose of this program.

**567—210.9(455E) Fund disbursement limitations.**

**210.9(1) Prerequisites.** No funds shall be disbursed until the department has:

- a. Determined the total estimated cost of the eligible project;
- b. Received confirmation that all required permits or permit amendments have been obtained by the grant recipient as appropriate;
- c. Received a commitment from the grant recipient to implement the eligible project; and
- d. Executed a written agreement with the grant recipient.

**210.9(2) Public education and awareness initiative limit.** Not more than 50 percent of the moneys awarded shall be used for the public education and awareness initiative described in rule 567—210.2(455E).

**210.9(3) Community partnership program limit.** Not more than 50 percent of the moneys awarded shall be used for the community partnership program described in rule 567—210.2(455E). The only eligible community partners under this program are cities of 5,000 or fewer in population.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

**567—210.10(455E) Eligible costs.**

**210.10(1)** Applicants may request financial assistance in the implementation and operation of eligible projects, which includes, but is not limited to, funds for the purpose of:

- a. Development, printing and distribution of educational materials;
- b. Planning and implementation of educational forums including, but not limited to, workshops;
- c. Expenses directly related to the development, implementation and operation of eligible projects, including administration; and
- d. Research and laboratory analysis costs and engineering or consulting fees.

**210.10(2)** Additional eligible costs for community partnership programs. For the community partnership program described in rule 567—210.2(455E), eligible costs may also include, but are not limited to:

- a. Asbestos abatement and removal.
- b. The recovery and processing of recyclable or reusable material from derelict buildings.
- c. Reimbursement for purchased recycled content materials used in the renovation of buildings.

**567—210.11(455E) Ineligible costs.** Grant funds shall not be provided or used for costs including, but not limited to, the following:

1. Taxes.
2. Vehicle registration.
3. Legal costs.
4. Contingency funds.
5. Proposal preparation.
6. Contractual project administration.
7. Land acquisition.
8. Office furniture, office computers, fax machines and other office furnishings and equipment.
9. Costs for which payment has been or will be received under another federal, state or private financial assistance program.
10. Costs incurred before a written agreement between the applicant and the department has been executed.

**567—210.12(455E) Written agreement and reporting.**

**210.12(1) *Written agreement.*** The grant recipient shall enter into an agreement with the department for the purposes of implementing the eligible projects and activities for which financial assistance has been awarded. The agreement shall be signed by an authorized representative of the department and the authorized officer of the grant recipient.

**210.12(2) *Report.*** As a condition of the grant award, the grant recipient shall submit a written report to the department by July 31 following the end of the fiscal year for which the financial assistance was awarded. In addition to any other information required by the agreement, the report shall include information detailing the expenditure of all moneys received by the organization under this agreement and the results achieved through the expenditure of the moneys. Final reports are considered part of the public record.

**210.12(3) *Termination.*** The department may terminate the agreement and seek the return of any funds released under the agreement for failure of the grant recipient to perform pursuant to the terms and conditions of the agreement.

**210.12(4) *Amendments.*** Amendments to the agreement may be adopted by mutual written consent by the department and the grant recipient.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

These rules are intended to implement 2009 Iowa Code Supplement section 455E.11(2) "a"(1) as amended by 2010 Iowa Acts, House File 2525, section 24.

[Filed Emergency 5/19/10, effective 5/19/10]

[Published 6/16/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/16/10.

## ARC 8838B

### HUMAN SERVICES DEPARTMENT[441]

#### Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 514I.5, the Department of Human Services amends Chapter 86, "Healthy and Well Kids in Iowa (HAWK-I) Program," Iowa Administrative Code.

The Department is implementing an alternative method of verifying citizenship through a data match with the Social Security Administration. This should markedly reduce the number of cases for which a birth certificate or other documentation verifying citizenship is needed. Federal requirements for using this method extend the reasonable period for obtaining verification to 90 days. These amendments:

- Allow coverage under the HAWK-I Program to be approved for children claiming to be U.S. citizens who meet all other eligibility criteria except for proof of citizenship, and
- Extend the reasonable period for obtaining verification of citizenship from 60 days to 90 days.

Previously, the application was pended until verification was submitted or the reasonable period expired, but when citizenship was verified, benefits were approved based on the application date. Under these amendments, HAWK-I eligibility shall be granted immediately when all other eligibility factors are met and then canceled if proof of citizenship is not received within 90 days. If a child's coverage has been canceled for failure to verify citizenship and the family reapplies for HAWK-I benefits, a second reasonable period for obtaining verification will not be allowed for that child.

These amendments do not provide for waivers in specified situations because they benefit the families affected by streamlining eligibility procedures. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on January 13, 2010, as **ARC 8479B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to those published under Notice of Intended Action.

The HAWK-I Board adopted these amendments on May 17, 2010.

The Department finds that these amendments confer a benefit on HAWK-I applicants by providing immediate eligibility and streamlining procedures for verification of citizenship. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these amendments is waived.

These amendments are intended to implement Iowa Code chapter 514I.

These amendments became effective on June 1, 2010.

The following amendments are adopted.

Amend paragraphs **86.2(7)"d," "e" and "f"** as follows:

*d.* An applicant or enrollee shall have a reasonable period to obtain and provide proof of citizenship and nationality. For the purposes of this requirement, the "reasonable period" begins on the date a written request to obtain and provide proof is issued to an applicant or enrollee and continues to the date the proof is provided or to the ~~sixtieth~~ ninetieth calendar day from the date the written request was issued.

*e.* Eligibility for HAWK-I shall ~~not~~ be approved for applicants for one reasonable period as described in paragraph 86.2(7)"d."

(1) The reasonable period shall begin no earlier than the first day of the month following the month in which a valid application is received and shall continue until the end of the month in which the ninetieth day occurs or until acceptable documentary evidence is provided, whichever is earlier.

HUMAN SERVICES DEPARTMENT[441](cont'd)

However, coverage may be canceled before the end of the reasonable period when another eligibility requirement is not met.

(2) For the purposes of HAWK-I eligibility, an applicant who received coverage during a reasonable period as a Medicaid applicant shall not be granted coverage pursuant to this paragraph for a second reasonable period.

*f.* Failure to provide acceptable documentary evidence by the ~~sixtieth~~ ninetieth calendar day from the date the written request was issued pursuant to paragraph 86.2(7)“*d*” shall be the basis for ~~denial~~ cancellation of coverage under HAWK-I for the child.

[Filed Emergency After Notice 5/18/10, effective 6/1/10]

[Published 6/16/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/16/10.

**ARC 8843B**

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 455A.6, the Environmental Protection Commission hereby adopts new Chapter 16, "Revocation, Suspension, and Nonrenewal of License for Failure to Pay State Liabilities," Iowa Administrative Code.

The chapter provides a mechanism through which the Department may suspend, revoke or deny issuance or renewal of licenses of persons who fail to pay liabilities to the state in compliance with the requirements in Iowa Code chapter 272D and Iowa Code section 261.126.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 10, 2010, as **ARC 8597B**. Comments were accepted through April 13, 2010. No comments were received. These rules are identical to those published under Notice.

These rules are intended to implement Iowa Code chapter 272D and Iowa Code section 261.126.

The amendment will become effective July 21, 2010.

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 16] is being omitted. These rules are identical to those published under Notice as **ARC 8597B**, IAB 3/10/10.

[Filed 5/19/10, effective 7/21/10]

[Published 6/16/10]

[For replacement pages for IAC, see IAC Supplement 6/16/10.]

**ARC 8839B**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 514I.5, the Department of Human Services amends Chapter 86, "Healthy and Well Kids in Iowa (HAWK-I) Program," Iowa Administrative Code.

This amendment changes the definition of "client error" used in the recovery of overpayments to include the failure of an enrollee to report correct information or changes in family circumstances. The Department will not have to prove the client's negligence or intent to defraud the program in order to recover premiums that were incorrectly paid. This change brings the HAWK-I definition of "client error" in line with that used in the Medicaid and Family Investment programs.

This amendment does not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Notice of Intended Action on this amendment was published in the Iowa Administrative Bulletin on March 10, 2010, as **ARC 8581B**. The Department received no comments on the Notice of Intended Action. This amendment is identical to that published under Notice of Intended Action.

The HAWK-I Board adopted this amendment on May 17, 2010.

This amendment is intended to implement Iowa Code chapter 514I.

This amendment shall become effective on August 1, 2010.

The following amendment is adopted.

Amend subrule **86.19(1)**, definition of "Client error," as follows:

"*Client error*" means ~~an intentional or negligent~~ any action or inaction attributed to the enrollee that results in incorrect payment of benefits, including premiums paid to a health or dental plan, because the enrollee or the enrollee's representative:

1. Failed to disclose information or gave a false or misleading statement, oral or written, regarding income or another eligibility factor; or

HUMAN SERVICES DEPARTMENT[441](cont'd)

2. Failed to timely report a change as defined in rule 441—86.10(514I).

[Filed 5/18/10, effective 8/1/10]

[Published 6/16/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/16/10.

**ARC 8856B**

## **INSPECTIONS AND APPEALS DEPARTMENT[481]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 137F.2, the Department of Inspections and Appeals hereby amends Chapter 31, "Food Establishment and Food Processing Plant Inspections," Iowa Administrative Code.

The Department is adopting an amendment to the requirement that all wild mushrooms be inspected by an approved mushroom identification expert prior to their sale at food establishments. The amendment clarifies the requirement for a morel mushroom identification expert only. The amendment allows an individual who has successfully completed a three-hour morel mushroom identification expert course (every three years) to procure or sell wild morel mushrooms to a food establishment.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 8697B** on April 21, 2010. The amendment was also Adopted and Filed Emergency and published on the same date as **ARC 8696B**.

Comments from the public related to a belief that the amendment imposed additional regulation and would limit the sale of morel mushrooms; whereas, the amendment is intended to do exactly the opposite and make it easier to sell morel mushrooms.

To make the amendment more clear, the Department has clarified that the sale of morel mushrooms is allowed at farmers markets.

This amendment is intended to implement Iowa Code section 137F.2.

This amendment will become effective July 21, 2010, at which time the Adopted and Filed Emergency amendment is hereby rescinded.

The following amendment is adopted.

Adopt the following **new** subrule 31.1(12):

**31.1(12)** Section 3-201.16, paragraph (A), is amended by the adding the following:

"A food establishment or farmers market potentially hazardous food licensee may serve or sell morel mushrooms if procured from an individual who has completed a morel mushroom identification expert course. Every morel mushroom shall be identified and found to be safe by a certified morel mushroom identification expert whose competence has been verified and approved by the department through the expert's successful completion of a morel mushroom identification expert course provided by either an accredited college or university or a mycological society. The certified morel mushroom identification expert shall personally inspect each mushroom and determine it to be a morel mushroom. A morel mushroom identification expert course shall be at least three hours in length. To maintain status as a morel mushroom identification expert, the individual shall have successfully completed a morel mushroom identification expert course described above within the past three years. A person who wishes to offer a morel mushroom identification expert course must submit the course curriculum to the department for review and approval. Food establishments or farmers market potentially hazardous food licensees offering morel mushrooms shall maintain the following information for a period of 90 days from the date the morel mushrooms were obtained:

"1. The name, address, and telephone number of the morel mushroom identification expert;

"2. A copy of the morel mushroom identification expert's certificate of successful completion of the course, containing the date of completion; and

"3. The quantity of morel mushrooms purchased and the date(s) purchased.

## INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

“Furthermore, a consumer advisory shall inform consumers by brochures, deli case or menu advisories, label statements, table tents, placards, or other effective written means that wild mushrooms should be thoroughly cooked and may cause allergic reactions or other effects.”

[Filed 5/26/10, effective 7/21/10]

[Published 6/16/10]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 6/16/10.

**ARC 8857B**

**INSPECTIONS AND APPEALS DEPARTMENT[481]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 135H.10, the Department of Inspections and Appeals hereby amends Chapter 41, “Psychiatric Mental Institutions for Children (PMIC),” Iowa Administrative Code.

Chapter 41 is being amended to make restraints standards in PMICs consistent between the Department of Inspections and Appeals (DIA) and the Department of Education. DIA received this request from a citizen concerned about the use of prone restraints. DIA has met with the trade association and PMICs and has received no opposition to the prohibition of prone restraints.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 8657B** on April 7, 2010. No public comments were received. This amendment is identical to that published under Notice of Intended Action.

This amendment is intended to implement Iowa Code sections 135H.4 and 135H.5.

This amendment will become effective July 21, 2010.

The following amendment is adopted.

Adopt the following new rule 481—41.17(135H):

**481—41.17(135H) Additional provisions concerning physical restraint.** If a PMIC uses a physical restraint, the following provisions shall apply:

**41.17(1)** No employee shall use any prone restraints. For the purposes of this rule, “prone restraints” means those in which an individual is held face down on the floor. Employees who find themselves involved in the use of a prone restraint as the result of responding to an emergency must take immediate steps to end the prone restraint.

**41.17(2)** No employee shall use any restraint that obstructs the airway of any resident.

**41.17(3)** If an employee physically restrains a resident who uses sign language or an augmentative mode of communication as the resident’s primary mode of communication, the resident shall be permitted to have the resident’s hands free of restraint for brief periods, unless an employee determines that such freedom appears likely to result in harm to self or others.

This rule is intended to implement Iowa Code sections 135H.4 and 135H.5.

[Filed 5/26/10, effective 7/21/10]

[Published 6/16/10]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 6/16/10.

**ARC 8860B**

**PUBLIC HEALTH DEPARTMENT[641]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 105.4, the Plumbing and Mechanical Systems Board hereby amends Chapter 25, “State Plumbing Code,” Iowa Administrative Code.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

The rules in Chapter 25 describe the minimum standards for plumbing materials and plumbing methods in buildings and on premises in Iowa. These amendments change the statutory reference from Iowa Code chapter 135 to chapter 105. The model code adopted by reference is changed from the Uniform Plumbing Code (UPC), 2000 Edition, to the Uniform Plumbing Code, 2009 Edition. Sections of the UPC previously excluded are now included by reference. Several amendments to the UPC from the previous rules have been eliminated. The table of required plumbing fixtures from the UPC was replaced by a similar table from the International Plumbing Code, 2009 Edition.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 21, 2010, as **ARC 8703B**. A public hearing was held on May 11, 2010.

Written comments were received from the Iowa League of Cities and the City of Dubuque objecting to the deletion from rule 641—25.1(135) of a paragraph referencing local ordinances and Iowa Code section 364.3. The Board concluded that the authority provided to cities under Iowa Code chapter 364 is not affected by the language's being included or not included in rule 641—25.1(105).

Plumbing inspectors employed by the City of Des Moines recommended the retention of three technical amendments from the previous rule and suggested that UPC storm drainage provisions adopted for the first time with these rules would require licensing of foundation contractors that typically install subsoil drainage. The Board concluded that the additional amendments were unnecessary and that licensure requirements are governed by Iowa Code chapter 105, not provisions of the UPC.

These amendments are identical to the amendments published under Notice of Intended Action.

The Plumbing and Mechanical Systems Board adopted these amendments on May 26, 2010.

These amendments are intended to implement Iowa Code chapter 105.

These amendments will become effective July 21, 2010.

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 [25.1 to 25.5] is being omitted. These amendments are identical to those published under Notice as **ARC 8703B**, IAB 4/21/10.

[Filed 5/26/10, effective 7/21/10]

[Published 6/16/10]

[For replacement pages for IAC, see IAC Supplement 6/16/10.]

**ARC 8837B****TRANSPORTATION DEPARTMENT[761]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on May 13, 2010, adopted an amendment to Chapter 529, "For-Hire Interstate Motor Carrier Authority," Iowa Administrative Code.

Because the Code of Federal Regulations (CFR) was updated in October 2009, the Department must cite the current version in the administrative rules. Changes to 49 CFR Parts 365-368 and 370-379 have occurred.

Notice of Intended Action for this amendment was published in the April 7, 2010, Iowa Administrative Bulletin as **ARC 8668B**.

This amendment is identical to that published under Notice of Intended Action.

This amendment is intended to implement Iowa Code chapter 327B.

This amendment will become effective July 21, 2010.

Rule-making action:

TRANSPORTATION DEPARTMENT[761](cont'd)

Amend rule 761—529.1(327B) as follows:

**761—529.1(327B) Motor carrier regulations.** The Iowa department of transportation adopts the Code of Federal Regulations, 49 CFR Parts 365-368 and 370-379, dated October 1, ~~2008~~ 2009, for regulating interstate for-hire carriers.

Copies of this publication are available from the state law library or through the Internet at <http://www.fmcsa.dot.gov>.

[Filed 5/17/10, effective 7/21/10]

[Published 6/16/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/16/10.

**ARC 8859B**

## **UTILITIES DIVISION[199]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.4, 17A.7, 476.1, and 476.8 and Section 211 of the Public Utilities Regulatory Policies Act of 1978, as amended by the Energy Policy Act of 2005, the Utilities Board (Board) gives notice that on May 26, 2010, the Board issued an order in Docket No. RMU-2009-0008, In re: Electric Interconnection of Distributed Generation Facilities, "Order Adopting Rules." The Board is adopting amendments to 199—15.8(476), 199—15.10(476), and 199—15.11(476) and new Chapter 45. The amendments and new chapter deal with electric interconnection of distributed generation facilities.

The genesis of this matter began on August 8, 2005, when the Energy Policy Act of 2005 (EPACT 2005) was signed into law. Among the many provisions of this federal legislation are five new federal rate-making standards added to the Public Utility Regulatory Policies Act of 1978 (PURPA). The fifth of these new standards (commonly referred to as Standard 15), found in Section 211 of PURPA (16 U.S.C. 2621(d)), pertains to interconnection of distributed generation facilities. Standard 15 provides that all state utility commissions must consider and make a determination of whether to adopt the standard. Standard 15, if adopted by the Board, would require each rate-regulated utility to interconnect any customer's on-site generation (i.e., distributed generation) with the utility's local distribution facilities, based on Institute of Electrical and Electronics Engineers, Inc. (IEEE), Standard 1547. Standard 15 also requires, among other things, the establishment of nondiscriminatory practices and procedures that promote the best practices for interconnection of distributed generation.

The Board initiated a proceeding on July 3, 2006, to consider adopting Standard 15. After receiving comments from inquiry participants, the Board issued an order on April 25, 2007, adopting Standard 15, in part, and inviting comments on preliminary model interconnection procedures for rate-regulated utilities. Several participants filed comments on the model interconnection procedures. Three inquiry participants, the Environmental Law and Policy Center representing the Distributed Generation Coalition, MidAmerican Energy Company, and the Consumer Advocate Division of the Department of Justice, filed supplemental comments on December 24, 2008. The three participants agreed to jointly advocate the use of interconnection rules adopted by Illinois as a starting point for revising the Board's generator interconnection rules, rather than the draft model interconnection procedures promulgated by the Board for comment on April 25, 2007, in Docket No. NOI-06-4.

The Board asked inquiry participants to comment on whether and how the Illinois interconnection rules should be adopted for Iowa. Several participants responded in January 2009. Although not all inquiry participants indicated their agreement with using the Illinois rules as a starting point, the Board believed it was time to propose amendments to Chapter 15 and to propose a new Chapter 45, using the Illinois rules as a starting point, so that the process could move forward and interconnection standards for distributed generation facilities could be adopted on a timely basis.

## UTILITIES DIVISION[199](cont'd)

Notice of Intended Action in Docket No. RMU-2009-0008 was published in IAB Vol. XXXII, No. 8 (10/07/2009), p. 948, as **ARC 8201B**. Written comments were received from several participants, and an oral presentation was held on December 10, 2009. In addition, a two-day workshop to address technical issues was held on March 23 and 24, 2010. A transcript of the workshop is available for review in the Board's Records Center. A complete summary of the oral and written comments, along with staff recommendations, is available through the Board's electronic filing system, which can be accessed at <http://efs.iowa.gov>. This on-line document provides a complete explanation of the changes from the noticed rules, including red-lined versions of the changes to the noticed rules. Because of the length of this rule making, only the most significant issues and changes from the proposed rules will be addressed here. However, the Board has considered all of the comments and issues, as described in the available summary, which is incorporated in this action by reference.

The adopted rules apply only to PURPA qualifying facilities and alternate energy production facilities and to rate-regulated utilities. Several participants argued that the rules should also apply to non-rate-regulated cooperative and municipal utilities. The jurisdictional issue is not well-settled, and the Board will not seek to assert jurisdiction to impose interconnections standards on non-rate-regulated utilities at this time. Those that advocate extending these interconnection standards to all utilities could seek legislation that would end any debate over the extent of the Board's jurisdiction over non-rate-regulated utilities. However, if problems develop with respect to interconnections with non-rate-regulated utilities, the Board may revisit the jurisdictional issue in a new rule making that would seek to apply the adopted rules to non-rate-regulated utilities even in the absence of new legislation.

The Board's goal in the notice of inquiry and interconnection rule making is to facilitate the addition of distributed generation at the distribution level. The adopted rules reflect this goal, for example, in the insurance requirements. For small facilities, general liability insurance, such as a homeowner's policy, is sufficient. (See Appendix A; rule 199—45.14(476).) While proof of coverage must be provided, the utility does not have to be named as an insured on the policy, a requirement that apparently creates difficulties with some carriers. Insurance requirements increase as the project size or level of review increases. Similarly, the application fees adopted by the Board impose minimal filing fees on the smallest facilities, with the fees increasing as the project size or level of review increases. (See subrule 45.4(2); Appendices referenced.)

To facilitate interconnection and provide transparency to the process, the rules provide for standard forms that the utility must use. (See Appendices; rule 199—45.14(476) et seq.) While the utilities may change the appearance and format of the forms by providing such things as checkboxes, the information and specific wording contained in the standard forms must be present and each utility's specific form must be filed with its tariffs and, when approved, posted on the utility's Web site.

The adopted rules provide four levels of review. (See rule 199—45.7(476) et seq.) Levels 1 through 3 provide expedited review and Level 4 involves a more in-depth process. Level 1 provides an expedited review process for very small lab-certified generation facilities with capacities of 10 kW (i.e., 10 kVA) or less. Level 2 provides an expedited process for lab-certified generation facilities of 2 MW (i.e., 2 MVA) or less that seek interconnection with either a radial distribution circuit or a spot network that serves only one customer. Level 3 provides an expedited process for lab-certified generation facilities that will not export power onto the utility's system and which seek interconnection with either area networks (limited to generation facilities of 50 kVA or less) or radial distribution circuits (limited to generation facilities of 10 MVA or less). All three expedited review levels presume the interconnection will require no construction of additional facilities by the utility. If additional facilities are required by the utility to accommodate the interconnection, or if the application cannot successfully complete Levels 1, 2, or 3, the application will receive more extensive review under Level 4.

Numerous technical issues were resolved or clarified at the two-day workshop. The Board commends all participants for their work in resolving many of these issues and facilitating future interconnections.

The Board recognizes that this is a significant rule making, both in terms of subject matter and size. The Board intends to closely monitor the practical application of the rules and may propose amendments

## UTILITIES DIVISION[199](cont'd)

if the adopted rules are not working as intended to facilitate the interconnection of distributed generation facilities.

The Board does not find it necessary to propose a separate waiver provision in this rule making. The Board's general waiver provision in 199—1.3(17A,474,476,78GA,HF2206) is applicable to these amendments.

The adopted amendments and new chapter have been revised from the noticed rules. However, the changes have been made in response to the written and oral comments, including those at the two-day workshop, and no additional notice is necessary prior to adopting these amendments.

These amendments are intended to implement Iowa Code sections 476.1 and 476.8 and Section 211 of the Public Utilities Regulatory Policies Act of 1978, as amended by the Energy Policy Act of 2005.

These amendments will become effective on July 21, 2010.

The following amendments are adopted.

ITEM 1. Amend rule 199—15.8(476) as follows:

**199—15.8(476) Interconnection costs.** For purposes of this rule, “utility” means a rate-regulated electric utility.

**15.8(1)** ~~Qualifying facilities and AEP facilities shall be obligated to pay any interconnection costs, as defined described in this chapter. These costs shall be assessed on a nondiscriminatory basis with respect to other customers with similar load characteristics. 199—Chapter 45.~~

**15.8(2)** ~~Utilities shall be reimbursed by qualifying facilities and AEP facilities for interconnection costs at the time the costs are incurred. Upon petition by any party involved and for good cause shown, the board may allow for reimbursement of costs over a reasonable period of time and upon such conditions as the board may determine; provided, however, that no other customers of the utility shall bear any of the costs of interconnection. Reserved.~~

ITEM 2. Amend rule 199—15.10(476) as follows:

**199—15.10(476) Standards for interconnection, safety, and operating reliability.** For purposes of this rule, “electric utility” or “utility” means both rate-regulated and non-rate-regulated electric utilities.

**15.10(1) Acceptable standards.** ~~Qualifying~~ The interconnection of qualifying facilities and AEP facilities and associated interconnection equipment to an electric utility system shall meet the applicable provisions in of the publications listed below ~~in order to be eligible for interconnection to an electric utility system:~~

~~a. General Requirements for Synchronous Machines, ANSI C50.10-1990.~~

~~b. IEEE Standard for Salient Pole 50 Hz and 60 Hz, Synchronous Generators and Generator/Motors for Hydraulic Turbine Applications Rated 5 MVA and above, IEEE C50.12-2005.~~

~~c. IEEE Standard for Cylindrical-Rotor 50 Hz and 60 Hz, Synchronous Generators Rated 10 MVA and above, IEEE C50.13-2005.~~

a. Standard for Interconnecting Distributed Resources with Electric Power Systems, ANSI/IEEE Standard 1547-2003. For guidance in applying IEEE Standard 1547, the utility may refer to:

(1) IEEE Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems—IEEE Standard 519-1992; and

(2) IEC/TR3 61000-3-7 Assessment of Emission Limits for Fluctuating Loads in MV and HV Power Systems.

~~d. b. Iowa Electrical Safety Code, as defined in 199—Chapter 25.~~

~~e. c. National Electrical Code, ANSI/NFPA 70-2005 2008.~~

~~f. IEEE Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems—IEEE 519-1992.~~

~~g. Standard for Interconnecting Distributed Resources with Electric Power Systems, ANSI/IEEE 1547-2003.~~

For those facilities which are of such design as to not be subject to the standards noted in paragraphs 15.10(1)“a” through “d,” data on the manufacturer, type of device, and output current wave form (at

UTILITIES DIVISION[199](cont'd)

full load) and output voltage wave form (at no load and at full load) shall be submitted to the utility for review and approval prior to interconnection. A copy of the utility decision (whether approving or disapproving), including the data specified in paragraphs 15.10(1) "a" through "d" and the exact location of the facility, shall be filed with the board within one week of the date of the decision. The utility decision, or its failure to decide within a reasonable time, may be appealed to the board. The appeal shall be treated as a contested case proceeding.

**15.10(2)** No change.

**15.10(3)** *Interconnection facilities.* Interconnections between qualifying facilities or AEP facilities and electric utility systems shall be equipped with devices, as set forth below, to protect either system from abnormalities or component failures that may occur within the facility or the electric utility system. Inclusion of the following protective systems shall be considered as a minimum standard of accepted good practice unless otherwise ordered by the board:

*a.* ~~The interconnection must be provided with a switch that provides a visible break or opening. The switch must be capable of being padlocked in the open position. The utility may require the distributed generation facility to have the capability to be isolated from the utility, either by means of a lockable, visible-break isolation device accessible by the utility, or by means of a lockable isolation device whose status is indicated and is accessible by the utility. If an isolation device is required by the utility, the device shall be installed, owned, and maintained by the owner of the distributed generation facility and located electrically between the distributed generation facility and the point of interconnection. A draw-out type of circuit breaker accessible to the utility with a provision for padlocking at the drawn-out position satisfies the requirement for an isolation device.~~

*b. to d.* No change.

**15.10(4)** *Access.* ~~Both~~ If an isolation device is required by the utility, both the operator of the qualifying facility or AEP facility and the utility shall have access to the interconnection switch isolation device at all times. An interconnection customer may elect to provide the utility with access to an isolation device that is contained in a building or area that may be unoccupied and locked or not otherwise accessible to the utility by installing a lockbox provided by the utility that allows ready access to the isolation device. The lockbox shall be in a location determined by the utility to be accessible by the utility. The interconnection customer shall permit the utility to affix a placard in a location of the utility's choosing that provides instructions to utility operating personnel for accessing the isolation device. If the utility needs to isolate the distributed generation facility, the utility shall not be held liable for any damages resulting from the actions necessary to isolate the generation facility.

**15.10(5)** No change.

**15.10(6)** *Emergency disconnection.* In the event that an electric utility or its customers experience problems of a type that could be caused by the presence of alternating currents or voltages with a frequency higher than 60 Hertz, the utility shall be permitted to open and lock the interconnection switch pending a complete investigation of the problem. Where the utility believes the condition creates a hazard to the public or to property, the disconnection may be made without prior notice. However, the utility shall notify the operator of the qualifying facility or AEP facility by written notice and, where possible, verbal notice as soon as practicable after the disconnections. ~~If the facility and the utility are unable to agree on conditions for reconnection of the facility, a contested case proceeding to determine the conditions for reconnection may be commenced by the facility or the utility upon filing of a petition.~~

ITEM 3. Rescind and reserve subrule **15.11(4)**.

ITEM 4. Adopt the following **new** 199—Chapter 45:

#### CHAPTER 45

#### ELECTRIC INTERCONNECTION OF DISTRIBUTED GENERATION FACILITIES

**199—45.1(476) Definitions.** Terms defined in the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 2601 et seq., shall have the same meaning for purposes of these rules as they have under PURPA, unless further defined in this chapter.

## UTILITIES DIVISION[199](cont'd)

*“Adverse system impact”* means a negative effect that compromises the safety or reliability of the electric distribution system or materially affects the quality of electric service provided by the utility to other customers.

*“AEP facility”* means an AEP facility, as defined in 199—Chapter 15, used by an interconnection customer to generate electricity that operates in parallel with the electric distribution system. An AEP facility typically includes an electric generator and the interconnection equipment required to interconnect safely with the electric distribution system or local electric power system.

*“Affected system”* means an electric system not owned or operated by the utility reviewing the interconnection request that could suffer an adverse system impact from the proposed interconnection.

*“Applicant”* means a person (or entity) who has submitted an interconnection request to interconnect a distributed generation facility to a utility’s electric distribution system.

*“Area network”* means a type of electric distribution system served by multiple transformers interconnected in an electrical network circuit, generally used in large, densely populated metropolitan areas.

*“Board”* means the Iowa utilities board.

*“Business day”* means Monday through Friday, excluding state and federal holidays.

*“Calendar day”* means any day, including Saturdays, Sundays, and state and federal holidays.

*“Certificate of completion”* means the Standard Certificate of Completion in Appendix B (199—45.15(476)) that contains information about the interconnection equipment to be used, its installation, and local inspections.

*“Commissioning test”* means a test applied to a distributed generation facility by the applicant after construction is completed to verify that the facility does not create adverse system impacts and performs to the submitted specifications. At a minimum, the scope of the commissioning tests performed shall include the commissioning test specified in Institute of Electrical and Electronics Engineers, Inc. (IEEE), Standard 1547, Section 5.4 “Commissioning tests.”

*“Distributed generation facility”* means a qualifying facility or an AEP facility.

*“Distribution upgrade”* means a required addition or modification to the electric distribution system to accommodate the interconnection of the distributed generation facility. Distribution upgrades do not include interconnection facilities.

*“Draw-out type circuit breaker”* means a switching device capable of making, carrying and breaking currents under normal and abnormal circuit conditions such as those of a short circuit. A draw-out type circuit breaker can be physically removed from its enclosure creating a visible break in the circuit. The draw-out type circuit breaker shall be capable of being locked in the open, drawn-out position.

*“Electric distribution system”* means the facilities and equipment owned and operated by the utility and used to transmit electricity to ultimate usage points such as homes and industries from interchanges with higher voltage transmission networks that transport bulk power over longer distances. The voltage levels at which electric distribution systems operate differ among areas but generally operate at less than 100 kilovolts of electricity. “Electric distribution system” has the same meaning as the term “Area EPS,” as defined in Section 3.1.6.1 of IEEE Standard 1547.

*“Fault current”* is the electrical current that flows through a circuit during an electrical fault condition. A fault condition occurs when one or more electrical conductors contact ground or each other. Types of faults include phase to ground, double-phase to ground, three-phase to ground, phase-to-phase, and three-phase. Often, a fault current is several times larger in magnitude than the current that normally flows through a circuit.

*“IEEE Standard 1547”* is the Institute of Electrical and Electronics Engineers, Inc., 3 Park Avenue, New York, NY 10016-5997, Standard 1547 (2003) “Standard for Interconnecting Distributed Resources with Electric Power Systems.”

*“IEEE Standard 1547.1”* is the IEEE Standard 1547.1 (2005) “Conformance Test Procedures for Equipment Interconnecting Distributed Resources with Electric Power Systems.”

*“Interconnection customer”* means a person or entity that interconnects a distributed generation facility to an electric distribution system.

## UTILITIES DIVISION[199](cont'd)

*“Interconnection equipment”* means a group of components or an integrated system owned and operated by the interconnection customer that connects an electric generator with a local electric power system, as that term is defined in Section 3.1.6.2 of IEEE Standard 1547, or with the electric distribution system. Interconnection equipment is all interface equipment including switchgear, protective devices, inverters, or other interface devices. Interconnection equipment may be installed as part of an integrated equipment package that includes a generator or other electric source.

*“Interconnection facilities”* means facilities and equipment required by the utility to accommodate the interconnection of a distributed generation facility. Collectively, interconnection facilities include all facilities and equipment between the distributed generation facility’s interconnection equipment and the point of interconnection, including any modifications, additions, or upgrades necessary to physically and electrically interconnect the distributed generation facility to the electric distribution system. Interconnection facilities are sole-use facilities and do not include distribution upgrades.

*“Interconnection request”* means an applicant’s request, in a form approved by the board, for interconnection of a new distributed generation facility or to change the capacity or other operating characteristics of an existing distributed generation facility already interconnected with the electric distribution system.

*“Interconnection study”* is any study described in rule 199—45.11(476).

*“Lab-certified”* means a designation that the interconnection equipment meets the requirements set forth in rule 199—45.6(476).

*“Line section”* is that portion of an electric distribution system connected to an interconnection customer’s site, bounded by automatic sectionalizing devices or the end of the distribution line, or both.

*“Local electric power system”* means facilities that deliver electric power to a load that is contained entirely within a single premises or group of premises. “Local electric power system” has the same meaning as that term as defined in Section 3.1.6.2 of IEEE Standard 1547.

*“Nameplate capacity”* is the maximum rated output of a generator, prime mover, or other electric power production equipment under specific conditions designated by the manufacturer and usually indicated on a nameplate physically attached to the power production equipment.

*“Nationally recognized testing laboratory”* or “NRTL” means a qualified private organization that meets the requirements of the Occupational Safety and Health Administration’s (OSHA) regulations. See 29 CFR 1910.7 (July 31, 2000). NRTLs perform independent safety testing and product certification. Each NRTL shall meet the requirements as set forth by OSHA in its NRTL program.

*“Parallel operation”* or “parallel” means a distributed generation facility that is connected electrically to the electric distribution system for longer than 100 milliseconds.

*“Point of interconnection”* has the same meaning as the term “point of common coupling” defined in Section 3.1.13 of IEEE Standard 1547.

*“Primary line”* means an electric distribution system line operating at greater than 600 volts.

*“Qualifying facility”* means a cogeneration facility or a small power production facility that is a qualifying facility under 18 CFR Part 292, Subpart B, used by an interconnection customer to generate electricity that operates in parallel with the electric distribution system. A qualifying facility typically includes an electric generator and the interconnection equipment required to interconnect safely with the electric distribution system or local electric power system.

*“Radial distribution circuit”* means a circuit configuration in which independent feeders branch out radially from a common source of supply.

*“Review order position”* means, for each distribution circuit or line section, the order of a completed interconnection request relative to all other pending completed interconnection requests on that distribution circuit or line section. The review order position is established by the date that the utility receives the completed interconnection request.

*“Scoping meeting”* means a meeting between representatives of the applicant and utility conducted for the purpose of discussing interconnection issues and exchanging relevant information.

*“Secondary line”* means an electric distribution system line, or service line, operating at 600 volts or less.

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“*Shared transformer*” means a transformer that supplies secondary voltage to more than one customer.

“*Spot network*” means a type of electric distribution system that uses two or more inter-tied transformers to supply an electrical network circuit. A spot network is generally used to supply power to a single customer or a small group of customers. “Spot network” has the same meaning as the term “spot network” as defined in Section 4.1.4 of IEEE Standard 1547.

“*Standard distributed generation interconnection agreement*” means the Standard Distributed Generation Interconnection Agreements in Appendix A (199—45.14(476)) and Appendix D (199—45.17(476)) applicable to interconnection requests for distributed generation facilities.

“*UL Standard 1741*” means the standard titled “Inverters, Converters, and Controllers for Use in Independent Power Systems,” November 7, 2005, edition, Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, IL 60062-2096.

“*Utility*” means an electric utility that is subject to rate regulation by the Iowa utilities board.

“*Witness test*” for lab-certified equipment means a verification either by an on-site observation or review of documents that the interconnection installation evaluation required by IEEE Standard 1547, Section 5.3 and the commissioning test required by IEEE Standard 1547, Section 5.4 have been adequately performed. For interconnection equipment that has not been lab-certified, the witness test shall also include verification of the on-site design tests as required by IEEE Standard 1547, Section 5.1 and verification of production tests required by IEEE Standard 1547, Section 5.2. All verified tests are to be performed in accordance with the test procedures specified by IEEE Standard 1547.1.

**199—45.2(476) Scope.**

**45.2(1)** This chapter applies to utilities, and distributed generation facilities seeking to operate in parallel with utilities, provided the facilities are not subject to the interconnection requirements of the Federal Energy Regulatory Commission (FERC), the Midwest Independent Transmission System Operator, Inc. (MISO), or the Mid-Continent Area Power Pool (MAPP).

**45.2(2)** If the nameplate capacity of the facility is greater than 10 MVA, the interconnection customer and the utility shall start with the Level 4 review process and agreements under rules 199—45.11(476), 199—45.17(476), 199—45.18(476), 199—45.19(476), and 199—45.20(476), and modify the process and agreements as needed by mutual agreement. In addition, the interconnection customer and the utility shall start with the technical standards under rule 199—45.3(476) and modify the standards as needed by mutual agreement. If the interconnection customer and the utility cannot reach mutual agreement, the interconnection customer may seek resolution through the rule 199—45.12(476) dispute process.

**199—45.3(476) Technical standards.** The technical standard to be used in evaluating interconnection requests governed by this chapter is IEEE Standard 1547, unless otherwise noted.

**45.3(1) Acceptable standards.** The interconnection of distributed generation facilities and associated interconnection equipment to an electric utility system shall meet the applicable provisions of the publications listed below:

*a.* Standard for Interconnecting Distributed Resources with Electric Power Systems, IEEE Standard 1547. For guidance in applying IEEE Standard 1547, the utility may refer to:

(1) IEEE Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems—IEEE Standard 519-1992; and

(2) IEC/TR3 61000-3-7 Assessment of Emission Limits for Fluctuating Loads in MV and HV Power Systems.

*b.* Iowa Electrical Safety Code, as defined in 199—Chapter 25.

*c.* National Electrical Code, ANSI/NFPA 70-2008.

**45.3(2) Interconnection facilities.**

*a.* The utility may require the distributed generation facility to have the capability to be isolated from the utility, either by means of a lockable, visible-break isolation device accessible by the utility, or by means of a lockable isolation device whose status is indicated and is accessible by the utility. If an isolation device is required by the utility, the device shall be installed, owned, and maintained by the

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owner of the distributed generation facility and located electrically between the distributed generation facility and the point of interconnection. A draw-out type of circuit breaker accessible to the utility with a provision for padlocking at the drawn-out position satisfies the requirement for an isolation device.

*b.* The interconnection shall include overcurrent devices on the facility to automatically disconnect the facility at all currents that exceed the full-load current rating of the facility.

*c.* Distributed generation facilities with a design capacity of 100 kVA or less must be equipped with automatic disconnection upon loss of electric utility-supplied voltage.

*d.* Those facilities that produce a terminal voltage prior to the closure of the interconnection shall be provided with synchronism-check devices to prevent closure of the interconnection under conditions other than a reasonable degree of synchronization between the voltages on each side of the interconnection switch.

**45.3(3) Access.** If an isolation device is required by the utility, both the operator of the distributed generation facility and the utility shall have access to the isolation device at all times. An interconnection customer may elect to provide the utility with access to an isolation device that is contained in a building or area that may be unoccupied and locked or not otherwise accessible to the utility by installing a lockbox provided by the utility that allows ready access to the isolation device. The lockbox shall be in a location determined by the utility to be accessible by the utility. The interconnection customer shall permit the utility to affix a placard in a location of the utility's choosing that provides instructions to utility operating personnel for accessing the isolation device. If the utility needs to isolate the distributed generation facility, the utility shall not be held liable for any damages resulting from the actions necessary to isolate the generation facility.

**45.3(4) Inspections.** The operator of the distributed generation facility shall adopt a program of inspection of the generator and its appurtenances and the interconnection facilities in order to determine necessity for replacement and repair. Representatives of the utility shall have access at all reasonable hours to the interconnection equipment specified in subrule 45.3(2) for inspection and testing.

**45.3(5) Emergency disconnection.** In the event that an electric utility or its customers experience problems of a type that could be caused by the presence of alternating currents or voltages with a frequency higher than 60 Hertz, the utility shall be permitted to open and lock the interconnection switch pending a complete investigation of the problem. Where the utility believes the condition creates a hazard to the public or to property, the disconnection may be made without prior notice. However, the utility shall notify the operator of the distributed generation facility by written notice and, where possible, verbal notice as soon as practicable after the disconnections.

**199—45.4(476) Interconnection requests.**

**45.4(1)** Applicants seeking to interconnect a distributed generation facility shall submit an interconnection request to the utility that owns the electric distribution system to which interconnection is sought. Applicants shall use interconnection request forms approved by the board.

**45.4(2)** Utilities shall specify the fee by level that the applicant shall remit to process the interconnection request. The fee shall be specified in the interconnection request forms. Utilities may charge a fee by level that applicants must remit in order to process an interconnection request. The utilities shall not charge more than the fees specified in the Standard Application Forms in Appendix A (199—45.14(476)) and Appendix C (199—45.16(476)).

**45.4(3)** Interconnection requests may be submitted electronically, if agreed to by the parties.

**199—45.5(476) General requirements.**

**45.5(1)** When an interconnection request for a distributed generation facility includes multiple energy production devices at a site for which the applicant seeks a single point of interconnection, the interconnection request shall be evaluated on the basis of the aggregate nameplate capacity of the multiple devices.

**45.5(2)** When an interconnection request is for an increase in capacity for an existing distributed generation facility, the interconnection request shall be evaluated on the basis of the new total nameplate capacity of the distributed generation facility.

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**45.5(3)** The utility shall designate a point of contact and provide contact information on the utility's Web site. The point of contact shall be able to direct applicant questions concerning interconnection request submissions and the interconnection request process to knowledgeable individuals within the utility.

**45.5(4)** The information that the utility makes available to potential applicants can include previously existing utility studies that help applicants understand whether it is feasible to interconnect a distributed generation facility at a particular point on the utility's electric distribution system. However, the utility can refuse to provide the information to the extent that providing it violates security requirements or confidentiality agreements, or is contrary to state or federal law. In appropriate circumstances, the utility may require a confidentiality agreement prior to release of this information.

**45.5(5)** When an interconnection request is deemed complete by the utility, any modification that is not agreed to by the utility requires submission of a new interconnection request.

**45.5(6)** When an applicant is not currently a customer of the utility at the proposed site, the applicant shall provide, upon utility request, proof of the applicant's legal right to control the site, evidenced by the applicant's name on a property tax bill, deed, lease agreement or other legally binding contract.

**45.5(7)** To minimize the cost to interconnect multiple distributed generation facilities, the utility or the applicant may propose a single point of interconnection for multiple distributed generation facilities located at an interconnection customer site that is on contiguous property. If the applicant rejects the utility's proposal for a single point of interconnection, the applicant shall pay any additional cost to provide a separate point of interconnection for each distributed generation facility. If the utility, without written technical explanation, rejects the customer's proposal for a single point of interconnection, the utility shall pay any additional cost to provide separate points of interconnection for each distributed generation facility.

**45.5(8)** Any metering required for a distributed generation interconnection shall be installed, operated, and maintained in accordance with the utility's metering rules filed with the board under 199—subrule 20.2(5), and inspection and testing practices adopted under rule 199—20.6(476). Any such metering requirements shall be identified in the Standard Distributed Generation Interconnection Agreement executed between the interconnection customer and the utility.

**45.5(9)** Utility requirements for monitoring and control of distributed generation facilities are permitted only when the nameplate capacity rating is greater than 1 MVA. Monitoring and control requirements shall be reasonable, consistent with the utility's published requirements, and shall be clearly identified in the interconnection agreement between the interconnection customer and the utility. Transfer trip shall not be considered utility monitoring and control when required and installed to protect the electric distribution system or an affected system against adverse system impacts.

**45.5(10)** The utility may require a witness test after the distributed generation facility is constructed. The applicant shall provide the utility with at least 15 business days' notice of the planned commissioning test for the distributed generation facility. The applicant and utility shall schedule the witness test at a mutually agreeable time. If the witness test results are not acceptable to the utility, the applicant shall be granted 30 business days to address and resolve any deficiencies. The time period for addressing and resolving any deficiencies may be extended upon the mutual agreement of the utility and the applicant prior to the end of the 30 business days. An initial request for extension shall not be denied by the utility; subsequent requests may be denied. If the applicant fails to address and resolve the deficiencies to the utility's satisfaction, the interconnection request shall be deemed withdrawn. Even if the utility or an entity approved by the utility does not witness a commissioning test, the applicant remains obligated to satisfy the interconnection test specifications and requirements set forth in IEEE Standard 1547, Section 5. The applicant shall, if requested by the utility, provide a copy of all documentation in its possession regarding testing conducted pursuant to IEEE Standard 1547.1.

**199—45.6(476) Lab-certified equipment.** An interconnection request may be eligible for expedited interconnection review under rule 199—45.8(476), 199—45.9(476), or 199—45.10(476) (as described in rule 199—45.7(476)) if the distributed generation facility uses interconnection equipment that is lab-certified.

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**45.6(1)** Interconnection equipment shall be deemed to be lab-certified if:

- a. The interconnection equipment has been successfully tested in accordance with IEEE Standard 1547.1 (as appropriate for lab testing) or complies with UL Standard 1741, as demonstrated by any NRTL recognized by OSHA to test and certify interconnection equipment; and
- b. The interconnection equipment has been labeled and is publicly listed by the NRTL at the time of the interconnection application; and
- c. The applicant's proposed use of the interconnection equipment falls within the use or uses for which the interconnection equipment was labeled and listed by the NRTL; and
- d. The generator, other electric sources, and interface components being utilized are compatible with the interconnection equipment and are consistent with the testing and listing specified by the NRTL for this type of interconnection equipment.

**45.6(2)** Lab-certified interconnection equipment shall not require further design testing or production testing, as specified by IEEE Standard 1547, Sections 5.1 and 5.2, or additional interconnection equipment modification to meet the requirements for expedited review; however, nothing in this subrule shall preclude the need for an interconnection installation evaluation, commissioning tests, or periodic testing as specified by IEEE Standard 1547, Sections 5.3, 5.4, and 5.5, or for a witness test conducted by a utility.

**199—45.7(476) Determining the review level.** A utility shall determine whether an interconnection request should be processed under the Level 1, 2, 3, or 4 procedures by using the following screens.

**45.7(1)** A utility shall use Level 1 procedures to evaluate all interconnection requests to connect a distributed generation facility when:

- a. The applicant has filed a Level 1 application; and
- b. The distributed generation facility has a nameplate capacity rating of 10 kVA or less; and
- c. The distributed generation facility is inverter-based; and
- d. The customer interconnection equipment proposed for the distributed generation facility is lab-certified; and
- e. No construction of facilities by the utility shall be required to accommodate the distributed generation facility.

**45.7(2)** A utility shall use Level 2 procedures for evaluating interconnection requests when:

- a. The applicant has filed a Level 2 application; and
- b. The nameplate capacity rating is 2 MVA or less; and
- c. The interconnection equipment proposed for the distributed generation facility is lab-certified; and
- d. The proposed interconnection is to a radial distribution circuit or a spot network limited to serving one customer; and
- e. No construction of facilities by the utility shall be required to accommodate the distributed generation facility, other than minor modifications provided for in subrule 45.9(6).

**45.7(3)** A utility shall use Level 3 review procedures for evaluating interconnection requests to area networks and radial distribution circuits where power will not be exported based on the following criteria.

- a. For interconnection requests to the load side of an area network, the following criteria shall be satisfied to qualify for a Level 3 expedited review:
  - (1) The applicant has filed a Level 3 application; and
  - (2) The nameplate capacity rating of the distributed generation facility is 50 kVA or less; and
  - (3) The proposed distributed generation facility uses a lab-certified inverter-based equipment package; and
  - (4) The distributed generation facility will use reverse power relays or other protection functions that prevent the export of power into the area network; and
  - (5) The aggregate of all generation on the area network does not exceed the lower of 5 percent of an area network's maximum load or 50 kVA; and
  - (6) No construction of facilities by the utility shall be required to accommodate the distributed generation facility.

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*b.* For interconnection requests to a radial distribution circuit, the following criteria shall be satisfied to qualify for a Level 3 expedited review:

- (1) The applicant has filed a Level 3 application; and
- (2) The aggregated total of the nameplate capacity ratings of all of the generators on the circuit, including the proposed distributed generation facility, is 10 MVA or less; and
- (3) The distributed generation facility will use reverse power relays or other protection functions that prevent power flow onto the electric distribution system; and
- (4) The distributed generation facility is not served by a shared transformer; and
- (5) No construction of facilities by the utility on its own system shall be required to accommodate the distributed generation facility.

**45.7(4)** A utility shall use the Level 4 study review procedures for evaluating interconnection requests when:

- a.* The applicant has filed a Level 4 application; and
- b.* The nameplate capacity rating of the small generation facility is 10 MVA or less; and
- c.* Not all of the interconnection equipment or distributed generation facilities being used for the application are lab-certified.

**199—45.8(476) Level 1 expedited review.** A utility shall use the Level 1 interconnection review procedures for an interconnection request that meet the requirements specified in subrule 45.7(1). A utility may not impose additional requirements on Level 1 reviews that are not specifically authorized under this rule or rule 199—45.3(476) unless the applicant agrees.

**45.8(1)** The utility shall evaluate the potential for adverse system impacts using the following screens, which shall be satisfied:

*a.* For interconnection of a proposed distributed generation facility to a radial distribution circuit, the total distributed generation connected to the distribution circuit, including the proposed distributed generation facility, may not exceed 15 percent of the maximum load normally supplied by the distribution circuit.

*b.* For interconnection within a spot network, the distributed generation facility must use a minimum import relay or other protective scheme that will ensure that power imported from the utility to the network will, during normal utility operations, remain above 1 percent of the network's maximum load over the past year, or will remain above a point reasonably set by the utility in good faith. At the utility's discretion, the requirement for minimum import relays or other protective schemes may be waived and alternative screening criteria may be applied.

*c.* When a proposed distributed generation facility is to be interconnected on a single-phase shared secondary line, the aggregate generation capacity on the shared secondary line, including the proposed distributed generation facility, shall not exceed 20 kVA.

*d.* When a proposed distributed generation facility is single-phase and is to be interconnected on a center tap neutral of a 240-volt service, its addition may not create an imbalance between the two sides of the 240-volt service of more than 20 percent of the nameplate rating of the service transformer.

*e.* The utility shall not be required to construct any facilities on its own system to accommodate the distributed generation facility's interconnection.

**45.8(2)** The Level 1 interconnection shall use the following procedures:

*a.* The applicant shall submit an interconnection request using the appropriate Standard Application Form in Appendix A (199—45.14(476)) along with the Level 1 application fee.

*b.* Within seven business days after receipt of the interconnection request, the utility shall inform the applicant whether the interconnection request is complete. If the request is incomplete, the utility shall specify what information is missing and the applicant has ten business days after receiving notice from the utility to provide the missing information or the interconnection request shall be deemed withdrawn.

*c.* Within 15 business days after the utility notifies the applicant that its interconnection request is complete, the utility shall verify whether the distributed generation facility passes all the relevant Level 1 screens.

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*d.* If the utility determines and demonstrates that a distributed generation facility does not pass all relevant Level 1 screens, the utility shall provide a letter to the applicant explaining the reasons that the facility did not pass the screens.

*e.* Otherwise, the utility shall approve the interconnection request and provide to the applicant a signed version of the standard “Conditional Agreement to Interconnect Distributed Generation Facility” in Appendix A (199—45.14(476)) subject to the following conditions:

(1) The distributed generation facility has been approved by local or municipal electric code officials with jurisdiction over the interconnection;

(2) The Standard Certificate of Completion in Appendix B (199—45.15(476)) has been returned to the utility. Completion of local inspections may be designated on inspection forms used by local inspecting authorities;

(3) The witness test has either been successfully completed or waived by the utility in accordance with Section (2)(c)(ii) of the Terms and Conditions for Interconnection in Appendix A (199—45.14(476)); and

(4) The applicant has signed the standard “Conditional Agreement to Interconnect Distributed Generation Facility” in Appendix A (199—45.14(476)). When an applicant does not sign the agreement within 30 business days after receipt of the agreement from the utility, the interconnection request is deemed withdrawn unless the applicant requests to have the deadline extended for no more than 15 business days. An initial request for extension shall not be denied by the utility, but subsequent requests may be denied.

*f.* If a distributed generation facility is not approved under a Level 1 review, and the utility’s reasons for denying Level 1 status are not subject to dispute, the applicant may submit a new interconnection request for consideration under Level 2, Level 3, or Level 4 procedures.

**199—45.9(476) Level 2 expedited review.** A utility shall use the Level 2 review procedure for interconnection requests that meet the Level 2 criteria in subrule 45.7(2). A utility may not impose additional requirements for Level 2 reviews that are not specifically authorized under this rule or rule 199—45.3(476) or subrule 45.5(9) unless the applicant agrees.

**45.9(1)** The utility shall evaluate the potential for adverse system impacts using the following screens, which shall be satisfied:

*a.* For interconnection of a proposed distributed generation facility to a radial distribution circuit, the total distributed generation connected to the distribution circuit, including the proposed distributed generation facility, may not exceed 15 percent of the maximum normal load normally supplied by the distribution circuit.

*b.* For interconnection of a proposed distributed generation facility within a spot network, the proposed distributed generation facility must be inverter-based and use a minimum import relay or other protective scheme that will ensure that power imported from the utility to the network will, during normal utility operations, remain above 1 percent of the network’s maximum load over the past year, or will remain above a point reasonably set by the utility in good faith. At the utility’s discretion, the requirement for minimum import relays or other protective schemes may be waived and alternative screening criteria may be applied.

*c.* The proposed distributed generation facility, in aggregation with other generation on the distribution circuit, may not contribute more than 10 percent to the distribution circuit’s maximum fault current at the point on the primary line nearest the point of interconnection.

*d.* Any proposed distributed generation facility, in aggregate with other generation on the distribution circuit, shall not cause any electric utility distribution devices to be exposed to fault currents exceeding 90 percent of their short-circuit interrupting capability. Interconnection of a non-inverter-based distributed generation facility may not occur under Level 2 if equipment on the utility’s distribution circuit is already exposed to fault currents of between 90 and 100 percent of the utility’s equipment short-circuit interrupting capability. However, if fault currents exceed 100 percent of the utility’s equipment short-circuit interrupting capability even without the distributed generation

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being interconnected, the utility shall replace the equipment at its own expense, and interconnection may proceed under Level 2.

*e.* When a customer-generator facility is to be connected to 3-phase, 3-wire primary utility distribution lines, a 3-phase or single-phase generator shall be connected phase-to-phase.

*f.* When a customer-generator facility is to be connected to 3-phase, 4-wire primary utility distribution lines, a 3-phase or single-phase generator shall be connected line-to-neutral and shall be grounded.

*g.* When the proposed distributed generation facility is to be interconnected on a single-phase shared secondary line, the aggregate generation capacity on the shared secondary line, including the proposed distributed generation facility, may not exceed 20 kVA.

*h.* When a proposed distributed generation facility is single-phase and is to be interconnected on a center tap neutral of a 240-volt service, its addition may not create an imbalance between the two sides of the 240-volt service of more than 20 percent of the nameplate rating of the service transformer.

*i.* A distributed generation facility, in aggregate with other generation interconnected to the distribution side of a substation transformer feeding the circuit where the distributed generation facility proposes to interconnect, may not exceed 10 MVA in an area where there are transient stability limitations to generating units located in the general electrical vicinity, as publicly posted by the Mid-Continent Area Power Pool (MAPP), the Midwest Independent Transmission System Operator, Inc. (MISO), or the Midwest Reliability Organization (MRO).

*j.* Except as permitted by additional review in subrule 45.9(6), the utility shall not be required to construct any facilities on its own system to accommodate the distributed generation facility's interconnection.

**45.9(2)** The Level 2 interconnection shall use the following procedures:

*a.* The applicant submits an interconnection request using the appropriate Standard Application Form in Appendix C (199—45.16(476)) along with the Level 2 application fee.

*b.* Within ten business days after receiving the interconnection request, the utility shall inform the applicant as to whether the interconnection request is complete. If the request is incomplete, the utility shall specify what materials are missing and the applicant has ten business days to provide the missing information or the interconnection request shall be deemed withdrawn.

*c.* After an interconnection request is deemed complete, the utility shall assign a review order position based upon the date that the interconnection request is determined to be complete. The utility shall then inform the applicant of its review order position.

*d.* If, after determining that the interconnection request is complete, the utility determines that it needs additional information to evaluate the distributed generation facility's adverse system impact, it shall request this information. The utility may not restart the review process or alter the applicant's review order position because it requires the additional information. The utility can extend the time to finish its evaluation only to the extent of the delay required for receipt of the additional information. If the additional information is not provided by the applicant within 15 business days, the interconnection request shall be deemed withdrawn.

*e.* Within 20 business days after the utility notifies the applicant it has received a completed interconnection request, the utility shall:

(1) Evaluate the interconnection request using the Level 2 screening criteria; and

(2) Provide the applicant with the utility's evaluation, including a written technical explanation. If a utility does not have a record of receipt of the interconnection request and the applicant can demonstrate that the original interconnection request was delivered, the utility shall complete the evaluation of the interconnection request within 20 business days after applicant's demonstration.

**45.9(3)** When a utility determines that the interconnection request passes the Level 2 screening criteria, or the utility determines that the distributed generation facility can be interconnected safely and will not cause adverse system impacts, even if it fails one or more of the Level 2 screening criteria, it shall provide the applicant with the Standard Distributed Generation Interconnection Agreement in Appendix D (199—45.17(476)) within three business days of the date the utility makes its determination.

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**45.9(4)** Within 35 business days after issuance by the utility of the Standard Distributed Generation Interconnection Agreement, the applicant shall sign and return the agreement to the utility. If the applicant does not sign and return the agreement within 35 business days, the interconnection request shall be deemed withdrawn unless the applicant requests a 15-business-day extension in writing before the end of the 35-day period. The initial request for extension may not be denied by the utility. When the utility conducts an additional review under the provisions of subrule 45.9(6), the interconnection of the distributed generation facility shall proceed according to milestones agreed to by the parties in the Standard Distributed Generation Interconnection Agreement.

**45.9(5)** The Standard Distributed Generation Interconnection Agreement is not final until:

- a. All requirements in the agreement are satisfied;
- b. The distributed generation facility is approved by the electric code officials with jurisdiction over the interconnection;
- c. The applicant provides the Standard Certificate of Completion in Appendix B (199—45.15(476)) to the utility. Completion of local inspections may be designated on inspection forms used by local inspecting authorities; and
- d. The witness test has either been successfully completed or waived by the utility in accordance with Article 2.1.1 of the Standard Distributed Generation Interconnection Agreement.

**45.9(6)** Additional review may be appropriate when a distributed generation facility fails to meet one or more of the Level 2 screens. The utility shall offer to perform additional review to determine whether there are minor modifications to the distributed generation facility or electric distribution system that would enable the interconnection to be made safely and so that it will not cause adverse system impacts. The utility shall provide the applicant with a nonbinding estimate for the costs of additional review and the costs of minor modifications to the electric distribution system. The utility shall undertake the additional review only after the applicant pays for the additional review. The utility shall undertake the modifications only after the applicant pays for the modifications.

**45.9(7)** If the distributed generation facility is not approved under a Level 2 review, the utility shall provide the applicant with written notification explaining its reasons for denying the interconnection request. The applicant may submit a new interconnection request for consideration under a Level 4 interconnection review. The review order position assigned to the Level 2 interconnection request shall be retained, provided that the request is made by the applicant within 15 business days after notification that the current interconnection request is denied.

**199—45.10(476) Level 3 expedited review.** A utility shall use the Level 3 expedited review procedure for an interconnection request that meets the criteria in subrule 45.7(3) or 45.7(4). A utility may not impose additional requirements for Level 3 reviews not specifically authorized under this rule or rule 199—45.3(476) unless the applicant agrees.

**45.10(1)** A Level 3 interconnection shall use the following procedures:

- a. The applicant shall submit an interconnection request using the appropriate Standard Application Form in Appendix C (199—45.16(476)) along with the Level 3 application fee.
- b. Within ten business days after receiving the interconnection request, the utility shall inform the applicant as to whether the interconnection request is complete. If the request is incomplete, the utility shall specify what materials are missing and the applicant has ten business days to provide the missing information, or the interconnection request shall be deemed withdrawn.
- c. After an interconnection request is deemed complete, the utility shall assign a review order position to it based upon the date the interconnection request is determined to be complete. The utility shall then inform the applicant of its review order position.
- d. If, after determining that the interconnection request is complete, the utility determines that it needs additional information to evaluate the distributed generation facility's adverse system impact, the utility shall request this information. The utility may not restart the review process or alter the applicant's review order position because it requires the additional information. The utility can extend the time to finish its evaluation only to the extent the delay is required for receipt of the additional information. If

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this additional information is not provided by the applicant within 15 business days, the interconnection request shall be deemed withdrawn.

*e.* Interconnection requests meeting the requirements set forth in paragraph 45.7(3)“*a*” for nonexporting distributed generation facilities interconnecting to an area network shall be presumed to be appropriate for interconnection. The utility shall process the interconnection requests using the following procedures:

(1) The utility shall evaluate the interconnection request under Level 2 interconnection review procedures as set forth in subrule 45.9(1) except that the utility has 25 business days to evaluate the interconnection request against the screens to determine whether interconnecting the distributed generation facility to the utility’s area network has any potential adverse system impacts.

(2) If the Level 2 screens for area networks identify potential adverse system impacts, the utility may determine at its sole discretion that it is inappropriate for the distributed generation facility to interconnect to the area network under Level 3 review, and the interconnection request is denied. The applicant may submit a new interconnection request for consideration under Level 4 procedures at the review order position assigned to the Level 3 interconnection request, if the request is made within 15 business days after notification that the current application is denied.

*f.* For interconnection requests that meet the requirements of paragraph 45.7(3)“*b*”for nonexporting distributed generation facilities interconnecting to a radial distribution circuit, the utility shall evaluate the interconnection request under the Level 2 expedited review in subrule 45.9(1), except for the screen in paragraph 45.9(1)“*a*.”

**45.10(2)** For a distributed generation facility that satisfies the criteria in paragraph 45.10(1)“*e*” or 45.10(1)“*f*,” the utility shall approve the interconnection request and provide the Standard Distributed Generation Interconnection Agreement in Appendix D (199—45.17(476)) for the applicant to sign within three business days of the date the utility makes its determination.

**45.10(3)** Within 35 business days after issuance by the utility of the Standard Distributed Generation Interconnection Agreement, the applicant shall complete, sign, and return the agreement to the utility. If the applicant does not sign the agreement within 35 business days, the request shall be deemed withdrawn, unless the applicant requests a 15-business-day extension in writing before the end of the 35-day period. An initial request for extension may not be denied by the utility. After the agreement is signed by the parties, interconnection of the distributed generation facility shall proceed according to any milestones agreed to by the parties in the Standard Distributed Generation Interconnection Agreement.

**45.10(4)** The Standard Distributed Generation Interconnection Agreement shall not be final until:

- a.* All requirements in the agreement are satisfied; and
- b.* The distributed generation facility is approved by the electric code officials with jurisdiction over the distributed generation facility; and
- c.* The applicant provides the Standard Certificate of Completion in Appendix B (199—45.15(476)) to the utility; and
- d.* The witness test has either been successfully completed or waived by the utility in accordance with Article 2.1.1 of the Standard Distributed Generation Interconnection Agreement.

**45.10(5)** If the distributed generation facility is not approved under a Level 3 review, the utility shall provide the applicant with written notification explaining its reasons for denying the interconnection request. The applicant may submit a new interconnection request for consideration under a Level 4 interconnection review. The review order position assigned to the Level 3 interconnection request shall be retained, provided that the request is made within 15 business days after notification that the current interconnection request is denied.

**199—45.11(476) Level 4 review.** A utility shall use the following Level 4 study review procedures for an interconnection request that meets the criteria in subrule 45.7(4).

**45.11(1)** The applicant submits an interconnection request using the appropriate Standard Application Form in Appendix C (199—45.16(476)) along with the Level 4 application fee.

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**45.11(2)** Within ten business days after receipt of an interconnection request, the utility shall notify the applicant whether the request is complete. When the interconnection request is not complete, the utility shall provide the applicant with a written list detailing the information required to complete the interconnection request. The applicant has ten business days to provide the required information or the interconnection request is considered withdrawn. The parties may agree to extend the time for receipt of the additional information. The interconnection request is deemed complete when the required information has been provided by the applicant, or the parties have agreed that the applicant may provide additional information at a later time.

**45.11(3)** After an interconnection request is deemed complete, the utility shall assign a review order position to it based upon the date the interconnection request is determined to be complete. When assigning a review order position, a utility may consider whether there are any other interconnection projects on the same distribution circuit. If there are other interconnection projects on the same distribution circuit, the utility may consider them together. If a utility assigns a review order position based on the existence of interconnection projects on the same distribution circuit, the utility shall notify the applicant of that fact when it assigns the review order position. The review order position of an interconnection request is used to determine the cost responsibility for the facilities necessary to accommodate the interconnection. The utility shall notify the applicant as to its position in the review order. If the interconnection request is subsequently amended, it shall receive a new review order position based on the date that it was amended.

**45.11(4)** Level 4 study review procedures. After the interconnection request has been assigned to the review order, a Level 4 study review shall be conducted:

*a.* Waiver or combination of standard Level 4 study review procedures. By mutual agreement of the parties in writing, the scoping meeting, feasibility study, system impact study, or facilities study in paragraph 45.11(4) “*b*” may be waived or combined with other studies. Otherwise, the standard Level 4 study review procedures in paragraph 45.11(4) “*b*” shall apply.

*b.* Standard Level 4 study review procedures.

(1) Scoping meeting. Unless waived or combined with other studies pursuant to paragraph 45.11(4) “*a*,” a scoping meeting shall be held with the applicant on a mutually agreed-upon date and time, after the utility has notified the applicant that the Level 4 interconnection request is deemed complete, or after the applicant has requested that its interconnection request proceed under Level 4 review after failing the requirements of a Level 1, Level 2, or Level 3 review. The purpose of the meeting is to review the interconnection request, any existing studies relevant to the interconnection request, and the results of any Level 1, Level 2, or Level 3 screening criteria.

(2) Feasibility study. Unless waived or combined with other studies pursuant to paragraph 45.11(4) “*a*,” an interconnection feasibility study (subrule 45.11(5)) shall be performed.

1. The utility shall provide the applicant a copy of the Standard Interconnection Feasibility Study Agreement in Appendix E (199—45.18(476)) or a mutually agreed-upon alternative form, plus a description of the study and a nonbinding estimate of the cost to perform the study.

2. The utility shall provide the study agreement and information no later than 10 business days after the following have occurred, as applicable:

- Receipt of a complete interconnection request; and
- The scoping meeting (if held).

3. If the applicant does not sign and return the study agreement with payment of the estimated costs of the study within 15 business days, the application shall be deemed withdrawn.

(3) System impact study. Unless waived or combined with other studies pursuant to paragraph 45.11(4) “*a*,” an interconnection system impact study (subrule 45.11(6)) shall be performed.

1. The utility shall provide the applicant a copy of the Standard Interconnection System Impact Study Agreement in Appendix F (199—45.19(476)) or a mutually agreed-upon alternative form, plus an outline of the scope of the study and a nonbinding estimate of the cost to perform the study.

2. The utility shall provide the study agreement and information no later than 10 business days after the following have occurred, as applicable:

- Receipt of a complete interconnection request;

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- The scoping meeting (if held); and
  - Transmittal of the interconnection feasibility study (if performed).
3. If the applicant does not sign and return the study agreement with payment of the estimated costs of the study within 15 business days, the application shall be deemed withdrawn.

(4) Facilities study. Unless waived or combined with other studies pursuant to paragraph 45.11(4) "a," an interconnection facilities study (subrule 45.11(7)) shall be performed.

1. The utility shall provide the applicant a copy of the Standard Interconnection Facilities Study Agreement in Appendix G (199—45.20(476)) or a mutually agreed-upon alternative form, plus an outline of the scope of the study and a nonbinding estimate of the cost to perform the study.

2. The utility shall provide the study agreement and information no later than 10 business days after the following have occurred, as applicable:

- Receipt of a complete interconnection request;
  - The scoping meeting (if held);
  - Transmittal of the interconnection feasibility study (if performed); and
  - Transmittal of the interconnection system impact study (if performed).
3. If the applicant does not sign and return the study agreement with payment of the estimated costs of the study within 15 business days, the application shall be deemed withdrawn.

**45.11(5) Interconnection feasibility study.**

a. Unless waived or combined with other studies by agreement of the parties pursuant to paragraph 45.11(4) "a," the interconnection feasibility study shall include any necessary analyses for the purpose of identifying potential adverse system impacts to the utility's electric system that would result from the interconnection from among the following:

- (1) Initial identification of any circuit breaker short circuit capability limits exceeded as a result of the interconnection;
- (2) Initial identification of any thermal overload or voltage limit violations resulting from the interconnection; and
- (3) Initial review of grounding requirements and system protection.

b. Before performing the study, the utility shall provide the applicant a description of the study and a nonbinding estimate of the cost to perform the study.

c. If an applicant requests that the interconnection feasibility study evaluate multiple potential points of interconnection, additional evaluations may be required. Additional evaluations shall be paid for by the applicant.

d. An interconnection system impact study is not required when the interconnection feasibility study concludes that there is no adverse system impact, or when the study identifies an adverse system impact but the utility is able to identify a remedy without the need for an interconnection system impact study.

e. Either party can require that the Standard Interconnection Feasibility Study Agreement in Appendix E (199—45.18(476)) be used. However, if both parties agree, an alternative form can be used.

**45.11(6) Interconnection system impact study.** An interconnection system impact study evaluates the impact of the proposed interconnection on both the safety and reliability of the utility's electric distribution system. The study identifies and details the system impacts that interconnecting the distributed generation facility to the utility's electric system have if there are no system modifications. The study focuses on the potential or actual adverse system impacts identified in the interconnection feasibility study, including those that were identified in the scoping meeting. The study shall consider all other distributed generation facilities that, on the date the interconnection system impact study is commenced, are directly interconnected with the utility's system, have a pending higher review order position to interconnect to the electric distribution system, or have signed an interconnection agreement.

a. Unless waived or combined with other studies by agreement of the parties pursuant to paragraph 45.11(4) "a," an interconnection system impact study shall be performed when either a potential adverse system impact is identified in the interconnection feasibility study, or an interconnection feasibility study has not been performed. Before performing the study, the utility shall provide the applicant an outline of

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the scope of the study and a nonbinding estimate of the cost to perform the study. The interconnection system impact study shall include any pertinent elements from among the following:

- (1) A load flow study;
- (2) Identification of affected systems;
- (3) An analysis of equipment interrupting ratings;
- (4) A protection coordination study;
- (5) Voltage drop and flicker studies;
- (6) Protection and set point coordination studies;
- (7) Grounding reviews; and
- (8) Impact on system operation.

b. An interconnection system impact study shall consider any necessary criteria from among the following:

- (1) A short-circuit analysis;
- (2) A stability analysis;
- (3) Alternatives for mitigating adverse system impacts on affected systems;
- (4) Voltage drop and flicker studies;
- (5) Protection and set point coordination studies; and
- (6) Grounding reviews.

c. The final interconnection system impact study shall provide the following:

- (1) The underlying assumptions of the study;
- (2) The results of the analyses;
- (3) A list of any potential impediments to providing the requested interconnection service;
- (4) Required distribution upgrades; and
- (5) A nonbinding estimate of cost and time to construct any required distribution upgrades.

d. Either party can require that the Standard Interconnection System Impact Study Agreement in Appendix F (199—45.19(476)) be used. However, if both parties agree, an alternative form can be used.

**45.11(7)** Interconnection facilities study. Unless waived or combined with other studies by agreement of the parties pursuant to paragraph 45.11(4)“a,” an interconnection facilities study shall be performed as follows:

a. Before performing the study, the utility shall provide the applicant an outline of the scope of the study and a nonbinding estimate of the cost to perform the study.

b. The interconnection facilities study shall estimate the cost of the equipment, engineering, procurement and construction work, including overheads, needed to implement the conclusions of the interconnection feasibility study and the interconnection system impact study. The interconnection facilities study shall identify:

- (1) The electrical switching configuration of the equipment, including transformer, switchgear, meters and other station equipment;
- (2) The nature and estimated cost of the utility’s interconnection facilities and distribution upgrades necessary to accomplish the interconnection; and
- (3) An estimate for the time required to complete the construction and installation of the interconnection facilities and distribution upgrades.

c. The utility may agree to permit an applicant to arrange separately for a third party to design and construct the required interconnection facilities. In such a case, when the applicant agrees to separately arrange for design and construction, and to comply with security and confidentiality requirements, the utility shall make all relevant information and required specifications available to the applicant to permit the applicant to obtain an independent design and cost estimate for the facilities, which shall be built in accordance with the utility’s specifications.

d. Upon completion of the interconnection facilities study, and after the applicant agrees to pay for the interconnection facilities and distribution upgrades identified in the interconnection facilities study, the utility shall provide the Standard Distributed Generation Interconnection Agreement in Appendix D (199—45.17(476)) for the applicant to sign within three business days of the date the utility makes its determination.

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*e.* In the event that distribution upgrades are identified in the interconnection system impact study that shall be added only in the event that customers with higher review order positions not yet interconnected eventually complete and interconnect their generation facilities, the applicant may elect to interconnect without paying the estimate for such upgrades at the time of the interconnection, provided that the applicant pays for such upgrades prior to commencement of construction of such upgrades to be completed by the time the customer with higher review order position is ready to interconnect. If the applicant does not pay for such upgrades at that time, the utility shall require the applicant to immediately disconnect its distributed generation facility to accommodate the customer with higher review order position.

*f.* Either party can require that the Standard Interconnection Facilities Study Agreement in Appendix G (199—45.20(476)) be used. However, if both parties agree, an alternative form can be used.

**45.11(8)** When a utility determines, as a result of the studies conducted under a Level 4 review, that it is appropriate to interconnect the distributed generation facility, the utility shall provide the applicant with the Standard Distributed Generation Interconnection Agreement in Appendix D (199—45.17(476)). If the interconnection request is denied, the utility shall provide the applicant with a written explanation as to its reasons for denying interconnection. If denied, the interconnection request does not retain its position in the review order.

**45.11(9)** Within 30 business days after receipt of the Standard Distributed Generation Interconnection Agreement, the applicant shall provide all necessary information required of the applicant by the agreement, and the utility shall develop all other information required of the utility by the agreement. After completing the agreement with the additional information, the utility will transmit the completed agreement to the applicant. Within 30 business days after receipt of the completed agreement, the applicant shall sign and return the completed agreement to the utility. If the applicant does not sign and return the agreement within 30 business days after receipt, the interconnection request shall be deemed withdrawn, unless the applicant requests in writing to have the deadline extended by no more than 15 business days, prior to the expiration of the 30-business-day period. The initial request for extension may not be denied by the utility. If the applicant does not sign and return the agreement after the 15-business-day extension, the interconnection request shall be deemed withdrawn. If withdrawn, the interconnection request does not retain its position in the review order. When construction is required, the interconnection of the distributed generation facility shall proceed according to milestones agreed to by the parties in the Standard Distributed Generation Interconnection Agreement.

**45.11(10)** The Standard Distributed Generation Interconnection Agreement is not final until:

- a.* The requirements of the agreement are satisfied; and
- b.* The distributed generation facility is approved by electric code officials with jurisdiction over the interconnection; and
- c.* The applicant provides the Standard Certificate of Completion in Appendix B (199—45.15(476)) to the utility. Completion of local inspections may be designated on inspection forms used by local inspecting authorities; and
- d.* The witness test has either been successfully completed or waived by the utility in accordance with Article 2.1.1 of the Standard Distributed Generation Interconnection Agreement in Appendix D (199—45.17(476)).

**199—45.12(476) Disputes.**

**45.12(1)** A party shall attempt to resolve all disputes regarding interconnection promptly and in a good-faith manner. A party shall provide prompt written notice of the existence of the dispute, including sufficient detail to identify the scope of the dispute, to the other party in order to attempt to resolve the dispute in a good-faith manner.

**45.12(2)** An informal meeting between the parties shall be held within ten business days after receipt of the written notice. Persons with decision-making authority from each party shall attend such meeting. In the event said dispute involves technical issues, persons with sufficient technical expertise

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and familiarity with the issue in dispute from each party shall also attend the informal meeting. If the parties agree, such a meeting may be conducted by teleconference.

**45.12(3)** Subsequent to the informal meeting referred to in subrule 45.12(2), a party may seek resolution of any disputes through the 199—Chapter 6 complaint procedures of the board. Dispute resolution under these procedures will initially be conducted informally under rules 199—6.2(476) through 199—6.4(476) to reach resolution with minimal cost and delay. If any party is dissatisfied with the outcome of the informal process, the party may file a formal complaint with the board under rule 199—6.5(476).

**45.12(4)** Pursuit of dispute resolution shall not affect an interconnection applicant with regard to consideration of an interconnection request or an interconnection applicant's position in the utility's interconnection review order.

**199—45.13(476) Records and reports.**

**45.13(1)** For each completed interconnection request received by the utility, the utility shall maintain records of the following for a minimum of three years:

- a. The total nameplate capacity and fuel type of the distributed generation facility;
- b. The level of review received (Level 1, Level 2, Level 3, or Level 4); and
- c. Whether the interconnection was approved or denied.

**45.13(2)** Beginning May 1, 2011, each utility shall file a nonconfidential annual report detailing the information required in subrule 45.13(1) for the previous calendar year.

**45.13(3)** Each utility shall retain copies of studies it performs to determine the feasibility of, system impacts of, or facilities required by the interconnection of any distributed generation facility. The utility shall provide the applicant copies of any studies performed in analyzing the applicant's interconnection request upon applicant request. However, a utility has no obligation to provide any future applicants any information regarding prior interconnection requests to the extent that providing the information would violate security requirements or confidentiality agreements, or is contrary to state or federal law. In appropriate circumstances, the utility may require a confidentiality agreement prior to release of this information.

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**199—45.14(476) Appendix A – Level 1 standard application form and distributed generation interconnection agreement.**

LEVEL 1:

STANDARD APPLICATION FORM AND INTERCONNECTION AGREEMENT

Interconnection Request Application Form and  
Conditional Agreement to Interconnect  
(For Lab-Certified Inverter-Based Distributed Generation Facilities 10 kVA or Smaller)

AN APPLICATION FEE OF \$50.00 MUST BE SUBMITTED WITH THE APPLICATION

Interconnection Applicant Contact Information

Name: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Telephone (Daytime): \_\_\_\_\_ (Evening): \_\_\_\_\_  
Facsimile Number: \_\_\_\_\_ E-Mail Address: \_\_\_\_\_

Alternate Contact Information (if different from Applicant)

Name: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Telephone (Daytime): \_\_\_\_\_ (Evening): \_\_\_\_\_  
Facsimile Number: \_\_\_\_\_ E-Mail Address: \_\_\_\_\_

Equipment Contractor

Name: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Telephone (Daytime): \_\_\_\_\_ (Evening): \_\_\_\_\_  
Facsimile Number: \_\_\_\_\_ E-Mail Address: \_\_\_\_\_  
License number (if applicable): \_\_\_\_\_  
Active License? (if applicable) Yes \_\_\_\_ No \_\_\_\_

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Electrical Contractor (if Different from Equipment Contractor):

Name: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
 Telephone (Daytime): \_\_\_\_\_ (Evening): \_\_\_\_\_  
 Facsimile Number: \_\_\_\_\_ E-Mail Address: \_\_\_\_\_  
 License number: \_\_\_\_\_  
 Active License? Yes \_\_\_ No \_\_\_

Is the Interconnection Customer requesting Net Metering in accordance with Iowa Utilities Board rule 199 IAC 15.11(5) and the utility's net metering or net billing tariff?  
 Yes \_\_\_ No \_\_\_

Intent of Generation

- \_\_\_ Net Metering (Unit will operate in parallel and will export power to utility pursuant to Iowa Utilities Board rule 199 IAC 15.11(5) and the utility's net metering or net billing tariff)
- \_\_\_ Self-Use and Sales to the Utility (Unit will operate in parallel and may export and sell excess power to utility pursuant to Iowa Utilities Board rule 199 IAC 15.5 and the utility's tariff)
- \_\_\_ Other (Please explain): \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Distributed Generation Facility ("Facility") Information

Facility Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
 Utility serving Facility site: \_\_\_\_\_  
 Account Number of Facility site (existing utility customers): \_\_\_\_\_  
 Inverter Manufacturer: \_\_\_\_\_ Model: \_\_\_\_\_

Is the inverter lab-certified as that term is defined in Iowa Utilities Board Chapter 45 rules on Electric Interconnection of Distributed Generation (199 IAC 45.1)?  
 Yes \_\_\_ No \_\_\_

(If yes, attach manufacturer's technical specifications and label information from a nationally recognized testing laboratory.)

Generation Facility Nameplate Rating: \_\_\_\_\_(kW) \_\_\_\_\_ (kVA) \_\_\_\_\_(AC Volts)  
 Energy Source: Wind \_\_\_ Solar \_\_\_ Biomass \_\_\_ Hydro \_\_\_ Diesel \_\_\_  
 Natural Gas \_\_\_ Fuel Oil \_\_\_ Other: \_\_\_\_\_  
 Energy Converter Type: Wind Turbine \_\_\_ Photovoltaic Cell \_\_\_ Fuel Cell \_\_\_  
 Reciprocating Engine \_\_\_ Other: \_\_\_\_\_

Commissioning Test Date: \_\_\_\_\_

(If the Commissioning Test Date changes, the interconnection customer must inform the utility as soon as it is aware of the changed date.)

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Insurance Disclosure

The attached terms and conditions contain provisions related to liability and indemnification and should be carefully considered by the interconnection customer. The interconnection customer shall carry general liability insurance coverage, such as, but not limited to, homeowner's insurance.

Other Facility Information

One Line Diagram – A basic drawing of an electric circuit in which one or more conductors are represented by a single line and each electrical device and major component of the installation, from the generator to the point of interconnection, are noted by symbols.

One Line Diagram attached: \_\_\_\_\_ Yes

Plot Plan – A map showing the distributed generation facility's location in relation to streets, alleys, or other geographic markers.

Plot Plan attached: \_\_\_\_\_ Yes

Customer Signature

I hereby certify that: (1) I have read and understand the terms and conditions, which are attached hereto by reference; (2) I hereby agree to comply with the attached terms and conditions; and (3) to the best of my knowledge, all of the information provided in this application request form is complete and true.

Applicant Signature: \_\_\_\_\_  
Title: \_\_\_\_\_ Date: \_\_\_\_\_

.....  
This Application Form and Interconnection Agreement is comprised of: 1) the Level 1 Standard Application Form and Interconnection Agreement; 2) the Attachment of Terms and Conditions for Interconnection; and 3) the Certificate of Completion.

NOTE: If the Certificate of Completion is not completed and returned to the utility within 12 months following the utility's dated conditional agreement to interconnect below, this Application Form and Interconnection Agreement will automatically terminate and be of no further force and effect.

.....  
Conditional Agreement to Interconnect Distributed Generation Facility

Receipt of the application fee is acknowledged and, by its signature below, the utility has determined the interconnection request is complete. Interconnection of the distributed generation facility is conditionally approved contingent upon the attached terms and conditions of this Agreement, the return of the attached Certificate of Completion, duly executed verification of electrical inspection and successful witness test.

Utility Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: \_\_\_\_\_ Title: \_\_\_\_\_

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ATTACHMENT

## Level 1: Standard Interconnection Agreement

Terms and Conditions for Interconnection

- 1) Construction of the Distributed Generation Facility. The interconnection customer may proceed to construct (including operational testing not to exceed 2 hours) the distributed generation facility, once the conditional Agreement to interconnect a distributed generation facility has been signed by the utility.
- 2) Final Interconnection and Operation. The interconnection customer may operate the distributed generation facility and interconnect with the utility's electric distribution system after all of the following have occurred:
  - a) Electrical Inspection: Upon completing construction, the interconnection customer shall cause the distributed generation facility to be inspected by the local electrical inspection authority, who shall establish that the distributed generation facility meets local code requirements.
  - b) Certificate of Completion: The interconnection customer shall provide the utility with a copy of the Certificate of Completion with all relevant and necessary information fully completed by the interconnection customer, as well as an inspection form from the local electrical inspection authority demonstrating that the distributed generation facility passed inspection.
  - c) The utility has completed its witness test as per the following:
    - i) The interconnection customer shall provide the utility at least 15 business days' notice of the planned commissioning test for the distributed generation facility. Within 10 business days after the commissioning test, the utility may, upon reasonable notice and at a mutually convenient time, conduct a witness test of the distributed generation facility to ensure that all equipment has been appropriately installed and operating as designed and in accordance with the requirements of IEEE 1547.
    - ii) If the utility does not perform the witness test within the 10 business days after the commissioning test or such other time as is mutually agreed to by the Parties, the witness test is deemed waived, unless the utility cannot do so for good cause. In these cases, upon utility request, the interconnection customer shall agree to another date for the test within 10 business days after the original scheduled date.
- 3) IEEE 1547. The distributed generation facility shall be installed, operated and tested in accordance with the requirements of The Institute of Electrical and Electronics Engineers, Inc. (IEEE), 3 Park Avenue, New York, NY 10016-5997, Standard 1547 (2003) "Standard for Interconnecting Distributed Resources with Electric Power Systems," as well as any applicable federal, state, or local laws, regulations, codes, ordinances, orders, or similar directives of any government or other authority having jurisdiction.
- 4) Access. The utility must have access to the isolation device or disconnect switch and metering equipment of the distributed generation facility at all times. When practical, the utility shall provide notice to the customer prior to using its right of access.
- 5) Metering. Any required metering shall be installed pursuant to the utility's metering rules filed with the Iowa Utilities Board under subrule 199 IAC 20.2(5).

## UTILITIES DIVISION[199](cont'd)

- 6) Disconnection. The utility may disconnect the distributed generation facility upon any of the following conditions, but must reconnect the distributed generation facility once the condition is cured:
- a) For scheduled outages, provided that the distributed generation facility is treated in the same manner as utility's load customers;
  - b) For unscheduled outages or emergency conditions;
  - c) If the distributed generation facility does not operate in a manner consistent with this Agreement or the applicable requirements of 199 IAC Chapter 15 or 45;
  - d) Improper installation or failure to pass the witness test;
  - e) If the distributed generation facility is creating a safety, reliability, or power quality problem;
  - f) The interconnection equipment used by the distributed generation facility is delisted by the Nationally Recognized Testing Laboratory that provided the listing at the time the interconnection was approved;
  - g) Unauthorized modification of the interconnection facilities or the distributed generation facility; or
  - h) Unauthorized connection to the utility's electric system.
- 7) Indemnification. The interconnection customer shall indemnify and defend the utility and the utility's directors, officers, employees, and agents from all claims, damages and expenses, including reasonable attorney's fees, to the extent resulting from the interconnection customer's negligent installation, operation, modification, maintenance, or removal of its distributed generation facility or interconnection facilities, or the interconnection customer's willful misconduct or breach of this Agreement. The utility shall indemnify and defend the interconnection customer and the interconnection customer's directors, officers, employees, and agents from all claims, damages, and expenses, including reasonable attorney's fees, to the extent resulting from the utility's negligent installation, operation, modification, maintenance, or removal of its interconnection facilities or electric distribution system, or the utility's willful misconduct or breach of this Agreement.
- 8) Insurance. The interconnection customer shall provide the utility with proof that it has a current homeowner's insurance policy or other general liability policy.
- 9) Limitation of Liability. Each Party's liability to the other Party for any loss, cost, claim, injury, liability, or expense, including reasonable attorney's fees, relating to or arising from any act or omission in its performance of this Agreement, shall be limited to the amount of direct damage actually incurred. In no event shall either Party be liable to the other Party for any indirect, incidental, special, consequential, or punitive damages of any kind whatsoever, provided that in no event shall death, bodily injury or third-party claims be construed as indirect or consequential damages.
- 10) Termination. This Agreement will remain in effect until terminated and may be terminated under the following conditions:
- a) By interconnection customer - The interconnection customer may terminate this interconnection agreement by providing written notice to the utility. If the interconnection customer ceases operation of the distributed generation facility, the interconnection customer must notify the utility.
  - b) By the utility - The utility may terminate this Agreement without liability to the interconnection customer if the interconnection customer fails to remedy a violation of terms of this Agreement within 30 calendar days after notice, or such other date as may be mutually agreed to in writing prior to the expiration of the 30 calendar day remedy period. The termination date may be no less than 30 calendar days after the interconnection customer receives notice of its violation from the utility.

## UTILITIES DIVISION[199](cont'd)

- 11) Modification of Distributed Generation Facility. The interconnection customer must receive written authorization from the utility before making any changes to the distributed generation facility that could affect the utility's distribution system. If the interconnection customer makes such modifications without the utility's prior written authorization, the utility shall have the right to disconnect the distributed generation facility.
- 12) Permanent Disconnection. In the event the Agreement is terminated, the utility shall have the right to disconnect its facilities or direct the interconnection customer to disconnect its distributed generation facility.
- 13) Disputes. Each Party agrees to attempt to resolve all disputes regarding the provisions of this Agreement that cannot be resolved between the two Parties pursuant to the dispute resolution provisions found in Iowa Utilities Board Chapter 45 rules on Electric Interconnection of Distributed Generation Facilities (199 IAC 45.12).
- 14) Governing Law, Regulatory Authority, and Rules. The validity, interpretation and enforcement of this Agreement and each of its provisions shall be governed by the laws of the State of Iowa. Nothing in this Agreement is intended to affect any other agreement between the utility and the interconnection customer.
- 15) Survival Rights. This Agreement shall remain in effect after termination to the extent necessary to allow or require either Party to fulfill rights or obligations that arose under the Agreement.
- 16) Assignment/Transfer of Ownership of the Distributed Generation Facility. This Agreement shall terminate upon the transfer of ownership of the distributed generation facility to a new owner unless the transferring owner assigns the Agreement to the new owner, the new owner agrees in writing to the terms of this Agreement, and the transferring owner so notifies the utility in writing prior to the transfer of ownership.
- 17) Definitions. Any term used herein and not defined shall have the same meaning as the defined terms used in Iowa Utilities Board Chapter 45 rules on Electric Interconnection of Distributed Generation Facilities (199 IAC 45.1).
- 18) Notice. The Parties may mutually agree to provide notices, demands, comments, or requests by electronic means such as e-mail. Absent agreement to electronic communication, or unless otherwise provided in this Agreement, any written notice, demand, or request required or authorized in connection with this Agreement shall be deemed properly given when receipt is confirmed after notices are delivered in person, delivered by recognized national courier service, or sent by first-class mail, postage prepaid, return receipt requested, to the person specified below:

If Notice is to Interconnection Customer:

Use the contact information provided in the interconnection customer's application. The interconnection customer is responsible for notifying the utility of any change in the contact party information, including change of ownership.

UTILITIES DIVISION[199](cont'd)

If Notice is to Utility:

Use the contact information provided below. The utility is responsible for notifying the interconnection customer of any change in the contact party information.

Name: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Telephone (Daytime): \_\_\_\_\_ (Evening): \_\_\_\_\_  
Facsimile Number: \_\_\_\_\_ E-Mail Address: \_\_\_\_\_

- 19) Interruptions. The utility is not responsible for any lost opportunity or other costs incurred by the interconnection customer as a result of an interruption of service.

UTILITIES DIVISION[199](cont'd)

**199—45.15(476) Appendix B – Standard certificate of completion.**

CERTIFICATE OF COMPLETION

(To be completed and returned to the utility when installation is complete and final electric inspector approval has been obtained – Use contact information provided on the utility's web page for generator interconnection to obtain mailing address/fax number/e-mail address)

Interconnection Customer Information

Name: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Telephone (Daytime): \_\_\_\_\_ (Evening): \_\_\_\_\_  
Facsimile Number: \_\_\_\_\_ E-Mail Address: \_\_\_\_\_

Installer: \_\_\_\_\_ Check if owner-installed: \_\_\_\_\_

Name: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Telephone (Daytime): \_\_\_\_\_ (Evening): \_\_\_\_\_  
Facsimile Number: \_\_\_\_\_ E-Mail Address: \_\_\_\_\_

Final Electric Inspection and Interconnection Customer Signature

The distributed generation facility is complete and has been approved by the local electric inspector having jurisdiction. A signed copy of the electric inspector's form indicating final approval is attached. The interconnection customer acknowledges that it shall not operate the distributed generation facility until receipt of the final acceptance and approval by the utility as provided below.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature of interconnection customer)

Printed Name: \_\_\_\_\_

Check if copy of signed electric inspection form is attached: \_\_\_\_\_  
Check if copy of as-built documents is attached (projects larger than 10 kVA only): \_\_\_\_\_

.....

Acceptance and Final Approval for Interconnection (for utility use only)

The interconnection agreement is approved and the distributed generation facility is approved for interconnected operation upon the signing and return of this Certificate of Completion by utility:

Electric Distribution Company waives Witness Test? (Initial) Yes (\_\_\_\_) No (\_\_\_\_)

If not waived, date of successful Witness Test: \_\_\_\_\_ Passed: (Initial) (\_\_\_\_)

Utility Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

UTILITIES DIVISION[199](cont'd)

**199—45.16(476) Appendix C – Levels 2 to 4: standard application form.**

LEVELS 2 TO 4:  
STANDARD INTERCONNECTION REQUEST APPLICATION FORM  
(For Distributed Generation Facilities 10 MVA or less)

Interconnection Customer Contact Information

Name: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Telephone (Daytime): \_\_\_\_\_ (Evening): \_\_\_\_\_  
Facsimile Number: \_\_\_\_\_ E-Mail Address: \_\_\_\_\_

Alternative Contact Information (if different from Customer Contact Information)

Name: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Telephone (Daytime): \_\_\_\_\_ (Evening): \_\_\_\_\_  
Facsimile Number: \_\_\_\_\_ E-Mail Address: \_\_\_\_\_

Facility Address (if different from above): \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Utility Serving Facility Site: \_\_\_\_\_  
Account Number of Facility Site (existing utility customers): \_\_\_\_\_  
Inverter Manufacturer: \_\_\_\_\_ Model: \_\_\_\_\_

Equipment Contractor

Name: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Telephone (Daytime): \_\_\_\_\_ (Evening): \_\_\_\_\_  
Facsimile Number: \_\_\_\_\_ E-Mail Address: \_\_\_\_\_

Electrical Contractor (if different from Equipment Contractor)

Name: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Telephone (Daytime): \_\_\_\_\_ (Evening): \_\_\_\_\_  
Facsimile Number: \_\_\_\_\_ E-Mail Address: \_\_\_\_\_  
License Number: \_\_\_\_\_

Electric Service Information for Customer Facility where Generator will be Interconnected

Capacity: \_\_\_\_\_ (Amps) Voltage: \_\_\_\_\_ (Volts)  
Type of Service:  Single Phase  Three Phase

If 3 Phase Transformer, Indicate Type:  
Primary Winding  Wye  Delta  
Secondary Winding  Wye  Delta

Transformer Size: \_\_\_\_\_ Impedance: \_\_\_\_\_

UTILITIES DIVISION[199](cont'd)

Intent of Generation

- Offset Load (Unit will operate in parallel, but will not export power to utility)
- Net Metering (Unit will operate in parallel and will export power to utility pursuant to Iowa Utilities Board rule 199 IAC 15.11(5) and the utility's net metering or net billing tariff)
- Self-Use and Sales to the Utility (Unit will operate in parallel and may export and sell excess power to utility pursuant to Iowa Utilities Board rule 199 IAC 15.5 and the utility's tariff)
- Wholesale Market Transaction (Unit will operate in parallel and participate in MISO or other wholesale power markets pursuant to separate requirements and agreements with MISO or other transmission providers, and applicable rules of the Federal Energy Regulatory Commission)
- Back-up Generation (Units that temporarily operate in parallel with the electric distribution system for more than 100 milliseconds)

Note: Back-up units that do not operate in parallel for more than 100 milliseconds do not need an interconnection agreement.

Generator & Prime Mover Information

Energy Source (Hydro, Wind, Solar, Process Byproduct, Biomass, Oil, Natural Gas, Coal, etc.): \_\_\_\_\_

Energy Converter Type (Wind Turbine, Photovoltaic Cell, Fuel Cell, Steam Turbine, etc.): \_\_\_\_\_

Generator Size: \_\_\_\_\_ kW or \_\_\_\_\_ kVA      Number of Units: \_\_\_\_\_

Total Capacity: \_\_\_\_\_ kW or \_\_\_\_\_ kVA

Generator Type (Check one):  
 Induction     Inverter     Synchronous     Other: \_\_\_\_\_

Requested Procedure Under Which to Evaluate Interconnection Request

Please indicate below which review procedure applies to the interconnection request. The review procedure used is subject to confirmation by the utility.

- Level 2 – Lab-certified interconnection equipment with an aggregate electric nameplate capacity less than or equal to 2 MVA. Lab-certified is defined in Iowa Utilities Board Chapter 45 rules on Electric Interconnection of Distributed Generation Facilities (199 IAC 45.1). (Application fee is \$100 plus \$1.00 per kVA.)
- Level 3 – Distributed generation facility does not export power. Nameplate capacity rating is less than or equal to 50 kVA if connecting to area network or less than or equal to 10 MVA if connecting to a radial distribution feeder. (Application fee amount is \$500 plus \$2.00 per kVA.)

UTILITIES DIVISION[199](cont'd)

\_\_\_ Level 4 – Nameplate capacity rating is less than or equal to 10 MVA and the distributed generation facility does not qualify for a Level 1, Level 2, or Level 3 review, or the distributed generation facility has been reviewed but not approved under a Level 1, Level 2, or Level 3 review. (Application fee amount is \$1,000 plus \$2.00 per kVA, to be applied toward any subsequent studies related to this application.)

Note: Descriptions for interconnection review categories do not list all criteria that must be satisfied. For a complete list of criteria, please refer to Iowa Utilities Board Chapter 45 rules on Electric Interconnection of Distributed Generation Facilities (199 IAC 45).

Distributed Generation Facility Information:

Commissioning Test Date: \_\_\_\_\_

List interconnection components/systems to be used in the distributed generation facility that are lab-certified.

Component/System	NRTL Providing Label & Listing
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____

Please provide copies of manufacturer brochures or technical specifications.

Energy Production Equipment/Inverter Information:

\_\_\_ Synchronous \_\_\_ Induction \_\_\_ Inverter \_\_\_ Other: \_\_\_\_\_  
 Rating: \_\_\_\_\_ kW                      Rating: \_\_\_\_\_ kVA  
 Rated Voltage: \_\_\_\_\_ Volts  
 Rated Current: \_\_\_\_\_ Amps  
 System Type Tested (Total System): \_\_\_ Yes \_\_\_ No; attach product literature

UTILITIES DIVISION[199](cont'd)

For Synchronous Machines:

Note: Contact utility to determine if all the information requested in this section is required for the proposed distributed generation facility.

Manufacturer: \_\_\_\_\_  
 Model No.: \_\_\_\_\_ Version No.: \_\_\_\_\_  
 Submit copies of the Saturation Curve and the Vee Curve  
 \_\_\_ Salient \_\_\_ Non-Salient  
 Torque: \_\_\_ lb-ft Rated RPM: \_\_\_\_\_ Field Amperes: \_\_\_\_\_ at rated generator  
 voltage and current and \_\_\_\_\_ % PF over-excited  
 Type of Exciter: \_\_\_\_\_  
 Output Power of Exciter: \_\_\_\_\_  
 Type of Voltage Regulator: \_\_\_\_\_  
 Locked Rotor Current: \_\_\_\_\_ Amps Synchronous Speed: \_\_\_\_\_ RPM  
 Winding Connection: \_\_\_\_\_ Min. Operating Freq./Time: \_\_\_\_\_  
 Generator Connection: \_\_\_ Delta \_\_\_ Wye \_\_\_ Wye Grounded  
 Direct-axis Synchronous Reactance: (Xd) \_\_\_\_\_ ohms  
 Direct-axis Transient Reactance: (X'd) \_\_\_\_\_ ohms  
 Direct-axis Sub-transient Reactance: (X''d) \_\_\_\_\_ ohms  
 Negative Sequence Reactance: \_\_\_\_\_ ohms  
 Zero Sequence Reactance: \_\_\_\_\_ ohms  
 Neutral Impedance or Grounding Resister (if any): \_\_\_\_\_ ohms

For Induction Machines:

Note: Contact utility to determine if all the information requested in this section is required for the proposed distributed generation facility.

Manufacturer: \_\_\_\_\_  
 Model No.: \_\_\_\_\_ Version No.: \_\_\_\_\_  
 Locked Rotor Current: \_\_\_\_\_ Amps  
 Rotor Resistance (Rr): \_\_\_\_\_ ohms Exciting Current: \_\_\_\_\_ Amps  
 Rotor Reactance (Xr): \_\_\_\_\_ ohms Reactive Power Required: \_\_\_\_\_  
 Magnetizing Reactance (Xm): \_\_\_\_\_ ohms \_\_\_\_\_ VARs (No Load)  
 Stator Resistance (Rs): \_\_\_\_\_ ohms \_\_\_\_\_ VARs (Full Load)  
 Stator Reactance (Xs): \_\_\_\_\_ ohms  
 Short Circuit Reactance (X'd): \_\_\_\_\_ ohms  
 Phases: \_\_\_ Single \_\_\_ Three-Phase  
 Frame Size: \_\_\_\_\_ Design Letter: \_\_\_ Temp. Rise: \_\_\_\_\_ °C.

Reverse Power Relay Information (Level 3 Review Only):

Manufacturer: \_\_\_\_\_  
 Relay Type: \_\_\_\_\_ Model Number: \_\_\_\_\_  
 Reverse Power Setting: \_\_\_\_\_  
 Reverse Power Time Delay (if any): \_\_\_\_\_

UTILITIES DIVISION[199](cont'd)

Additional Information For Inverter-Based Facilities:

Inverter Information:

Manufacturer: \_\_\_\_\_ Model: \_\_\_\_\_  
Type:  Forced Commutated  Line Commutated  
Rated Output: \_\_\_\_\_ Watts \_\_\_\_\_ Volts  
Efficiency: \_\_\_\_\_% Power Factor: \_\_\_\_\_%  
Inverter UL1741 Listed:  Yes  No

DC Source/Prime Mover:

Rating: \_\_\_\_\_ kW Rating: \_\_\_\_\_ kVA  
Rated Voltage: \_\_\_\_\_ Volts  
Open Circuit Voltage (if applicable): \_\_\_\_\_ Volts  
Rated Current: \_\_\_\_\_ Amps  
Short Circuit Current (if applicable): \_\_\_\_\_ Amps

Other Facility Information:

One-Line Diagram – A basic drawing of an electric circuit in which one or more conductors are represented by a single line and each electrical device and major component of the installation, from the generator to the point of interconnection, are noted by symbols.

One-Line Diagram attached:  Yes

Plot Plan – A map showing the distributed generation facility's location in relation to streets, alleys, or other geographic markers.

Plot Plan attached:  Yes

Customer Signature:

I hereby certify that all of the information provided in this Interconnection Request Application Form is true.

Applicant Signature: \_\_\_\_\_  
Title: \_\_\_\_\_ Date: \_\_\_\_\_

An application fee is required before the application can be processed. Please verify that the appropriate fee is included with the application:

Amount: \_\_\_\_\_

Utility Acknowledgement:

Receipt of the application fee is acknowledged and this interconnection request is complete.

Utility Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

UTILITIES DIVISION[199](cont'd)

**199—45.17(476) Appendix D – Levels 2 to 4: standard distributed generation interconnection agreement.**

LEVELS 2 TO 4:  
STANDARD INTERCONNECTION AGREEMENT  
(For Distributed Generation Facilities with a capacity of 10 MVA or less)

This agreement ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, by and between \_\_\_\_\_ ("interconnection customer"), as an individual person, or as a \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_, and \_\_\_\_\_, ("utility"), a \_\_\_\_\_ existing under the laws of the State of Iowa. Interconnection customer and utility each may be referred to as a "Party," or collectively as the "Parties."

Recitals:

Whereas, interconnection customer is proposing to install or direct the installation of a distributed generation facility, or is proposing a generating capacity addition to an existing distributed generation facility, consistent with the interconnection request application form completed by interconnection customer on \_\_\_\_\_; and

Whereas, the interconnection customer will operate and maintain, or cause the operation and maintenance of, the distributed generation facility; and

Whereas, interconnection customer desires to interconnect the distributed generation facility with utility's electric distribution system.

Now, therefore, in consideration of the premises and mutual covenants set forth in this Agreement, the Parties covenant and agree as follows:

Article 1.        Scope and Limitations of Agreement

- 1.1 This Agreement shall be used for all approved interconnection requests for distributed generation facilities that fall under Levels 2, 3, and 4 according to the procedures set forth in Iowa Utilities Board Chapter 45 rules on Electric Interconnection of Distributed Generation Facilities (199 IAC 45).
- 1.2 This Agreement governs the terms and conditions under which the distributed generation facility will interconnect to, and operate in parallel with, the utility's electric distribution system.
- 1.3 This Agreement does not constitute an agreement to purchase or deliver the interconnection customer's power.
- 1.4 Nothing in this Agreement is intended to affect any other agreement between the utility and the interconnection customer.
- 1.5 Terms used in this Agreement are defined in Attachment 1 hereto or in Iowa Utilities Board Chapter 45 rules on Electric Interconnection of Distributed Generation Facilities (199 IAC 45.1) unless otherwise noted.
- 1.6 Responsibilities of the Parties
  - 1.6.1 The Parties shall perform all obligations of this Agreement in accordance with all applicable laws, regulations, codes, ordinances, orders, or similar directives of any government or other authority having jurisdiction.

## UTILITIES DIVISION[199](cont'd)

- 1.6.2 The utility shall construct, own, operate, and maintain its interconnection facilities in accordance with this Agreement.
- 1.6.3 The interconnection customer shall construct, own, operate, and maintain its distributed generation facility and interconnection facilities in accordance with this Agreement.
- 1.6.4 Each Party shall operate, maintain, repair, and inspect, and shall be fully responsible for, the facilities that it now owns or subsequently may own unless otherwise specified in the attachments to this Agreement. Each Party shall be responsible for the safe installation, maintenance, repair, and condition of its respective lines and appurtenances on its respective sides of the point of interconnection.
- 1.6.5 The interconnection customer agrees to design, install, maintain, and operate its distributed generation facility so as to minimize the likelihood of causing an adverse system impact on the electric distribution system or any other electric system that is not owned or operated by the utility.

## 1.7 Parallel Operation Obligations

Once the distributed generation facility has been authorized to commence parallel operation, the interconnection customer shall abide by all operating procedures established in IEEE Standard 1547 and any other applicable laws, statutes or guidelines, including those specified in Attachment 4 of this Agreement.

## 1.8 Metering

The interconnection customer shall be responsible for the cost to purchase, install, operate, maintain, test, repair, and replace metering and data acquisition equipment specified in Attachments 5 and 6 of this Agreement.

## 1.9 Reactive Power

- 1.9.1 Interconnection customers with a distributed generation facility larger than or equal to 1 MVA shall design their distributed generation facilities to maintain a power factor at the point of interconnection between .95 lagging and .95 leading at all times. Interconnection customers with a distributed generation facility smaller than 1 MVA shall design their distributed generation facility to maintain a power factor at the point of interconnection between .90 lagging and .90 leading at all times.
- 1.9.2 Any utility requirements for meeting a specific voltage or specific reactive power schedule as a condition for interconnection shall be clearly specified in Attachment 4. Under no circumstance shall the utility's additional requirements for voltage or reactive power schedules be outside of the agreed-upon operating parameters defined in Attachment 4.
- 1.9.3 If the interconnection customer does not operate the distributed generation facility within the power factor range specified in Attachment 4, or does not operate the distributed generation facility in accordance with a voltage or reactive power schedule specified in Attachment 4, the interconnection customer is in default, and the terms of Article 6.5 apply.

## UTILITIES DIVISION[199](cont'd)

## 1.10 Standards of Operations

The interconnection customer must obtain all certifications, permits, licenses, and approvals necessary to construct, operate, and maintain the facility and to perform its obligations under this Agreement. The interconnection customer is responsible for coordinating and synchronizing the distributed generation facility with the utility's system. The interconnection customer is responsible for any damage that is caused by the interconnection customer's failure to coordinate or synchronize the distributed generation facility with the electric distribution system. The interconnection customer agrees to be primarily liable for any damages resulting from the continued operation of the distributed generation facility after the utility ceases to energize the line section to which the distributed generation facility is connected. In Attachment 4, the utility shall specify the shortest reclose time setting for its protection equipment that could affect the distributed generation facility. The utility shall notify the interconnection customer at least 10 business days prior to adopting a faster reclose time on any automatic protective equipment, such as a circuit breaker or line recloser, that might affect the distributed generation facility.

Article 2. Inspection, Testing, Authorization, and Right of Access

## 2.1 Equipment Testing and Inspection

The interconnection customer shall test and inspect its distributed generation facility including the interconnection equipment prior to interconnection in accordance with IEEE Standard 1547 (2003) and IEEE Standard 1547.1 (2005). The interconnection customer shall not operate its distributed generation facility in parallel with the utility's electric distribution system without prior written authorization by the utility as provided for in Articles 2.1.1-2.1.3.

2.1.1 The utility shall perform a witness test after construction of the distributed generation facility is completed, but before parallel operation, unless the utility specifically waives the witness test. The interconnection customer shall provide the utility at least 15 business days' notice of the planned commissioning test for the distributed generation facility. If the utility performs a witness test at a time that is not concurrent with the commissioning test, it shall contact the interconnection customer to schedule the witness test at a mutually agreeable time within 10 business days after the scheduled commissioning test designated on the application. If the utility does not perform the witness test within 10 business days after the commissioning test, the witness test is deemed waived unless the Parties mutually agree to extend the date for scheduling the witness test, or unless the utility cannot do so for good cause, in which case, the Parties shall agree to another date for scheduling the test within 10 business days after the original scheduled date. If the witness test is not acceptable to the utility, the interconnection customer has 30 business days to address and resolve any deficiencies. This time period may be extended upon agreement in writing between the utility and the interconnection customer. If the interconnection customer fails to address and resolve the deficiencies to the satisfaction of the utility, the applicable cure provisions of Article 6.5 shall apply. The interconnection customer shall, if requested by the utility, provide a copy of all documentation in its possession regarding testing conducted pursuant to IEEE Standard 1547.1.

## UTILITIES DIVISION[199](cont'd)

2.1.2 If the interconnection customer conducts interim testing of the distributed generation facility prior to the witness test, the interconnection customer shall obtain permission from the utility before each occurrence of operating the distributed generation facility in parallel with the electric distribution system. The utility may, at its own expense, send qualified personnel to the distributed generation facility to observe such interim testing, but it cannot mandate that these tests be considered in the final witness test. The utility is not required to observe the interim testing or precluded from requiring the tests be repeated at the final witness test.

2.1.3 After the distributed generation facility passes the witness test, the utility shall affix an authorized signature to the certificate of completion and return it to the interconnection customer approving the interconnection and authorizing parallel operation. The authorization shall not be conditioned or delayed.

## 2.2 Commercial Operation

The interconnection customer shall not operate the distributed generation facility, except for interim testing as provided in Article 2.1, until such time as the certificate of completion is signed by all Parties.

## 2.3 Right of Access

The utility must have access to the isolation device or disconnect switch and metering equipment of the distributed generation facility at all times. When practical, the utility shall provide notice to the customer prior to using its right of access.

## Article 3. Effective Date, Term, Termination, and Disconnection

### 3.1 Effective Date

This Agreement shall become effective upon execution by all Parties.

### 3.2 Term of Agreement

This Agreement shall become effective on the effective date and shall remain in effect unless terminated in accordance with Article 3.3 of this Agreement.

### 3.3 Termination

3.3.1 The interconnection customer may terminate this Agreement at any time by giving the utility 30 calendar days' prior written notice.

3.3.2 Either Party may terminate this Agreement after default pursuant to Article 6.5.

3.3.3 The utility may terminate, upon 60 calendar days' prior written notice, for failure of the interconnection customer to complete construction of the distributed generation facility within 12 months after the in-service date as specified by the Parties in Attachment 2, which may be extended by mutual written agreement between the Parties prior to the expiration of the 12-month period.

3.3.4 The utility may terminate this Agreement, upon 60 calendar days' prior written notice, if the interconnection customer has abandoned, cancelled, permanently disconnected or stopped development, construction, or operation of the distributed generation facility, or if the interconnection customer fails to operate the distributed generation facility in parallel with the utility's electric system for three consecutive years.

## UTILITIES DIVISION[199](cont'd)

- 3.3.5 Upon termination of this Agreement, the distributed generation facility will be disconnected from the utility's electric distribution system. Terminating this Agreement does not relieve either Party of its liabilities and obligations that are owed or continuing when the Agreement is terminated.
- 3.3.6 If the Agreement is terminated, the interconnection customer loses its position in the interconnection review order.

### 3.4 Temporary Disconnection

A Party may temporarily disconnect the distributed generation facility from the electric distribution system in the event one or more of the following conditions or events occurs:

- 3.4.1 **Emergency conditions** – Shall mean any condition or situation: (1) that in the judgment of the Party making the claim is likely to endanger life or property; or (2) that the utility determines is likely to cause an adverse system impact, or is likely to have a material adverse effect on the utility's electric distribution system, interconnection facilities or other facilities, or is likely to interrupt or materially interfere with the provision of electric utility service to other customers; or (3) that is likely to cause a material adverse effect on the distributed generation facility or the interconnection equipment. Under emergency conditions, the utility or the interconnection customer may suspend interconnection service and temporarily disconnect the distributed generation facility from the electric distribution system without giving notice to the other Party, provided that it gives notice as soon as practicable thereafter. The utility must notify the interconnection customer when it becomes aware of any conditions that might affect the interconnection customer's operation of the distributed generation facility. The interconnection customer shall notify the utility when it becomes aware of any condition that might affect the utility's electric distribution system. To the extent information is known, the notification shall describe the condition, the extent of the damage or deficiency, the expected effect on the operation of both Parties' facilities and operations, its anticipated duration, and the necessary corrective action.
- 3.4.2 **Scheduled maintenance, construction, or repair** – the utility may interrupt interconnection service or curtail the output of the distributed generation facility and temporarily disconnect the distributed generation facility from the utility's electric distribution system when necessary for scheduled maintenance, construction, or repairs on utility's electric distribution system. To the extent possible, the utility shall provide the interconnection customer with notice five business days before an interruption. The utility shall coordinate the reduction or temporary disconnection with the interconnection customer; however, the interconnection customer is responsible for out-of-pocket costs incurred by the utility for deferring or rescheduling maintenance, construction, or repair at the interconnection customer's request.
- 3.4.3 **Forced outages** – The utility may suspend interconnection service to repair the utility's electric distribution system. The utility shall provide the interconnection customer with prior notice, if possible. If prior notice is not possible, the utility shall, upon written request, provide the interconnection customer with written documentation, after the fact, explaining the circumstances of the disconnection.

## UTILITIES DIVISION[199](cont'd)

- 3.4.4 Adverse system impact – The utility must provide the interconnection customer with written notice of its intention to disconnect the distributed generation facility, if the utility determines that operation of the distributed generation facility creates an adverse system impact. The documentation that supports the utility's decision to disconnect must be provided to the interconnection customer. The utility may disconnect the distributed generation facility if, after receipt of the notice, the interconnection customer fails to remedy the adverse system impact within 12 days, unless emergency conditions exist, in which case, the provisions of Article 3.4.1 apply. The utility may continue to leave the generating facility disconnected until the adverse system impact is corrected to the satisfaction of both the utility and the adversely-impacted customer.
- 3.4.5 Modification of the distributed generation facility – The interconnection customer must receive written authorization from the utility prior to making any change to the distributed generation facility, other than a minor equipment modification. If the interconnection customer modifies its facility without the utility's prior written authorization, the utility has the right to disconnect the distributed generation facility until such time as the utility concludes the modification poses no threat to the safety or reliability of its electric distribution system.
- 3.4.6 Unauthorized connection to the utility's electric distribution system.
- 3.4.7 Failure of the distributed generation facility to operate in accordance with this Agreement or the applicable requirements of 199 IAC Chapter 15 or 45.
- 3.4.8 The utility is not responsible for any lost opportunity or other costs incurred by interconnection customer as a result of an interruption of service under Article 3.

Article 4. Cost Responsibility for Interconnection Facilities and Distribution Upgrades

4.1 Interconnection Facilities

- 4.1.1 The interconnection customer shall pay for the cost of the interconnection facilities itemized in Attachment 3. The utility shall identify the additional interconnection facilities necessary to interconnect the distributed generation facility with the utility's electric distribution system, the cost of those facilities, and the time required to build and install those facilities, as well as an estimated date of completion of the building or installation of those facilities.
- 4.1.2 The interconnection customer is responsible for its expenses, including overheads, associated with owning, operating, maintaining, repairing, and replacing its interconnection equipment.

4.2 Distribution Upgrades

The utility shall design, procure, construct, install, and own any distribution upgrades. The actual cost of the distribution upgrades, including overheads, shall be directly assigned to the interconnection customer whose distributed generation facility caused the need for the distribution upgrades.

## UTILITIES DIVISION[199](cont'd)

Article 5. Billing, Payment, Milestones, and Financial Security

- 5.1 Billing and Payment Procedures and Final Accounting (Applies to additional reviews conducted under a Level 2 review and Level 4 reviews)
- 5.1.1 The utility shall bill the interconnection customer for the design, engineering, construction, and procurement costs of utility-provided interconnection facilities and distribution upgrades contemplated by this Agreement as set forth in Attachment 3. The billing shall occur on a monthly basis, or as otherwise agreed to between the Parties. The interconnection customer shall pay each billing invoice within 30 calendar days after receipt, or as otherwise agreed to between the Parties, if a balance due is showing after any customer deposit funds have been expended.
- 5.1.2 Within 90 calendar days after completing the construction and installation of the utility's interconnection facilities and distribution upgrades described in Attachments 2 and 3 to this Agreement, the utility shall provide the interconnection customer with a final accounting report of any difference between: (1) the actual cost incurred to complete the construction and installation of the utility's interconnection facilities and distribution upgrades; and (2) the interconnection customer's previous deposit and aggregate payments to the utility for the interconnection facilities and distribution upgrades. If the interconnection customer's cost responsibility exceeds its previous deposit and aggregate payments, the utility shall invoice the interconnection customer for the amount due and the interconnection customer shall make payment to the utility within 30 calendar days. If the interconnection customer's previous deposit and aggregate payments exceed its cost responsibility under this Agreement, the utility shall refund to the interconnection customer an amount equal to the difference within 30 calendar days after the final accounting report. Upon request from the interconnection customer, if the difference between the budget estimate and the actual cost exceeds 20%, the utility will provide a written explanation for the difference.
- 5.1.3 If a Party disputes any portion of its payment obligation pursuant to this Article 5, the Party shall pay in a timely manner all non-disputed portions of its invoice, and the disputed amount shall be resolved pursuant to the dispute resolution provisions contained in Article 8. A Party disputing a portion of an Article 5 payment shall not be considered to be in default of its obligations under this Article.
- 5.2 Interconnection Customer Deposit

At least 20 business days prior to the commencement of the design, procurement, installation, or construction of the utility's interconnection facilities and distribution upgrades, the interconnection customer shall provide the utility with a deposit equal to 100% of the estimated, nonbinding cost to procure, install, or construct any such facilities. However, when the estimated date of completion of the building or installation of facilities exceeds three months from the date of payment of the deposit, pursuant to Article 4.1.1 of this Agreement, this deposit may be held by the utility and will accrue interest in accordance with 199 IAC 20.4(4), with any interest to inure to the benefit of the interconnection customer.

## UTILITIES DIVISION[199](cont'd)

Article 6. Assignment, Limitation on Damages, Indemnity, Force Majeure, and Default

## 6.1 Assignment

This Agreement may be assigned by either Party with the prior consent of the other Party. If the interconnection customer attempts to assign this Agreement, the assignee must agree to the terms of this Agreement in writing and such writing must be provided to the utility. Any attempted assignment that violates this Article is void and ineffective. Assignment shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason of the assignment. An assignee is responsible for meeting the same obligations as the assignor.

6.1.1 Either Party may assign this Agreement without the consent of the other Party to any affiliate (including mergers, consolidations, or transfers or a sale of a substantial portion of the Party's assets, between the Party and another entity), of the assigning Party that has an equal or greater credit rating and the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement.

6.1.2 The interconnection customer can assign this Agreement, without the consent of the utility, for collateral security purposes to aid in providing financing for the distributed generation facility.

## 6.2 Limitation on Damages

Except for cases of gross negligence or willful misconduct, the liability of any Party to this Agreement shall be limited to direct actual damages, including death, bodily injury, third-party claims, and reasonable attorney's fees, and all other damages at law are waived. Under no circumstances, except for cases of gross negligence or willful misconduct, shall any Party or its directors, officers, employees, and agents, or any of them, be liable to another Party, whether in tort, contract, or other basis in law or equity for any special, indirect, punitive, exemplary, or consequential damages, including lost profits, lost revenues, replacement power, cost of capital, or replacement equipment. This limitation on damages shall not affect any Party's rights to obtain equitable relief, including specific performance, as otherwise provided in this Agreement. The provisions of this Article 6.2 shall survive the termination or expiration of the Agreement.

## 6.3 Indemnity

6.3.1 This provision protects each Party from liability incurred as a result of carrying out the provisions of this Agreement. Liability under this provision is exempt from the general limitations on liability found in Article 6.2.

6.3.2 The interconnection customer shall indemnify and defend the utility and the utility's directors, officers, employees, and agents, from all claims, damages, and expenses, including reasonable attorney's fees, to the extent resulting from the interconnection customer's negligent installation, operation, modification, maintenance, or removal of its distributed generation facility or interconnection facilities, or the interconnection customer's willful misconduct or breach of this Agreement.

## UTILITIES DIVISION[199](cont'd)

- 6.3.3 The utility shall indemnify and defend the interconnection customer and the interconnection customer's directors, officers, employees, and agents from all claims, damages, and expenses, including reasonable attorney's fees, to the extent resulting from the utility's negligent installation, operation, modification, maintenance, or removal of its interconnection facilities or electric distribution system, or the utility's willful misconduct or breach of this Agreement.
- 6.3.4 Within 5 business days after receipt by an indemnified Party of any claim or notice that an action or administrative or legal proceeding or investigation as to which the indemnity provided for in this Article may apply has commenced, the indemnified Party shall notify the indemnifying Party of such fact. The failure to notify, or a delay in notification, shall not affect a Party's indemnification obligation unless that failure or delay is materially prejudicial to the indemnifying Party.
- 6.3.5 If an indemnified Party is entitled to indemnification under this Article as a result of a claim, and the indemnifying Party fails, after notice and reasonable opportunity to proceed under this Article, to assume the defense of such claim, that indemnified Party may, at the expense of the indemnifying Party, contest, settle, or consent to the entry of any judgment with respect to, or pay in full, the claim.
- 6.3.6 If an indemnifying Party is obligated to indemnify and hold any indemnified Party harmless under this Article, the amount owing to the indemnified person shall be the amount of the indemnified Party's actual loss, net of any insurance or other recovery by the indemnified Party.
- 6.4 Force Majeure
- 6.4.1 As used in this Article, a force majeure event shall mean any act of God, labor disturbance, act of the public enemy, war, acts of terrorism, insurrection, riot, fire, storm or flood, explosion, breakage, or accident to machinery or equipment through no direct, indirect, or contributory act of a Party, any order, regulation or restriction imposed by governmental, military, or lawfully established civilian authorities (e.g., MISO), or any other cause beyond a Party's control. A force majeure event does not include an act of gross negligence or intentional wrongdoing by the Party claiming force majeure.
- 6.4.2 If a force majeure event prevents a Party from fulfilling any obligations under this Agreement, the Party affected by the force majeure event ("Affected Party") shall notify the other Party of the existence of the force majeure event as soon as reasonably possible. The notification will specify the circumstances of the force majeure event, its expected duration (if known), and the steps that the Affected Party is taking and will take to mitigate the effects of the event on its performance (if known). If the initial notification is verbal, it must be followed up with a written notification promptly thereafter. The Affected Party shall keep the other Party informed on a periodic basis of developments relating to the force majeure event until the event ends. The Affected Party may suspend or modify its obligations under this Agreement without liability only to the extent that the effect of the force majeure event cannot be otherwise mitigated.

## UTILITIES DIVISION[199](cont'd)

## 6.5 Default

- 6.5.1 No default shall exist when the failure to discharge an obligation results from a force majeure event as defined in this Agreement, or the result of an act or omission of the other Party.
- 6.5.2 A Party shall be in default ("Default") of this Agreement if it fails in any material respect to comply with, observe, or perform, or defaults in the performance of, any covenant or obligation under this Agreement and fails to cure the failure within 60 calendar days after receiving written notice from the other Party. Upon a default of this Agreement, the non-defaulting Party shall give written notice of the default to the defaulting Party. Except as provided in Article 6.5.3, the defaulting Party has 60 calendar days after receipt of the default notice to cure the default; provided, however, if the default cannot be cured within 60 calendar days, the defaulting Party shall commence the cure within 20 calendar days after original notice and complete the cure within six months from receipt of the default notice; and, if cured within that time, the default specified in the notice shall cease to exist.
- 6.5.3 If a Party has assigned this Agreement in a manner that is not specifically authorized by Article 6.1, fails to provide reasonable access pursuant to Article 2.3, and is in default of its obligations pursuant to Article 7, or if a Party is in default of its payment obligations pursuant to Article 5 of this Agreement, the defaulting Party has 30 days from receipt of the default notice to cure the default.
- 6.5.4 If a default is not cured as provided for in this Article, or if a default is not capable of being cured within the period provided for in this Article, the non-defaulting Party shall have the right to terminate this Agreement without liability by written notice, and be relieved of any further obligation under this Agreement and, whether or not that Party terminates this Agreement, to recover from the defaulting Party all amounts due under this Agreement, plus all other damages and remedies to which it is entitled at law or in equity. The provisions of this Article shall survive termination of this Agreement.

Article 7. Insurance

- 7.1 For distributed generation facilities with a nameplate capacity less than 1 MVA, the interconnection customer shall carry general liability insurance coverage, such as, but not limited to, homeowner's insurance.
- 7.2 For distributed generation facilities with a nameplate capacity of 1 MVA or above, the interconnection customer shall carry sufficient insurance coverage so that the maximum comprehensive/general liability coverage that is continuously maintained by the interconnection customer during the term shall be not less than \$2,000,000 for each occurrence, and an aggregate, if any, of at least \$4,000,000. The utility, its officers, employees, and agents shall be added as an additional insured on this policy. The interconnection customer agrees to provide the utility with at least 30 calendar days' advance written notice of cancellation, reduction in limits, or non-renewal of any insurance policy required by this Article.

Article 8. Dispute Resolution

- 8.1 Parties shall attempt to resolve all disputes regarding interconnection as provided in this Article in a good faith manner.

## UTILITIES DIVISION[199](cont'd)

- 8.2 If there is a dispute between the Parties about an interpretation of the Agreement, the aggrieved Party shall issue a written notice to the other Party to the agreement that specifies the dispute and the Agreement articles that are disputed.
- 8.3 A meeting between the Parties shall be held within ten business days after receipt of the written notice. Persons with decision-making authority from each Party shall attend the meeting. If the dispute involves technical issues, persons with sufficient technical expertise and familiarity with the issue in dispute from each Party shall also attend the meeting. If the Parties agree, the meeting may be conducted by teleconference.
- 8.4 After the first meeting, each Party may seek resolution through the Iowa Utilities Board Chapter 6 complaint procedures (199 IAC 6). Dispute resolution under these procedures will initially be conducted informally under 199 IAC 6.2 through 6.4 to minimize cost and delay. If any Party is dissatisfied with the outcome of the informal process, the Party may file a formal complaint with the Board under 199 IAC 6.5.
- 8.5 Pursuit of dispute resolution may not affect an interconnection request or an interconnection applicant's position in the utility's interconnection review order.
- 8.6 If the Parties fail to resolve their dispute under the dispute resolution provisions of this Article, nothing in this Article shall affect any Party's rights to obtain equitable relief, including specific performance, as otherwise provided in this Agreement.

Article 9. Miscellaneous

## 9.1 Governing Law, Regulatory Authority, and Rules

The validity, interpretation and enforcement of this Agreement and each of its provisions shall be governed by the laws of the State of Iowa, without regard to its conflicts of law principles. This Agreement is subject to all applicable laws and regulations. Each Party expressly reserves the right to seek change in, appeal, or otherwise contest any laws, orders, or regulations of a governmental authority. The language in all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against the utility or interconnection customer, regardless of the involvement of either Party in drafting this Agreement.

## 9.2 Amendment

Modification of this Agreement shall be only by a written instrument duly executed by both Parties.

## 9.3 No Third-Party Beneficiaries

This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations in this Agreement assumed are solely for the use and benefit of the Parties, their successors in interest and, where permitted, their assigns.

## UTILITIES DIVISION[199](cont'd)

## 9.4 Waiver

9.4.1 Except as otherwise provided in this Agreement, a Party's compliance with any obligation, covenant, agreement, or condition in this Agreement may be waived by the Party entitled to the benefits thereof only by a written instrument signed by the Party granting the waiver, but the waiver or failure to insist upon strict compliance with the obligation, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

9.4.2 Failure of any Party to enforce or insist upon compliance with any of the terms or conditions of this Agreement, or to give notice or declare this Agreement or the rights under this Agreement terminated, shall not constitute a waiver or relinquishment of any rights set out in this Agreement, but the same shall be and remain at all times in full force and effect, unless and only to the extent expressly set forth in a written document signed by that Party granting the waiver or relinquishing any such rights. Any waiver granted, or relinquishment of any right, by a Party shall not operate as a relinquishment of any other rights or a waiver of any other failure of the Party granted the waiver to comply with any obligation, covenant, agreement, or condition of this Agreement.

## 9.5 Entire Agreement

Except as provided in Article 9.1, this Agreement, including all attachments and the completed Standard Certificate of Completion (199 IAC 45.15), constitutes the entire Agreement between the Parties with reference to the subject matter of this Agreement, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this Agreement. There are no other agreements, representations, warranties, or covenants that constitute any part of the consideration for, or any condition to, either Party's compliance with its obligations under this Agreement.

## 9.6 Multiple Counterparts

This Agreement may be executed in two or more counterparts, each of which is deemed an original, but all constitute one and the same instrument.

## 9.7 No Partnership

This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties, or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

## 9.8 Severability

If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other governmental authority, (1) that portion or provision shall be deemed separate and independent, (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by the ruling, and (3) the remainder of this Agreement shall remain in full force and effect.

UTILITIES DIVISION[199](cont'd)

9.9 Environmental Releases

Each Party shall notify the other Party of the release of any hazardous substances, any asbestos or lead abatement activities, or any type of remediation activities related to the distributed generation facility or the interconnection facilities, each of which may reasonably be expected to affect the other Party. The notifying Party shall (1) provide the notice as soon as practicable, provided that Party makes a good faith effort to provide the notice no later than 24 hours after that Party becomes aware of the occurrence, and (2) promptly furnish to the other Party copies of any publicly available reports filed with any governmental authorities addressing such events.

9.10 Subcontractors

Nothing in this Agreement shall prevent a Party from using the services of any subcontractor it deems appropriate to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing services and each Party shall remain primarily liable to the other Party for the performance of the subcontractor.

9.10.1 A subcontract relationship does not relieve any Party of any of its obligations under this Agreement. The hiring Party remains responsible to the other Party for the acts or omissions of its subcontractor. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of the hiring Party.

9.10.2 The obligations under this Article cannot be limited in any way by any limitation of subcontractor's insurance.

Article 10. Notices

10.1 General

Unless otherwise provided in this Agreement, any written notice, demand, or request required or authorized in connection with this Agreement ("Notice") shall be deemed properly given if delivered in person, delivered by recognized national courier service, or sent by first-class mail, postage prepaid, to the person specified below:

If Notice is to Interconnection Customer:

Interconnection Customer: \_\_\_\_\_  
Attention: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-mail: \_\_\_\_\_

If Notice is to Utility:

Utility: \_\_\_\_\_  
Attention: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-mail: \_\_\_\_\_

UTILITIES DIVISION[199](cont'd)

Alternative Forms of Notice:

Any notice or request required or permitted to be given by either Party to the other Party and not required by this Agreement to be in writing may be given by telephone, facsimile or e-mail to the telephone numbers and e-mail addresses set out above.

10.2 Billing and Payment

Billings and payments shall be sent to the contacts specified for Notices in Article 10.1 above, unless a different address is set out below:

If Billing or Payment is to Interconnection Customer:

Interconnection Customer: \_\_\_\_\_  
Attention: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

If Billing or Payment is to Utility:

Utility: \_\_\_\_\_  
Attention: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

10.3 Designated Operating Representative

The Parties may also designate operating representatives to conduct the communications that may be necessary or convenient for the administration of this Agreement. This person will also serve as the point of contact with respect to operations and maintenance of the Party's facilities. If no such operating representative is designated below, such notices will be sent to the contacts listed in Article 10.1 above.

Interconnection Customer's Operating Representative:

Name: \_\_\_\_\_  
Attention: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Utility's Operating Representative:

Name: \_\_\_\_\_  
Attention: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

10.4 Changes to the Notice Information

Either Party may change this notice information by giving five business days' written notice before the effective date of the change.

UTILITIES DIVISION[199](cont'd)

Article 11. Signatures

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives.

For the Interconnection Customer:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

For the Utility:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

UTILITIES DIVISION[199](cont'd)

ATTACHMENT 1

## Levels 2 To 4: Standard Interconnection Agreement

Definitions

Adverse system impact – A negative effect that compromises the safety or reliability of the electric distribution system or materially affects the quality of electric service provided by the utility to other customers.

AEP facility – An AEP facility as defined in 199 IAC 15 (Iowa Utilities Board Chapter 15 rules on Cogeneration and Small Power Production), used by an interconnection customer to generate electricity that operates in parallel with the electric distribution system. An AEP facility typically includes an electric generator and the interconnection equipment required to interconnect safely with the electric distribution system or local electric power system.

Applicable laws and regulations – All duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any governmental authority, having jurisdiction over the Parties.

Commissioning test – Tests applied to a distributed generation facility by the applicant after construction is completed to verify that the facility does not create adverse system impacts. At a minimum, the scope of the commissioning tests performed shall include the commissioning test specified IEEE Standard 1547 Section 5.4 "Commissioning tests."

Distributed generation facility – A qualifying facility or an AEP facility.

Distribution upgrades – A required addition or modification to the utility's electric distribution system at or beyond the point of interconnection to accommodate the interconnection of a distributed generation facility. Distribution upgrades do not include interconnection facilities.

Electric distribution system – The facilities and equipment used to transmit electricity to ultimate usage points such as homes and industries from interchanges with higher voltage transmission networks that transport bulk power over longer distances. The voltage levels at which electric distribution systems operate differ among areas but generally carry less than 100 kilovolts of electricity. Electric distribution system has the same meaning as the term Area EPS, as defined in 3.1.6.1 of IEEE Standard 1547.

Facilities study – An engineering study conducted by the utility to determine the required modifications to the utility's electric distribution system, including the cost and the time required to build and install the modifications, as necessary to accommodate an interconnection request.

Force majeure event – Any act of God, labor disturbance, act of the public enemy, war, acts of terrorism, insurrection, riot, fire, storm or flood, explosion, breakage, or accident to machinery or equipment through no direct, indirect, or contributory act of a Party, any order, regulation, or restriction imposed by governmental, military, or lawfully established civilian authorities (e.g., MISO), or any other cause beyond a Party's control. A force majeure event does not include an act of gross negligence or intentional wrongdoing by the Party claiming force majeure.

Governmental authority – Any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that this term does not include the interconnection customer, utility, or any affiliate of either.

## UTILITIES DIVISION[199](cont'd)

IEEE Standard 1547 – The Institute of Electrical and Electronics Engineers, Inc. (IEEE), 3 Park Avenue, New York, NY 10016-5997, Standard 1547 (2003), "Standard for Interconnecting Distributed Resources with Electric Power Systems."

IEEE Standard 1547.1 – The IEEE Standard 1547.1 (2005), "Conformance Test Procedures for Equipment Interconnecting Distributed Resources with Electric Power Systems."

Interconnection agreement or Agreement – The agreement between the interconnection customer and the utility. The interconnection agreement governs the connection of the distributed generation facility to the utility's electric distribution system and the ongoing operation of the distributed generation facility after it is connected to the utility's electric distribution system.

Interconnection customer – The entity entering into this Agreement for the purpose of interconnecting a distributed generation facility to the utility's electric distribution system.

Interconnection equipment – A group of components or an integrated system connecting an electric generator with a local electric power system or an electric distribution system that includes all interface equipment, including switchgear, protective devices, inverters, or other interface devices. Interconnection equipment may be installed as part of an integrated equipment package that includes a generator or other electric source.

Interconnection facilities – Facilities and equipment required by the utility to accommodate the interconnection of a distributed generation facility. Collectively, interconnection facilities include all facilities and equipment between the distributed generation facility and the point of interconnection, including modification, additions, or upgrades that are necessary to physically and electrically interconnect the distributed generation facility to the electric distribution system. Interconnection facilities are sole use facilities and do not include distribution upgrades.

Interconnection request – An interconnection customer's request, on the required form, for the interconnection of a new distributed generation facility, or to increase the capacity or change the operating characteristics of an existing distributed generation facility that is interconnected with the utility's electric distribution system.

Interconnection study – Any of the following studies, as determined to be appropriate by the utility: the interconnection feasibility study, the interconnection system impact study, and the interconnection facilities study.

Iowa standard distributed generation interconnection rules – The most current version of the procedures for interconnecting distributed generation facilities adopted by the Iowa Utilities Board. See Iowa Utilities Board Chapter 45 rules on Electric Interconnection of Distributed Generation Facilities (199 IAC 45).

Parallel operation or Parallel – The state of operation that occurs when a distributed generation facility is connected electrically to the electric distribution system for longer than 100 milliseconds.

Point of interconnection – The point where the distributed generation facility is electrically connected to the electric distribution system. Point of interconnection has the same meaning as the term "point of common coupling" defined in 3.1.13 of IEEE Standard 1547.

Qualifying facility – A cogeneration facility or a small power production facility that is a qualifying facility under 18 CFR Part 292, Subpart B, used by an interconnection customer to generate electricity that operates in parallel with the electric distribution system. A qualifying facility typically includes an electric generator and the interconnection equipment required to interconnect safely with the electric distribution system or local electric power system.

## UTILITIES DIVISION[199](cont'd)

Utility – Any electric utility that is subject to rate regulation by the Iowa Utilities Board.

Witness test – For lab-certified equipment, verification (either by an on-site observation or review of documents) by the utility that the interconnection installation evaluation required by IEEE Standard 1547 Section 5.3 and the commissioning test required by IEEE Standard 1547 Section 5.4 have been adequately performed. For interconnection equipment that has not been lab-certified, the witness test shall also include verification by the utility of the on-site design tests required by IEEE Standard 1547 Section 5.1 and verification by the utility of production tests required by IEEE Standard 1547 Section 5.2. All tests verified by the utility are to be performed in accordance with the test procedures specified by IEEE Standard 1547.1.

UTILITIES DIVISION[199](cont'd)

ATTACHMENT 2

Levels 2 To 4: Standard Interconnection Agreement

Construction Schedule, Proposed Equipment & Settings

This attachment is to be completed by the interconnection customer and shall include the following:

1. The construction schedule for the distributed generation facility.
2. A one-line diagram indicating the distributed generation facility, interconnection equipment, interconnection facilities, metering equipment, and distribution upgrades.
3. Component specifications for equipment identified in the one-line diagram.
4. Component settings.
5. Proposed sequence of operations.
6. A three-line diagram showing current potential circuits for protective relays.
7. Relay tripping and control schematic diagram.
8. A plot plan showing the distributed generation facility's location in relation to streets, alleys, address or other geographical markers.

UTILITIES DIVISION[199](cont'd)

ATTACHMENT 3

Levels 2 To 4: Standard Interconnection Agreement

Description, Costs and Time Required to  
Build and Install the Utility's Interconnection Facilities

This attachment is to be completed by the utility and shall include the following:

1. Required interconnection facilities, including any required metering.
2. An estimate of itemized costs charged by the utility for interconnection, including overheads, based on results from prior studies.
3. An estimate for the time required to build and install the utility's interconnection facilities based on results from prior studies and an estimate of the date upon which the facilities will be completed.

UTILITIES DIVISION[199](cont'd)

ATTACHMENT 4

Levels 2 To 4: Standard Interconnection Agreement

Operating Requirements for Distributed Generation Facilities Operating in Parallel

The utility shall list specific operating practices that apply to this distributed generation interconnection and the conditions under which each listed specific operating practice applies.

UTILITIES DIVISION[199](cont'd)

ATTACHMENT 5  
Levels 2 To 4: Standard Interconnection Agreement

Monitoring and Control Requirements

This attachment is to be completed by the utility and shall include the following:

1. The utility's monitoring and control requirements must be specified, along with a reference to the utility's written requirements documents from which these requirements are derived.
2. An internet link to the requirements documents.

UTILITIES DIVISION[199](cont'd)

ATTACHMENT 6

Levels 2 To 4: Standard Interconnection Agreement

Metering Requirements

This attachment is to be completed by the utility and shall include the following:

1. The metering requirements for the distributed generation facility.
2. Identification of the appropriate metering rules filed with the Iowa Utilities Board under subrule 199 IAC 20.2(5), and inspection and testing practices adopted under rule 199 IAC 20.6 that establish these requirements.
3. An internet link to these rules and practices.

UTILITIES DIVISION[199](cont'd)

ATTACHMENT 7

Levels 2 To 4: Standard Interconnection Agreement

As-Built Documents

This attachment is to be completed by the interconnection customer and shall include the following:

When it returns the certificate of completion to the utility, the interconnection customer shall provide the utility with documents detailing the as-built status of the following:

1. A one-line diagram indicating the distributed generation facility, interconnection equipment, interconnection facilities, and metering equipment.
2. Component specifications for equipment identified in the one-line diagram.
3. Component settings.
4. Proposed sequence of operations.
5. A three-line diagram showing current potential circuits for protective relays.
6. Relay tripping and control schematic diagram.

UTILITIES DIVISION[199](cont'd)

**199—45.18(476) Appendix E – Standard interconnection feasibility study agreement.**INTERCONNECTION FEASIBILITY STUDY AGREEMENT

This agreement ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, by and between \_\_\_\_\_ ("interconnection customer"), as an individual person, or as a \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_, and \_\_\_\_\_, ("utility"), a \_\_\_\_\_ existing under the laws of the State of Iowa. Interconnection customer and utility each may be referred to as a "Party," or collectively as the "Parties."

Recitals:

Whereas, interconnection customer is proposing to develop a distributed generation facility or modify an existing distributed generation facility consistent with the interconnection request application form submitted by interconnection customer on \_\_\_\_\_; and

Whereas, interconnection customer desires to interconnect the distributed generation facility with utility's electric distribution system; and

Whereas, interconnection customer has requested utility to perform an interconnection feasibility study to assess the feasibility of interconnecting the proposed distributed generation facility to utility's electric distribution system;

Now, therefore, in consideration of and subject to the mutual covenants contained herein the Parties agree as follows:

1. All terms defined in Iowa Utilities Board Chapter 45 rules on Electric Interconnection of Distributed Generation Facilities (199 IAC 45.1) shall have the meanings indicated in that rule when used in this Agreement.
2. Interconnection customer elects and utility shall cause to be performed an interconnection feasibility study consistent with Iowa Utilities Board Chapter 45 rules on Electric Interconnection of Distributed Generation Facilities (199 IAC 45.11).
3. The scope of the interconnection feasibility study shall be based upon the information set forth in the interconnection request application form and Attachment A to this Agreement.
4. The interconnection feasibility study shall be based on the technical information provided by interconnection customer in the interconnection request application form, as modified with the written agreement of the Parties. Utility has the right to request additional technical information from interconnection customer during the course of the interconnection feasibility study. If the interconnection customer modifies its interconnection request, the time to complete the interconnection feasibility study may be extended by the utility.
5. In performing the study, utility shall rely on existing studies of recent vintage to the extent practical. The interconnection customer will not be charged for such existing studies; however, interconnection customer is responsible for the cost of applying any existing study to the interconnection customer specific requirements and for any new study that the utility performs.
6. The interconnection feasibility study report must provide the following information:
  - 6.1 Identification of any equipment short circuit capability limits exceeded as a result of the interconnection,
  - 6.2 Identification of any thermal overload or voltage limit violations resulting from the interconnection, and
  - 6.3 A description and nonbinding estimated cost of facilities required to interconnect the distributed generation facility to utility's electric distribution system as required under Iowa Utilities Board Chapter 45 rules on Electric Interconnection of Distributed Generation Facilities (199 IAC 45.11(5)"a").

UTILITIES DIVISION[199](cont'd)

- 7. Interconnection customer shall provide a study deposit equal to 100% of the estimated nonbinding study costs at least 20 business days prior to the date upon which the study commences.
- 8. The interconnection feasibility study shall be completed and the results shall be transmitted to interconnection customer within 45 business days after this Agreement is signed by the Parties or the complete study deposit is received by the utility, whichever occurs later. If the interconnection customer's study request involves more than one point of interconnection and configuration, the time to complete the interconnection feasibility study may be extended by the utility.
- 9. Study fees shall be based on actual costs and will be invoiced to interconnection customer after the study is transmitted to interconnection customer. The invoice must include an itemized listing of employee time and costs expended on the study.
- 10. Interconnection customer shall pay any actual study costs that exceed the deposit without interest within 30 calendar days on receipt of the invoice. Utility shall refund any excess deposit amount without interest within 30 calendar days after the invoice.

In witness whereof, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

[Insert name of interconnection customer]

Signed: \_\_\_\_\_  
Name (Printed): \_\_\_\_\_ Title: \_\_\_\_\_

[Insert name of utility]

Signed: \_\_\_\_\_  
Name (Printed): \_\_\_\_\_ Title: \_\_\_\_\_

UTILITIES DIVISION[199](cont'd)

ATTACHMENT A  
Interconnection Feasibility Study Agreement

Assumptions Used in Conducting the Interconnection Feasibility Study

The interconnection feasibility study will be based upon the information in the interconnection request application form, agreed upon on \_\_\_\_\_:

1. Point of interconnection and configuration to be studied.

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2. Alternative points of interconnection and configurations to be studied.

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Note: 1 and 2 are to be completed by the interconnection customer. Any additional assumptions (explained below) may be provided by either the interconnection customer or the utility.

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UTILITIES DIVISION[199](cont'd)

**199—45.19(476) Appendix F – Standard interconnection system impact study agreement.**INTERCONNECTION SYSTEM IMPACT STUDY AGREEMENT

This agreement ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, by and between \_\_\_\_\_ ("interconnection customer"), as an individual person, or as a \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_, and \_\_\_\_\_, ("utility"), a \_\_\_\_\_ existing under the laws of the State of Iowa. Interconnection customer and utility each may be referred to as a "Party," or collectively as the "Parties."

Recitals:

Whereas, interconnection customer is proposing to develop a distributed generation facility or modifying an existing distributed generation facility consistent with the interconnection request application form completed by interconnection customer on \_\_\_\_\_; and

Whereas, interconnection customer desires to interconnect the distributed generation facility to utility's electric distribution system; and

Whereas, utility has completed an interconnection feasibility study and provided the results of said study to interconnection customer (this recital to be omitted if the Parties have agreed to forego the interconnection feasibility study); and

Whereas, interconnection customer has requested utility to perform an interconnection system impact study to assess the impact of interconnecting the distributed generation facility to utility's electric distribution system;

Now, therefore, in consideration of and subject to the mutual covenants contained herein the Parties agree as follows:

1. All terms defined in Iowa Utilities Board Chapter 45 rules on Electric Interconnection of Distributed Generation Facilities (199 IAC 45.1) shall have the meanings indicated in that rule when used in this Agreement.
2. Interconnection customer elects and utility shall cause to be performed an interconnection system impact study consistent with Iowa Utilities Board Chapter 45 rules on Electric Interconnection of Distributed Generation Facilities (199 IAC 45.11).
3. The scope of the interconnection system impact study shall be based upon the information set forth in the interconnection request application form and in Attachment A to this Agreement.
4. The interconnection system impact study shall be based upon the interconnection feasibility study and the technical information provided by interconnection customer in the interconnection request application form. Utility reserves the right to request additional technical information from interconnection customer. If interconnection customer modifies its proposed point of interconnection, interconnection request, or the technical information provided therein is modified, the time to complete the interconnection system impact study may be extended.
5. The interconnection system impact study report shall provide the following information:
  - 5.1 Identification of any equipment short circuit capability limits exceeded as a result of the interconnection,
  - 5.2 Identification of any thermal overload or voltage limit violations resulting from the interconnection,
  - 5.3 Identification of any instability or inadequately damped response to system disturbances resulting from the interconnection, and

UTILITIES DIVISION[199](cont'd)

- 5.4 Description and nonbinding estimated cost of facilities required to interconnect the distributed generation facility to utility's electric distribution system and to address the identified short circuit, thermal overload, voltage, and instability issues as required under Iowa Utilities Board Chapter 45 rules on Electric Interconnection of Distributed Generation Facilities (199 IAC 45.11(5) "b").
- 6. Interconnection customer shall provide a study deposit equal to 100% of the estimated nonbinding study costs at least 20 business days prior to the date upon which the study commences.
- 7. The interconnection system impact study, if required, shall be completed and the results transmitted to interconnection customer within 45 business days after this Agreement is signed by the Parties or the complete study deposit is received by the utility, whichever occurs later. If the interconnection customer's study request involves more than one point of interconnection and configuration, the time to complete the interconnection system impact study may be extended by the utility.
- 8. Study fees shall be based on actual costs and shall be invoiced to interconnection customer after the study is transmitted to interconnection customer. The invoice shall include an itemized listing of employee time and costs expended on the study.
- 9. Interconnection customer shall pay any study costs that exceed the deposit within 30 calendar days after receipt of the invoice. Utility shall refund any excess deposit amount within 30 calendar days of the invoice.

In witness thereof, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

[Insert name of interconnection customer]

Signed: \_\_\_\_\_  
Name (Printed): \_\_\_\_\_ Title: \_\_\_\_\_

[Insert name of utility]

Signed: \_\_\_\_\_  
Name (Printed): \_\_\_\_\_ Title: \_\_\_\_\_

UTILITIES DIVISION[199](cont'd)

ATTACHMENT A  
Interconnection System Impact Study Agreement

Assumptions Used in Conducting the Interconnection System Impact Study

The interconnection system impact study shall be based upon the results of the interconnection feasibility study, subject to any modifications in accordance with Iowa Utilities Board Chapter 45 rules on Electric Interconnection of Distributed Generation Facilities (199 IAC 45.11), and the following assumptions:

- 1. Point of interconnection and configuration to be studied.

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- 2. Alternative Points of interconnection and configurations to be studied.

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Note: 1 and 2 are to be completed by the interconnection customer. Any additional assumptions (explained below) may be provided by either the interconnection customer or the utility.

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UTILITIES DIVISION[199](cont'd)

**199—45.20(476) Appendix G – Standard interconnection facilities study agreement.**INTERCONNECTION FACILITIES STUDY AGREEMENT

This agreement ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, by and between \_\_\_\_\_ ("interconnection customer"), as an individual person, or as a \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_, and \_\_\_\_\_, ("utility"), a \_\_\_\_\_ existing under the laws of the State of Iowa. Interconnection customer and utility each may be referred to as a "Party," or collectively as the "Parties."

Recitals:

Whereas, interconnection customer is proposing to develop a distributed generation facility or modifying an existing distributed generation facility consistent with the interconnection request application form completed by interconnection customer on \_\_\_\_\_; and

Whereas, interconnection customer desires to interconnect the distributed generation facility with utility's electric distribution system; and

Whereas, utility has completed an interconnection system impact study and provided the results of said study to interconnection customer; and

Whereas, interconnection customer has requested utility to perform an interconnection facilities study to specify and estimate the cost of the equipment, engineering, procurement and construction work needed to interconnect the distributed generation facility;

Now, therefore, in consideration of and subject to the mutual covenants contained in this Agreement, the Parties agree as follows:

1. All terms defined in Iowa Utilities Board Chapter 45 rules on Electric Interconnection of Distributed Generation Facilities (199 IAC 45.1) shall have the meanings indicated in that rule when used in this Agreement.
2. Interconnection customer elects and utility shall cause to be performed an interconnection facilities study consistent with Iowa Utilities Board Chapter 45 rules on Electric Interconnection of Distributed Generation Facilities (199 IAC 45.11).
3. The scope of the interconnection facilities study shall be determined by the information provided in Attachment A to this Agreement.
4. An interconnection facilities study report (1) shall provide a description, estimated cost of distribution upgrades, and a schedule for required facilities to interconnect the distributed generation facility to utility's electric distribution system; and (2) shall address all issues identified in the interconnection system impact study (or identified in this study if the system impact study is combined herein).
5. Interconnection customer shall provide a study deposit of 100% of the estimated nonbinding study costs at least 20 business days prior to the date upon which the study commences.
6. In cases where no distribution upgrades are required, the interconnection facilities study shall be completed and the results shall be transmitted to interconnection customer within 15 business days after this Agreement is signed by the Parties. In cases where distribution upgrades are required, the interconnection facilities study shall be completed and the results shall be transmitted to interconnection customer within 35 business days after this Agreement is signed by the Parties or the complete study deposit is received by the utility, whichever occurs later.
7. Study fees shall be based on actual costs and will be invoiced to interconnection customer after the study is transmitted to interconnection customer. The invoice shall include an itemized listing of employee time and costs expended on the study.

UTILITIES DIVISION[199](cont'd)

- 8. Interconnection customer shall pay any actual study costs that exceed the deposit within 30 calendar days on receipt of the invoice. Utility shall refund any excess deposit amount within 30 calendar days after the invoice.

In witness whereof, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

[Insert name of interconnection customer]

Signed: \_\_\_\_\_  
Name (Printed): \_\_\_\_\_ Title: \_\_\_\_\_

[Insert name of utility]

Signed: \_\_\_\_\_  
Name (Printed): \_\_\_\_\_ Title: \_\_\_\_\_

UTILITIES DIVISION[199](cont'd)

ATTACHMENT A  
Interconnection Facilities Study Agreement

Minimum Information that the Interconnection Customer Must Provide with the  
Interconnection Facilities Study Agreement

Provide location plan and simplified one-line diagram of the distributed generation facilities.

For staged projects, please indicate size and location of planned additional future generation.

On the one-line diagram, indicate the generation capacity attached at each metering location. (Maximum load on CT/PT).

On the one-line diagram, indicate the location of auxiliary power. (Minimum load on CT/PT) Amps.

One set of metering is required for each generation connection to the utility's electric distribution system.

Number of generation connections: \_\_\_\_\_

Will an alternate source of auxiliary power be available during CT/PT maintenance?  
Yes \_\_\_\_\_ No \_\_\_\_\_

Will a transfer bus on the generation side of the metering require that each meter set be designed for the total distributed generation capacity? Yes \_\_\_\_\_ No \_\_\_\_\_  
(Please indicate on the one-line diagram).

What type of control system or PLC will be located at the distributed generation facility?  
\_\_\_\_\_.

What protocol does the control system or PLC use? \_\_\_\_\_.

Please provide a scale drawing of the site. Indicate the point of interconnection, distribution line, and property lines.

Number of third-party easements required for utility's interconnection facilities: \_\_\_\_\_

UTILITIES DIVISION[199](cont'd)

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To be Completed in Coordination with the Utility

Is the distributed generation facility located in utility's service area?

Yes \_\_\_\_\_ No \_\_\_\_\_

If No, please provide name of local provider: \_\_\_\_\_

Please provide the following proposed schedule dates:

Begin construction date: \_\_\_\_\_

Generator step-up transformers receive back feed power date: \_\_\_\_\_

Commissioning testing date: \_\_\_\_\_

Witness testing date: \_\_\_\_\_

Commercial operation date: \_\_\_\_\_

These rules are intended to implement Iowa Code sections 476.1 and 476.8 and Section 211 of the Public Utilities Regulatory Policies Act of 1978, as amended by the Energy Policy Act of 2005.

[Filed 5/26/10, effective 7/21/10]

[Published 6/16/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/16/10.