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

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

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

INSTRUCTIONS

FOR UPDATING THE

IOWA ADMINISTRATIVE CODE

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

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

Engineering and Land Surveying Examining Board[193C]

Replace Chapter 4

Utilities Division[199]

Replace Chapter 15

Environmental Protection Commission[567]

Replace Chapter 33

Professional Licensure Division[645]

Replace Chapter 31

Replace Chapter 33

Transportation Department[761]

Replace Chapter 401

Replace Chapter 425

CHAPTER 4
ENGINEERING LICENSURE
[Prior to 11/14/01, see 193C—1.4(542B)]

193C—4.1(542B) Requirements for licensure by examination. The specific requirements for initial licensing in Iowa are established in Iowa Code section 542B.14, and it is the board's intention to issue initial licensure only when those requirements are satisfied chronologically as set forth in the statute.

4.1(1) First, the applicant for initial licensure in Iowa must satisfy the educational requirements as follows:

a. Graduation from an engineering program of four years or more.

(1) If an applicant did not graduate from an Accreditation Board of Engineering and Technology/Engineering Accreditation Commission (ABET/EAC) or Canadian Engineering Accreditation Board (CEAB) approved curriculum, the applicant must also complete, in addition to the engineering degree, a year of practical experience satisfactory to the board after receiving the engineering degree and prior to taking the Fundamentals of Engineering examination.

(2) An engineering technology curriculum does not constitute an engineering program of four years or more.

b. If an applicant obtained an associate of science degree or a more advanced degree between July 1, 1983, and June 30, 1988, the board shall only require satisfactory completion of a minimum of two years of postsecondary study in mathematics, physical sciences, engineering technology, or engineering at an institution approved by the board and six years of practical experience which, in the opinion of the board, is of satisfactory character to properly prepare the applicant for the Fundamentals of Engineering examination. (Applicants qualifying under this subrule must successfully complete the Fundamentals of Engineering examination by June 30, 2001.)

4.1(2) Second, the applicant must successfully complete the Fundamentals of Engineering examination.

a. An applicant may take the Fundamentals of Engineering examination anytime after the educational requirements as specified above are completed, but the applicant must successfully complete the Fundamental of Engineering examination prior to taking the Principles and Practice of Engineering examination.

b. College seniors studying an ABET/EAC or CEAB approved curriculum may take the Fundamentals of Engineering examination during the final academic year. Applicants will be permitted to take the examination during the testing period which most closely precedes anticipated graduation. However, an official transcript from the applicant's college or university verifying that the applicant graduated must be sent by the registrar to the board office before an applicant's examination results will be released.

c. An applicant who graduated from a satisfactory engineering program and has 25 years or more of work experience satisfactory to the board shall not be required to take the Fundamentals of Engineering examination.

d. An applicant who has earned a Doctor of Philosophy degree from an institution in the United States of America with an accredited Bachelor of Science engineering degree program in the same discipline, or a similar doctoral degree in a discipline approved by the board, shall not be required to take the Fundamentals of Engineering examination.

4.1(3) Third, the applicant must satisfy the qualifying experience requirements. The purpose of this provision is to ensure that the applicant has acquired the professional judgment, capacity and competence to design engineering works, structures, and systems. The following criteria will be considered by the board in determining whether an applicant's experience satisfies the statutory requirements.

a. Oversight. All applicants must have direct supervision or professional tutelage (instruction, guidance, mentoring, review, and critique) from one or more licensed professional engineers. This experience must be verified by one or more licensed professional engineers who are familiar with the applicant's work and can attest that the experience was of the required quality and was accurately described. Verification of the qualifying experience is provided through the reference forms. It is the

responsibility of the applicant to provide reference forms to the licensed professional engineers to complete and return directly to the board.

(1) To be readily acceptable, all of the qualifying experience shall be under the direct supervision and tutelage of one or more licensed professional engineers.

(2) To be considered, a portion of the qualifying experience shall be under the direct supervision or tutelage of one or more licensed professional engineers. In this case, the rest of the qualifying experience shall be under the direct supervision or tutelage of an unlicensed graduate engineer.

b. Documentation of experience. All applicants must submit references and a work project description. Applicants who did not have all of their qualifying experience under the direct supervision and tutelage of one or more licensed professional engineers (see subparagraph 4.1(3)“a”(2)) must also submit the additional supporting documentation described in subparagraph 4.1(3)“b”(3). The board reserves the right to contact the employer and the person providing tutelage on the project for information about the project experience acquired by the applicant.

(1) References. An applicant for the Principles and Practice of Engineering examination shall submit five references on forms provided by the board.

1. At least three of the five references shall be from licensed professional engineers.

2. At least one of the licensed professional engineers who provide a reference for the applicant shall have provided direct supervision or professional tutelage in the course of a mentoring relationship on such matters as technical skills; professional development; the exercise of professional judgment, ethics, and standards in the application of engineering principles and in the review of such matters by others; and the professional obligations of assuming responsible charge of professional engineering works and services.

3. At least one reference shall be from a supervisor. If the applicant has had more than one supervisor, at least two of the references shall be from a supervisor of the applicant. An applicant shall submit supervisor references to verify at least four years of qualifying experience.

4. If an applicant has had professional experience under more than one employer, the applicant shall provide references from individuals with knowledge of the work performed under a minimum of two employers.

5. The board reserves the right to contact references, supervisors, or employers for information about the applicant’s professional experience and competence or to request additional references.

6. All licensed professional engineers who submit references for an applicant shall be sufficiently familiar with the applicant’s work product to formulate credible opinions on the applicant’s capacity to assume responsible charge of professional engineering works and services.

7. Applicants who have not been supervised or provided tutelage by a licensed professional engineer for at least four years of qualifying experience shall submit one or more references to verify tutelage by one or more unlicensed graduate engineers, as provided in subparagraph 4.1(3)“a”(2).

8. The board uses references partially as a means of verifying an applicant’s record of experience. The applicant must distribute a reference form to individuals who are asked to submit references for the applicant. To each reference form, the applicant shall attach a copy of the portion of the applicant’s experience record that is being addressed by the referring individual.

9. An applicant for the Fundamentals of Engineering examination whose engineering degree is not from an ABET/EAC or CEAB accredited engineering program must provide a reference from a supervisor on a form provided by the board.

10. The board may require the applicant to submit additional letters of reference or other evidence of suitable tutelage and supervision.

11. The board may require an oral interview with the applicant or other evidence to verify the applicant’s knowledge and experience in the principles and practice of engineering.

12. The board may conduct interviews with persons providing tutelage or supervision to the applicant.

(2) Work project description. An applicant for initial licensure as a professional engineer must include with the application a work project statement describing a significant project on which the applicant worked during the previous 12 months. The board will review all work project statements and

will approve only those that include all of the components listed below in paragraphs 4.1(3) “b”(2)“1” to “4” and meet the criteria listed in paragraph 4.1(3) “b”(2)“5.”

1. The statement shall describe the applicant’s degree of responsibility for the project.
2. The statement shall identify the project’s owner and location.
3. The statement shall include the name of the supervisor in charge of the project and, if the supervisor is a professional engineer, the license number of the supervisor.
4. The statement shall be signed and dated by the applicant.
5. Criteria the board shall use in evaluating the acceptability of the project as qualifying experience for the applicant shall include, but not be limited to, the following:
 - The degree to which the project and the experience described have progressed from assignments typical of initial assignments to those more nearly expected of a licensed professional;
 - The scope and quality of the professional tutelage experienced by the applicant;
 - The technical decisions required of the applicant in the project; and
 - The professional decisions required of the applicant.

(3) Additional supporting documentation. Applicants who did not have all of their qualifying experience under the direct supervision and tutelage of one or more licensed professional engineers (see subparagraph 4.1(3) “a”(2)) must also submit the following additional supporting documentation.

1. Cover letter to the board requesting consideration.
2. Reference from the unlicensed engineer who provided direct supervision or tutelage on forms provided by the board, to include:
 - Assessment of the applicant’s performance, development, integrity, and ability to assume responsible charge.

- Description of the engineer’s background in education and experience.
- Nature of the tutelage provided to the applicant.

c. Quality. Qualifying experience shall be of such quality as to demonstrate that the applicant has developed technical skill and initiative in the correct application of engineering principles. Such experience should demonstrate the applicant’s capacity to review the application of these principles by others and to assume responsibility for engineering work of professional character.

d. Scope. Experience shall be of sufficient breadth and scope to ensure that the applicant has attained reasonably well-rounded professional competence in a basic engineering field, rather than highly specialized skill in a narrow and limited field.

e. Progression. The record of experience shall indicate successive and continued progress from initial, subprofessional work of simpler character to recent, professional work of greater complexity and a higher degree of responsibility, as well as continued interest and effort on the part of the applicant toward further professional development and advancement. In evaluating this progression, the board will consider both subprofessional and professional activity as reported by the applicant. However, only work experience obtained after the applicant’s receipt of the qualifying degree will be considered, except as described in paragraph 4.1(3) “f.” Subprofessional work includes the time spent as an engineering technician, engineering assistant, inspector, or similar under the direct supervision of a licensed professional engineer. Professional work includes the time during which the applicant was occupied in engineering work of higher grade and responsibility than that defined above as subprofessional work. Time spent in teaching engineering subjects in a college or university at the level of assistant professor or higher may be listed as professional work.

f. Special work experience. Work experience prior to graduation from college may be accepted toward satisfaction of qualifying experience requirements only as follows: Cooperative work programs administered by engineering colleges and verified on the transcript and internships administered by engineering colleges with a verifying reference from the internship supervisor will be considered as half-time credit, with a maximum allowance of 6 months (12 months of cooperative work experience or internship) applicable toward the satisfaction of qualifying experience requirements. An applicant’s advanced education, military experience, or both will be reviewed in order to determine if they are applicable toward the statutory requirements for experience.

g. Advanced education. An applicant who has earned a master of science degree that includes research experience, in addition to writing an associated thesis, from an institution in the United States of America with an accredited bachelor of science engineering degree program in the same discipline and who has fulfilled the requirements for a bachelor of science degree may be granted a maximum of one-half year's experience credit. An applicant who has earned a doctor of philosophy degree from an institution in the United States of America with an accredited bachelor of science engineering degree program in the same discipline may be granted a maximum of one year's experience credit in addition to the one-half year's credit for the master of science degree.

h. Teaching experience. Teaching of engineering subjects at the level of assistant professor or higher in an accredited engineering program may be considered as experience, provided the applicant's immediate supervisor is a licensed professional engineer in the jurisdiction in which the college or university is located. If the applicant's immediate supervisor is not a licensed professional engineer, a program of mentoring or peer review by a licensed professional engineer acceptable to the board must be demonstrated. Applicants using teaching or research as experience must have a minimum of four years of acceptable experience in research, industry, or consulting. The board shall consider the complexity of the project(s) presented, the degree of responsibility of the applicant within the project, and other factors the board deems relevant. Academic experience must demonstrate increasing levels of responsibility for the conduct and management of projects involving engineering research, development or application. The board reserves the right to contact employers for information about the applicant's professional experience and competence.

i. Joint applications. Applicants requesting licensure both as a professional engineer and a land surveyor must submit a history of professional experience in both fields. Such histories will be considered separately on a case-by-case basis. The board does not grant full credit for concurrent experience in both professions.

j. Corporate exemption. The purpose of the provisions on qualifying experience which authorize the board to consider some experience that was not acquired under the direct supervision and tutelage of a licensed professional engineer is to provide a path toward licensure for those applicants who gain experience in settings where licensure is not required under the corporate exemption set forth in Iowa Code section 542B.26 or under similar statutory provisions in other jurisdictions. Such applicants may lawfully gain professional engineering experience under the supervision or tutelage of graduate engineers who are not licensed. To aid such applicants, the following guidelines are provided:

(1) The board shall not consider any experience gained under circumstances where the applicant could not lawfully have practiced professional engineering.

(2) The board shall not consider any experience the applicant may have attained in compliance with the law but that was not under the supervision or tutelage of a graduate engineer. The fundamental purpose of qualifying experience is professionally guided training to expand and complement engineering education. Self-guided experience does not qualify.

(3) Persons who desire licensure as professional engineers who are not directly supervised by licensed professional engineers should form tutelage relationships with licensed professional engineers as early in the process of gaining experience as is feasible. Unlicensed graduate engineers are not authorized to offer professional engineering services to the public or to be in responsible charge of such services; nor are they subject to the examinations required for licensure, the professional and ethical standards applicable to licensees, or the regulatory oversight of a licensing authority. Qualifying experience is intended to address both technical competence and the obligations to the public of a licensed professional engineer.

(4) Because the circumstances of individual applicants in corporate exemption settings are diverse, it is not possible to identify the minimum period of time during which the applicant must receive supervision or tutelage from one or more licensed professional engineers to be eligible for licensure. The board shall take into consideration both the quantity and quality of such experience. In general, an applicant's exposure to supervision or tutelage by one or more licensed professional engineers should reflect a sustained period of in-depth interaction from which the licensed engineers are in a position

to form credible opinions on the applicant's qualifications to be in responsible charge of engineering services offered to the public as a licensed professional engineer.

(5) The burden is on the applicant to demonstrate to the board's satisfaction that the combination of unlicensed and licensed supervision and tutelage satisfies the requirements of qualifying experience described in this rule.

4.1(4) Fourth, the applicant must successfully complete the Principles and Practice of Engineering examination.

a. To qualify to take this examination, the applicant must present a record of four years or more of practical experience in engineering work which is of a character satisfactory to the board. This experience must have been obtained after the receipt of the qualifying education and prior to the application due date for the examination.

b. An applicant for the Principles and Practice of Engineering examination shall have a minimum of one year of practical experience in the United States of America or a territory under its jurisdiction.

4.1(5) Education and experience requirements. The board will require the minimum number of years set forth on the following chart before an applicant will be permitted to take either the Fundamentals of Engineering or the Principles and Practice of Engineering examination. Column 1 indicates the years of practical experience required prior to the Fundamentals of Engineering examination in addition to the completion of the required educational level. To determine the total years of practical experience required prior to taking the Principles and Practice of Engineering examination, column 2 is added to column 1.

EXPERIENCE REQUIREMENTS FOR EXAMINATION APPLICANTS		
	1	2*
If the applicant's educational level is:	The applicant must have the following additional years of experience prior to taking the Fundamentals of Engineering examination:	The applicant must have the following years of experience after receipt of the qualifying degree and prior to taking the Principles and Practice of Engineering examination:
A 4-year bachelor's degree in an accredited engineering program	0	4
A 4-year bachelor's degree in mathematics or physical sciences plus a master's degree* in engineering	0	4
A 4-year bachelor's degree in technology or architecture plus a master's degree* in engineering	0	4
A 4-year bachelor's degree in engineering from a nonaccredited engineering program	1	4
A 4-year bachelor's degree in engineering from a nonaccredited engineering program plus a master's degree* in engineering	0	4

*For purposes of this subrule, an applicant's master's degree in engineering must be from an institution in the United States of America with an accredited bachelor's degree in the same curriculum, and the master's degree candidate must be required to fulfill the requirements for the bachelor's degree in the same area of specialization.

4.1(6) Required examinations. All examinations are uniform examinations prepared and graded by the National Council of Examiners for Engineering and Surveying (NCEES). The board may negotiate an agreement with an examination service to administer the examinations to applicants approved by the board, in which case applicants shall pay examination fees directly to the service.

a. Fundamentals of Engineering examination (fundamentals examination). The Fundamentals of Engineering examination is a written examination covering general engineering principles and other subjects commonly taught in accredited engineering programs.

b. Principles and Practice of Engineering examination (professional examination). The Principles and Practice of Engineering examination is a written examination designed to determine

proficiency and qualification to engage in the practice of professional engineering only in a specific branch. The Principles and Practice of Engineering two-module Structural examination is a written examination designed to determine proficiency and qualification to engage in the practice of structural engineering. A separate examination shall be required for each branch in which licensure is granted. An applicant may obtain a Structural branch license by passing either the Principles and Practice of Engineering Civil (Structural) examination or the Principles and Practice of Engineering two-module Structural examination.

c. Passing scores. The board reviews test results for each examination and determines what level shall constitute a minimum passing score for that examination. In making its determination, the board generally is guided by the passing score recommended by the NCEES. The board fixes the passing score for each examination at a level which it concludes is a reasonable indication of minimally acceptable professional competence.

d. Reexamination. An applicant who fails an examination may request reexamination at the next examination period without reapplication to the board. If the applicant intends to retake the examination, the applicant must notify the examination service selected by the board to administer the examinations prior to the application due date for the examination.

e. Failure to appear. An applicant who fails to appear for an examination may sit for the examination the next time it is offered without reapplication provided the application will not be more than one year old at the time of the application due date for the examination and the applicant notifies the examination service selected by the board to administer the examinations prior to the application due date for the examination.

f. Materials permitted in examination room. For security reasons, applicants shall comply with requirements regarding materials permitted in the examination room as issued by the National Council of Examiners for Engineering and Surveying and provided to candidates prior to the examination.

g. Release of examination results. Results of any examination shall only be reported as pass or fail except that the candidate who fails an examination may be provided with the candidate's converted score and a diagnostic report indicating areas of weakness, as available.

4.1(7) Examination subversion. Any individual who subverts or attempts to subvert the examination process may, at the discretion of the board, have the individual's examination scores declared invalid for the purpose of licensure in Iowa, be barred from engineering licensure and examinations in Iowa, or be subject to the imposition of other sanctions the board deems appropriate.

a. Conduct that subverts or attempts to subvert the examination process includes, but is not limited to:

(1) Conduct that violates the security of the examination materials, such as removing from the examination room any of the examination materials; reproducing or reconstructing any portion of the licensing examination; aiding by any means in the reproduction or reconstruction of any portion of the licensing examination; or selling, distributing, buying, receiving, or having unauthorized possession of any portion of a future, current, or previously administered licensing examination.

(2) Conduct that violates the standards of test administration, such as communicating with any other examination candidate during the administration of the licensing examination; communicating with others outside of the examination site during the administration of the examination; copying answers from another candidate or permitting one's answers to be copied by another candidate during the administration of the examination; or having in one's possession during the administration of the licensing examination any device or materials that might compromise the security of the examination or examination process, such as calculating and computing devices not on the list of devices approved by the examination provider or provided by the examination provider.

(3) Conduct that violates the examination process, such as falsifying or misrepresenting educational credentials or other information required for admission to the licensing examination or impersonating an examination candidate or having an impersonator take the licensing examination on one's behalf.

b. Any examination candidate who wishes to appeal a decision of the board under this subrule may request a contested case hearing. The request for hearing shall be in writing, shall briefly describe the basis for the appeal, and shall be filed in the board's office within 30 days of the date of the board

decision that is being appealed. Any hearing requested under this subrule shall be governed by the rules applicable to contested case hearings under 193—Chapter 7.

[ARC 7753B, IAB 5/6/09, effective 6/10/09; ARC 9285B, IAB 12/15/10, effective 1/19/11; ARC 9286B, IAB 12/15/10, effective 1/19/11; ARC 9288B, IAB 12/15/10, effective 1/19/11; ARC 0362C, IAB 10/3/12, effective 11/7/12; ARC 0684C, IAB 4/17/13, effective 5/22/13; ARC 0779C, IAB 6/12/13, effective 7/17/13]

193C—4.2(542B) Requirements for licensure by comity. A person holding a certificate of licensure to engage in the practice of engineering issued by a proper authority of a jurisdiction or possession of the United States, the District of Columbia, or any foreign country, based on requirements that do not conflict with the provisions of Iowa Code section 542B.14 and who has met standards determined by the board to be substantially equivalent to those required of applicants for initial licensure in this state may, upon application, be licensed without further examination. When determining whether the licensing standards satisfied by a comity applicant are substantially equivalent to those required in Iowa, the board considers each of the four licensing prerequisites in Iowa Code section 542B.14(1) individually. The licensing standards satisfied by the comity applicant must accordingly be equal or superior to those required in Iowa for education, fundamentals examination, experience, and professional examination. Unless expressly stated in this chapter, the board will not consider an applicant's superior satisfaction of one licensing prerequisite, such as a higher level of education than is required in Iowa, as resolving an applicant's lack of compliance with another prerequisite, such as professional examination. Comity applicants are governed by the same standards as are required of applicants for initial licensure in Iowa.

4.2(1) References. An applicant for licensure by comity shall submit references on forms provided by the board to verify at least four years of satisfactory experience after the receipt of the qualifying degree. This experience must be under the supervision of a licensed professional engineer, or the applicant must provide unlicensed tutelage references verifying at least four years of satisfactory engineering experience, as provided in paragraph 4.1(3) "a." The board reserves the right to contact employers for information about the applicant's professional experience and competence.

4.2(2) Basis for evaluation of applications. Applications for licensure by comity will be evaluated on the following basis:

a. The applicant's record of education, references, practical experience, and successful completion of approved examinations will be reviewed to determine if it currently satisfies the substantive requirements of Iowa Code section 542B.14. In reviewing the education, references, and practical experience of comity applicants, the board will use the same criteria used by the board to determine the eligibility of a candidate for the Principles and Practice of Engineering examination; or

b. The applicant's licensure in a jurisdiction other than Iowa will be reviewed to determine if it was granted only after satisfaction of requirements substantially equivalent to those that are required of applicants for initial licensure in Iowa by Iowa Code section 542B.14.

4.2(3) Evaluation of comity application process.

a. First, the applicant for licensure by comity from a jurisdiction other than Iowa must meet or exceed the education requirements set forth in Iowa Code section 542B.14. In addition, if the applicant did not graduate from an Accreditation Board of Engineering and Technology (ABET)/Engineering Accreditation Commission (EAC) or Canadian Engineering Accreditation Board (CEAB) approved curriculum, the applicant must have completed a year of practical experience satisfactory to the board. This year of experience must be in addition to the four years of practical experience in engineering work as required in paragraph 4.2(3) "d."

b. Second, the applicant must have successfully completed the Fundamentals of Engineering examination.

(1) An applicant who graduated from a satisfactory engineering program and who has 25 years or more of work experience satisfactory to the board shall not be required to take the Fundamentals of Engineering examination.

(2) An applicant who has earned a Doctor of Philosophy degree from an institution in the United States of America with an accredited Bachelor of Science engineering degree program in the same discipline, or a similar doctoral degree in a discipline approved by the board, shall not be required to take the Fundamentals of Engineering examination.

c. Third, the applicant must have successfully completed the Principles and Practice of Engineering examination.

d. Fourth, the applicant must have a record of four years or more of practical experience in engineering work which is of a character satisfactory to the board. This experience must have been obtained after the receipt of the appropriate education and must meet the requirements for practical experience found at paragraph 4.1(3) "a."

e. While the board will consider evidence presented by a comity applicant on non-NCEES examinations successfully completed in a foreign country, the non-NCEES examination will be compared with the appropriate NCEES examination. A non-NCEES professional examination, for instance, must be designed to determine whether a candidate is minimally competent to practice professional engineering in a specific branch of engineering, such as civil, structural, electrical, or mechanical engineering. The examination must be written, objectively graded, verifiable, and developed and validated in accordance with the testing standards of the American Psychological Association or equivalent testing standards. Free-form essays and oral interviews, while valuable for certain purposes, are not equal or superior to NCEES examinations for reasons including the subjective nature of such procedures, lack of verifiable grading standards, and heightened risk of inconsistent treatment.

4.2(4) Education and experience requirements.

a. For applicants who were originally licensed in a jurisdiction other than Iowa prior to July 1, 1988, the board will employ the following chart to determine if the applicant's licensure was granted after satisfaction of requirements substantially equivalent to those which were required by Iowa Code section 542B.14 at the time of the applicant's original licensure. Column 1 indicates the years of practical experience that were required prior to the Fundamentals of Engineering examination in addition to the completion of the required educational level. To determine the total years of practical experience that were required prior to taking the Principles and Practice of Engineering examination, column 2 is added to column 1.

EXPERIENCE REQUIREMENTS FOR COMITY APPLICANTS Who were licensed prior to July 1, 1988		
If the applicant's educational level was:	The applicant must have had the following additional years of experience prior to taking the Fundamentals of Engineering examination:	The applicant must have had the following years of experience after receipt of the qualifying degree and prior to taking the Principles and Practice of Engineering examination:
No post-high school education	8	4
Postsecondary study in mathematics or physical sciences		
One year	7	4
Two years	6	4
Three years	5	4
Four years	3	4
Four-year BS degree in mathematics or physical sciences plus master's degree in engineering	0	4
Postsecondary study in engineering technology programs and architecture		
One year	7	4
Two years	5.5	4
Three years	4	4
Four-year degree in a nonaccredited engineering technology program or BA in architecture	2.5	4
Four-year degree in an accredited engineering technology program	2	4
Bachelor of architecture, four years or more	2	4

EXPERIENCE REQUIREMENTS FOR COMITY APPLICANTS Who were licensed prior to July 1, 1988		
If the applicant's educational level was:	The applicant must have had the following additional years of experience prior to taking the Fundamentals of Engineering examination:	The applicant must have had the following years of experience after receipt of the qualifying degree and prior to taking the Principles and Practice of Engineering examination:
Four-year degree in engineering technology or architecture plus master's degree in engineering	0	4
Postsecondary study in a nonaccredited engineering program		
One year	7	4
Two years	5	4
Three years	3	4
Four-year BS degree	1	4
Four-year degree in a nonaccredited engineering program plus master's degree in engineering	0	4
Postsecondary study in an accredited engineering program		
Two years	6	4
Three years	3	4
Four-year degree in an accredited engineering program	0	4

b. For applicants who were originally licensed in another jurisdiction and who meet the requirements of Iowa Code section 542B.14(1)(a)(3), the board will employ the following chart to determine if the applicant's licensure was granted after satisfaction of requirements substantially equivalent to those which were required by Iowa Code section 542B.14 at the time of the applicant's original licensure. Column 1 indicates the years of practical experience that were required prior to the Fundamentals of Engineering examination in addition to the completion of the required educational level. To determine the total years of practical experience that were required prior to taking the Principles and Practice of Engineering examination, column 2 is added to column 1.

EXPERIENCE REQUIREMENTS FOR COMITY APPLICANTS Who meet the requirements of Iowa Code section 542B.14(1)(a)(3)		
If the applicant's educational level was:	The applicant must have had the following additional years of experience prior to taking the Fundamentals of Engineering examination:	The applicant must have had the following years of experience after receipt of the qualifying degree and prior to taking the Principles and Practice of Engineering examination:
College or junior college (mathematics or physical sciences)		
Two years	6	4
Three years	5	4
Four-year BS degree	3	4
Four-year BS degree plus master's degree in engineering	0	4
All engineering technology programs and architecture		
Two years	6	4
Three years	5	4
Four-year degree, nonaccredited technology or BA in architecture	3	4
Four-year degree, accredited technology	2	4

EXPERIENCE REQUIREMENTS FOR COMITY APPLICANTS Who meet the requirements of Iowa Code section 542B.14(1)(a)(3)		
If the applicant's educational level was:	The applicant must have had the following additional years of experience prior to taking the Fundamentals of Engineering examination:	The applicant must have had the following years of experience after receipt of the qualifying degree and prior to taking the Principles and Practice of Engineering examination:
Four-year degree or more, bachelor of architecture	2	4
Four-year BS degree, technology or architecture plus master's degree in engineering	0	4
Engineering program, nonaccredited		
Two years	6	4
Three years	3	4
Four-year BS degree	1	4
Four-year BS degree plus master's degree in engineering	0	4
Engineering program, accredited		
Two years	6	4
Three years	3	4
Four-year BS degree	0	4

c. For all other applicants who were originally licensed in a jurisdiction other than Iowa on or after July 1, 1988, the board will employ the chart found at subrule 4.1(5) to determine if the applicant's licensure was granted after satisfaction of requirements substantially equivalent to those which are required by Iowa Code section 542B.14.

d. For purposes of this subrule, an applicant's master's degree in engineering must be from an institution in the United States of America with an accredited bachelor's degree in the same curriculum, and the master's degree candidate must be required to fulfill the requirements for the bachelor's degree in the same area of specialization.

[ARC 7753B, IAB 5/6/09, effective 6/10/09; ARC 9287B, IAB 12/15/10, effective 1/19/11; ARC 0779C, IAB 6/12/13, effective 7/17/13]

193C—4.3(542B) Requirements for a licensee requesting additional examination. A person holding an active certificate of licensure to engage in the practice of engineering issued by the state of Iowa may, upon written request and payment of the application and examination fees, take additional examinations in other branches of engineering without submitting a formal application to the board as described for initial or comity licensure.

These rules are intended to implement Iowa Code sections 542B.2, 542B.13, 542B.14, 542B.15, 542B.17 and 542B.20.

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UTILITIES AND
TRANSPORTATION DIVISIONS

CHAPTER 15
COGENERATION AND SMALL POWER PRODUCTION

[Ch 15 renumbered as Ch 7,10/20/75]

[Prior to 10/8/86, Commerce Commission[250]]

199—15.1(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.

“*AEP facility*” means any of the following: (1) an electric production facility which derives 75 percent or more of its energy input from solar energy, wind, waste management, resource recovery, refuse-derived fuel, agricultural crops or residues, or wood burning; (2) a hydroelectric facility at a dam; (3) land, systems, buildings, or improvements that are located at the project site and are necessary or convenient to the construction, completion, or operation of the facility; or (4) transmission or distribution facilities necessary to conduct the energy produced by the facility to the purchasing utility.

“*Alternate energy purchase (AEP) program*” means a utility program that allows customers to contribute voluntarily to the development of alternate energy in Iowa.

“*Avoided costs*” means the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source.

“*Backup power*” means electric energy or capacity supplied by an electric utility to qualifying facilities and AEP facilities to replace energy ordinarily generated by a facility’s own generation equipment during an unscheduled outage of the facility.

“*Board*” means the Iowa utilities board.

“*Interconnection costs*” means the reasonable costs of connection, switching, metering, transmission, distribution, safety provisions and administrative costs incurred by the electric utility directly related to the installation and maintenance of the physical facilities necessary to permit interconnected operations with qualifying facilities and AEP facilities, to the extent the costs are in excess of the corresponding costs which the electric utility would have incurred if it had not engaged in interconnected operations, but instead generated an equivalent amount of electric energy itself or purchased an equivalent amount of electric energy or capacity from other sources. Interconnection costs do not include any costs included in the calculation of avoided costs.

“*Interruptible power*” means electric energy or capacity supplied by an electric utility subject to interruption by the electric utility under specified conditions.

“*Maintenance power*” means electric energy or capacity supplied by an electric utility during scheduled outages of qualifying facilities and AEP facilities.

“*Purchase*” means the purchase of electric energy or capacity or both from qualifying facilities and AEP facilities by an electric utility.

“*Qualifying facility*” means a cogeneration facility or a small power production facility which is a qualifying facility under 18 CFR Part 292, Subpart B.

“*Rate*” means any price, rate, charge, or classification made, demanded, observed or received with respect to the sale or purchase of electric energy or capacity, or any rule, regulation, or practice respecting any rate, charge, or classification, and any contract pertaining to the sale or purchase of electric energy or capacity.

“*Sale*” means the sale of electric energy or capacity or both by an electric utility to qualifying facilities and AEP facilities.

“*Supplementary power*” means electric energy or capacity supplied by an electric utility, regularly used by qualifying facilities and AEP facilities in addition to that which the facility generates itself.

“*System emergency*” means a condition on a utility’s system which is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property.

199—15.2(476) Scope.**15.2(1) Applicability.**

a. Subrule 15.2(2) and rule 199—15.10(476) of this chapter apply to all electric utilities, all qualifying facilities, and all AEP facilities.

b. Rule 199—15.3(476) of this chapter applies to electric utilities which are subject to rate regulation by the board.

c. Rules 199—15.4(476) and 199—15.5(476) of this chapter apply to qualifying facilities and electric utilities which are subject to rate regulation by the board.

d. Rules 199—15.6(476) to 199—15.9(476) of this chapter apply to all qualifying facilities and AEP facilities, and electric utilities which are subject to rate regulation by the board.

e. Rule 199—15.11(476) of this chapter lists additional requirements that apply to AEP facilities, and electric utilities which are subject to rate regulation by the board, pursuant to Iowa Code sections 476.41 to 476.45.

15.2(2) Negotiated rates or terms. These rules do not:

a. Limit the authority of any electric utility, any qualifying facility, or any AEP facility to agree to a rate for any purchase, or terms or conditions relating to any purchase, which differ from the rate or terms or conditions which would otherwise be required by these rules; or

b. Affect the validity of any contract entered into between an electric utility and a qualifying facility or AEP facility for any purchase.

199—15.3(476) Information to board. In addition to the information required to be supplied to the board under 18 CFR 292.302, all rate-regulated electric utilities shall supply to the board copies of contracts executed for the purchase or sale, for resale, of energy or capacity. If the purchases or sales are made other than pursuant to the terms of a written contract, then information as to the relevant prices and conditions shall be supplied to the board. All information required to be supplied under this rule shall be filed with the board by May 1 and November 1 of each year for all transactions occurring since the last filing was made.

199—15.4(476) Rate-regulated electric utility obligations under this chapter regarding qualifying facilities. For purposes of this rule, “electric utility” means a rate-regulated electric utility.

15.4(1) Obligation to purchase from qualifying facilities. Each electric utility shall purchase, in accordance with these rules, any energy and capacity which is made available from a qualifying facility:

a. Directly to the electric utility; or

b. Indirectly to the electric utility in accordance with subrule 15.4(4).

15.4(2) Obligation to sell to qualifying facilities. Each electric utility shall sell to any qualifying facility, in accordance with these rules and the other requirements of law, any energy and capacity requested by the qualifying facility.

15.4(3) Obligation to interconnect. Any electric utility shall make the interconnections with any qualifying facility as may be necessary to accomplish purchases or sales under these rules. The obligation to pay for any interconnection costs shall be determined in accordance with rule 199—15.8(476). However, no electric utility is required to interconnect with any qualifying facility if, solely by reason of purchases or sales over the interconnection, the electric utility would become subject to regulation as a public utility under Part II of the Federal Power Act.

15.4(4) Transmission to other electric utilities. If a qualifying facility agrees, an electric utility which would otherwise be obligated to purchase energy or capacity from the qualifying facility may transmit the energy or capacity to any other electric utility. Any electric utility to which the energy or capacity is transmitted shall purchase the energy or capacity under this subpart as if the qualifying facility were supplying energy or capacity directly to the electric utility. The rate for purchase by the electric utility to which the energy is transmitted shall be adjusted up or down to reflect line losses and shall not include any charges for transmission.

15.4(5) *Parallel operation.* Each electric utility shall offer to operate in parallel with a qualifying facility, provided that the qualifying facility complies with any applicable standards established in accordance with these rules.

199—15.5(476) Rates for purchases from qualifying facilities by rate-regulated electric utilities. For purposes of this rule, “electric utility” or “utility” means a rate-regulated electric utility.

15.5(1) *Rates for purchases.* Rates for purchases shall:

a. Be just and reasonable to the electric consumer of the electric utility and in the public interest; and

b. Not discriminate against qualifying cogeneration and small power production facilities. Nothing in these rules requires any electric utility to pay more than the avoided costs, as set forth in these rules, for purchases.

15.5(2) *Relationship to avoided costs.* For purposes of this subrule, “new capacity” means any purchase from capacity of a qualifying facility, construction of which was commenced on or after November 9, 1978.

A rate for purchases satisfies the requirements of this rule if the rate equals the avoided costs determined after consideration of the factors set forth in subrule 15.5(6); except that a rate for purchases other than from new capacity may be less than the avoided cost if the board determines that a lower rate is consistent with subrule 15.5(1) and is sufficient to encourage cogeneration and small power production.

Unless the qualifying facility and the utility agree otherwise, rates for purchases shall conform to the requirements of this rule regardless of whether the electric utility making purchases is simultaneously making sales to the qualifying facility.

In the case in which the rates for purchases are based upon estimates of avoided costs over the specific term of the contract or other legally enforceable obligation, the rates for purchases do not violate this rule if the rates for the purchases differ from avoided costs at the time of delivery.

15.5(3) *Standard rates for purchases.* Each electric utility shall file and maintain with the board tariffs specifying standard rates for purchases from qualifying facilities with a design capacity of 100 kilowatts or less. These tariffs may differentiate between qualifying facilities using various technologies on the basis of the supply characteristics of the different technologies. All utilities shall include a seasonal differential in these rates for purchases to the extent avoided costs vary by season. All utilities shall make available time of day rates for those facilities with a design capacity of 100 kilowatts or less, provided that the qualifying facility shall pay, in addition to the interconnection costs set forth in these rules, all additional costs associated with the time of day metering.

The standard rates set forth in this rule shall indicate what portion of the rate is attributable to payments for the utility’s avoided energy costs, and what portion of the rate, if any, is attributable to payments for capacity costs avoided by the utility. If no capacity credit is provided in the standard tariff, a qualifying facility may petition the board for an allowance of the capacity credit. The petition shall be handled by the board as a contested case proceeding, and the burden of proof shall be on the qualifying facility to demonstrate that capacity credit is warranted in the case in question.

The board may require utilities interconnected with qualifying facilities to provide metering and other equipment necessary for the collection test and monitoring of information concerning the time and conditions under which energy and capacity are available from the qualifying facility. The costs of such metering shall be treated by the utility in the same manner as any other research expenditure.

15.5(4) *Other purchases.* Rates for purchases from qualifying facilities with a design capacity of greater than 100 kilowatts shall be determined in contested case proceedings before the board, unless the rates are otherwise agreed upon by the qualifying facility and the utility involved.

15.5(5) *Purchases “as available” or pursuant to a legally enforceable obligation.* Each qualifying facility shall have the option either:

a. To provide energy as the qualifying facility determines the energy to be available for the purchases, in which case the rates for the purchases shall be based on the purchasing utility’s avoided costs calculated at the time of delivery; or

b. To provide energy or capacity pursuant to a legally enforceable obligation for the delivery of energy or capacity over a specified term, in which case the rates for the purchases shall, at the option of the qualifying facility exercised prior to the beginning of the specified term, be based on either: The avoided costs calculated at the time of delivery; or the avoided costs calculated at the time the obligation is incurred.

15.5(6) Factors affecting rates for purchases. In determining avoided costs, the following factors shall, to the extent practicable, be taken into account:

a. The prevailing rates for capacity or energy on any interstate power grid with which the utility is interconnected.

b. The incremental energy costs or capacity costs of the utility itself or utilities in the interstate power grid with which the utility is interconnected.

c. The time of day or season during which capacity or energy is available, including:

(1) The ability of the utility to dispatch the qualifying facility;

(2) The expected or demonstrated reliability of the qualifying facility;

(3) The terms of any contract or other legally enforceable obligation, including the duration of the obligation, termination notice requirement and sanctions for noncompliance;

(4) The extent to which scheduled outages of the qualifying facility can be usefully coordinated with scheduled outages of the utility's facilities;

(5) The usefulness of energy and capacity supplied from a qualifying facility during system emergencies, including its ability to separate its load from its generation; and

(6) The individual and aggregate value of energy and capacity from qualifying facilities on the electric utility's system.

d. The costs or savings resulting from variations in line losses from those that would have existed in the absence of purchases from the qualifying facility, if the purchasing electric utility generated an equivalent amount of energy itself.

15.5(7) Periods during which purchases not required. Any electric utility will not be required to purchase electric energy or capacity during any period during which, due to operational circumstances, purchases from qualifying facilities will result in costs greater than those which the utility would incur if it did not make the purchases, but instead generated an equivalent amount of energy itself; provided, however, that any electric utility seeking to invoke this subrule must notify each affected qualifying facility within a reasonable amount of time to allow the qualifying facility to cease the delivery of energy or capacity to the electric utility.

a. Any electric utility which fails to comply with the provisions of this subrule will be required to pay the usual rate for the purchase of energy or capacity from the facility.

b. A claim by an electric utility that such a period has occurred or will occur is subject to verification by the board.

[ARC 0781C, IAB 6/12/13, effective 7/17/13]

199—15.6(476) Rates for sales to qualifying facilities and AEP facilities by rate-regulated utilities. For purposes of this rule, "utility" means a rate-regulated electric utility. Rates for sales to qualifying facilities and AEP facilities shall be just, reasonable and in the public interest, and shall not discriminate against qualifying facilities and AEP facilities in comparison to rates for sales to other customers with similar load or other cost-related characteristics served by the utility. The rate for sales of backup or maintenance power shall not be based upon an assumption (unless supported by data) that forced outages or other reductions in electric output by all qualifying facilities and AEP facilities will occur simultaneously or during the system peak, or both, and shall take into account the extent to which scheduled outages of qualifying facilities and AEP facilities can be usefully coordinated with scheduled outages of the utility's facilities.

199—15.7(476) Additional services to be provided to qualifying facilities and AEP facilities by rate-regulated electric utilities. For purposes of this rule, "electric utility" or "utility" means a rate-regulated electric utility.

15.7(1) Upon request of qualifying facilities and AEP facilities, each electric utility shall provide supplementary power, backup, maintenance power, and interruptible power. Rates for such service shall meet the requirements of subrule 15.5(6), and shall be in accordance with the terms of the utility's tariff.

The board may waive this requirement pursuant to rule 199—1.3(17A,474) only after notice in the area served by the utility and an opportunity for public comment. The waiver may be granted if compliance with this rule will:

- a. Impair the electric utility's ability to render adequate service to its customers, or
- b. Place an undue burden on the electric utility.

15.7(2) Reserved.

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 interconnection costs, as described in 199—Chapter 45.

15.8(2) Reserved.

[ARC 8859B, IAB 6/16/10, effective 7/21/10]

199—15.9(476) System emergencies. For purposes of this rule, "electric utility" means a rate-regulated electric utility. Qualifying facilities and AEP facilities shall be required to provide energy or capacity to an electric utility during a system emergency only to the extent:

15.9(1) Provided by agreement between the qualifying facility or AEP facility and the electric utility; or

15.9(2) Ordered under Section 202(c) of the Federal Power Act. During any system emergency, an electric utility may immediately discontinue:

- a. Purchases from qualifying facilities and AEP facilities if purchases would contribute to the emergency; and
- b. Sales to qualifying facilities and AEP facilities, provided that the discontinuance is on a nondiscriminatory basis.

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. The interconnection of qualifying facilities and AEP 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, 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.

b. Iowa Electrical Safety Code, as defined in 199—Chapter 25.

c. National Electrical Code, ANSI/NFPA 70-2008.

15.10(2) Modifications required. Rescinded IAB 7/23/03, effective 8/27/03.

15.10(3) 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 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. Facilities with a design capacity of 100 kilowatts 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.

15.10(4) Access. 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 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) Inspections. The operator of the qualifying facility or AEP 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 15.10(3) for inspection and testing.

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.

[ARC 8859B, IAB 6/16/10, effective 7/21/10]

199—15.11(476) Additional rate-regulated utility obligations regarding AEP facilities. For purposes of this rule, “MW” means megawatt, “MWH” means megawatt-hour, and “utility” means a rate-regulated electric utility.

15.11(1) Obligation to purchase from AEP facilities. Each utility shall purchase, pursuant to contract, its share of at least 105 MW of AEP generating capacity and associated energy production. The utility's share of 105 MW is based on the utility's estimated percentage share of Iowa peak demand, which is based on the utility's highest monthly peak shown in its 1990 FERC Form 1 annual report, and on its related Iowa sales and total company sales and losses shown in its 1990 FERC Form 1 and IE-1 annual reports. Each utility's share of the 105 MW is determined to be as follows:

	Percentage Share of Iowa Peak	Utility Share of 105 MW
Interstate Power and Light	47.43%	49.8 MW
MidAmerican Energy	52.57%	55.2 MW

A utility is not required to purchase from an AEP facility that is not owned or operated by an individual, firm, copartnership, corporation, company, association, joint stock association, city, town, or county that meets both of the following: (1) is not primarily engaged in the business of producing or selling electricity, gas, or useful thermal energy other than electricity, gas, or useful thermal energy sold solely from AEP facilities; and (2) does not sell electricity, gas, or useful thermal energy to residential users other than the tenants or the owner or operator of the facility.

15.11(2) Purchases pursuant to a legally enforceable obligation. Each AEP facility shall provide electricity on a best-efforts basis pursuant to a legally enforceable obligation for the delivery of electricity over a specified contract term.

15.11(3) Annual reporting requirement. Beginning April 1, 2004, each utility shall file an annual report listing nameplate MW capacity and associated monthly MWH purchased from AEP facilities, itemized by AEP facility.

15.11(4) Tariff filings. Rescinded IAB 6/16/10, effective 7/21/10.

15.11(5) Net metering. Each utility shall offer to operate in parallel through net metering (with a single meter monitoring only the net amount of electricity sold or purchased) with an AEP facility, provided that the facility complies with any applicable standards established in accordance with these rules.

In the alternative, by choice of the facility, the utility and facility shall operate in a purchase and sale arrangement whereby any electricity provided to the utility by the AEP facility is sold to the utility at the fixed or negotiated buy-back rate, and any electricity provided to the AEP facility by the utility is sold to the facility at the tariffed rate.

[ARC 8859B, IAB 6/16/10, effective 7/21/10]

199—15.12(476) Rates for purchases from qualifying alternate energy and small hydro facilities by rate-regulated electric utilities. Rescinded IAB 7/23/03, effective 8/27/03.

199—15.13(476) Rates for sales to qualifying alternate energy production and small hydro facilities by rate-regulated utilities. Rescinded IAB 7/23/03, effective 8/27/03.

199—15.14(476) Additional services to be provided to qualifying alternate energy production and small hydro facilities. Rescinded IAB 7/23/03, effective 8/27/03.

199—15.15(476) Interconnection costs. Rescinded IAB 7/23/03, effective 8/27/03.

199—15.16(476) System emergencies. Rescinded IAB 7/23/03, effective 8/27/03.

These rules are intended to implement Iowa Code sections 476.1, 476.8, 476.41 to 476.45, and 546.7, Section 210 of the Public Utility Regulatory Policies Act of 1978, and 18 CFR Part 292.

199—15.17(476) Alternate energy purchase programs.

Any consumer-owned utility, including any electric cooperative corporation or association or any municipally owned electric utility, may apply to the board for a waiver under this rule.

This rule shall not apply to non-rate-regulated electric utilities physically located outside of Iowa that serve Iowa customers.

15.17(1) Obligation to offer programs.

a. Beginning January 1, 2004, each electric utility, whether or not subject to rate regulation by the board, shall offer an alternate energy purchase program that allows customers to contribute voluntarily to the development of alternate energy in Iowa, and allows for the exceptions listed in paragraph 15.17(1)“c.”

b. Each electric utility subject to rate regulation by the board, except for utilities that elect rate regulation pursuant to Iowa Code section 476.1A, shall demonstrate on an annual basis that it produces or purchases sufficient energy from program AEP facilities located in Iowa to meet the needs of its Iowa program. These Iowa-based AEP facilities shall not include AEP facilities for which the utility has sought cost recovery under rule 199—20.9(476) prior to July 1, 2001.

c. The electric utility may partially or fully base its program on energy produced by AEP facilities located outside of Iowa under any of the following circumstances:

(1) The energy is purchased by the electric utility pursuant to a contract in effect prior to July 1, 2001, and continues until the expiration of the contract, including any options to renew that are exercised by the electric utility.

(2) The electric utility has a financial interest, as of July 1, 2001, in an AEP facility that is located outside of Iowa or in an entity that has a financial interest in an AEP facility located outside of Iowa; or

(3) The energy is purchased by an electric utility that is not subject to rate regulation by the board, or which elects rate regulation pursuant to Iowa Code section 476.1A, and that is required to purchase all of its electric power requirements from one or more suppliers that are physically located outside of Iowa.

15.17(2) Customer notification.

a. Each electric utility shall notify eligible customer classes of its alternate energy purchase program and proposed program modifications at least 60 days prior to implementation of the program or program modification. The notification shall include, as applicable:

- (1) A description of the availability and purpose of the program or program modification, clarifying that customer contributions will not involve the direct sale of alternate energy to individual customers;
- (2) The effective date of the program or program modification;
- (3) Customer classes eligible for participation;
- (4) Forms and levels of customer contribution available to program participants;
- (5) A utility telephone number for answering customers' questions about the program; and
- (6) Customer instructions that explain how to participate in the program.

b. In addition to the notification requirements under paragraph 15.17(2) "a," each electric utility subject to rate regulation by the board, excluding utilities that elect rate regulation pursuant to Iowa Code section 476.1A, shall:

- (1) Include fuel report information described under subrule 15.17(5); and
- (2) Submit the proposed notification to the board for approval at least 30 days prior to the proposed date of issuance of the notification.

15.17(3) Program plan filing requirements for rate-regulated utilities. On or before October 1, 2003, each electric utility subject to rate regulation by the board, excluding utilities that elect rate regulation pursuant to Iowa Code section 476.1A, shall file with the board a plan for the utility's alternate energy purchase program. Initial program plans and any subsequent modifications will be subject to board approval. Modification filings need only include information about elements of the program that are being modified. The initial program plan filing shall include:

- a. The program tariff;
- b. The program effective date;
- c. A sample of the customer notification, including a description of the method of distribution;
- d. Customer classes eligible for participation and the schedule for extending participation to all customer classes;
- e. Identification of each AEP facility used for the program, including:
 - (1) Fuel type;
 - (2) Nameplate capacity;
 - (3) Estimated annual kWh output;
 - (4) Estimated in-service date;
 - (5) Ownership, including any utility affiliation;
 - (6) A copy of any contract for utility purchases from the facility;
 - (7) A description of the method or procedure used to select the facility;
 - (8) Facility location; and
 - (9) If the facility is located outside of Iowa, an explanation of how the facility qualifies under paragraph 15.17(1) "c";
- f. The forms and levels of customer contribution available to program participants, including, but not limited to:

- (1) kWh rate premiums applied to percentages of participant kWh usage, with an explanation of how the kWh rate premiums are derived; or
- (2) kWh rate premiums applied to fixed kWh blocks of participant usage, with an explanation of how the kWh rate premiums are derived; or
- (3) Fixed contributions, with an explanation of how the fixed amounts are derived;

g. The maximum allowable time lag between the beginning of customer contributions and the in-service date for identified AEP facilities, and the procedures for suspending customer contributions if the maximum time lag is exceeded;

h. The intended treatment of program participants under 199—20.9(476) energy automatic adjustment and AEP automatic adjustment clauses;

i. An accounting plan for identifying and tracking participant contributions and program costs, including:

(1) Identification of incremental program costs not otherwise recovered through the utility's rates, including but not limited to: program start-up and administration costs; program marketing costs; and program energy and capacity costs associated with identified AEP facilities;

(2) Methods for quantifying, assigning, and allocating costs of the program and for segregating those costs in the utility's accounts; and

j. Marketing and customer information plan, including schedules and copies of all marketing and information materials, as available.

15.17(4) Annual reporting requirements for rate-regulated utilities. On or before April 1, 2005, and annually thereafter, each electric utility subject to rate regulation by the board, excluding utilities that elect rate regulation pursuant to Iowa Code section 476.1A, shall file with the board a report of program activity for the previous calendar year. The annual report shall include:

a. Program information including:

(1) The number of program participants, by customer class;

(2) Participant contribution revenues, by customer class, by form and level of contribution, and associated participant kWh sales;

(3) Program electricity generated from each program AEP facility and the associated costs; and

(4) Other program costs, by cost type.

b. An annual reconciliation of participant contributions and program costs.

(1) Program costs are incremental costs associated with the utility's alternate energy purchase program not otherwise recovered through the utility's base tariff rates, and electricity costs dedicated to the program and separated from the utility's 199—20.9(476) energy or AEP automatic adjustment clauses.

(2) The excess of participant contributions over program costs is an annual program surplus, and the excess of program costs over participant contributions is an annual program deficit.

(3) Annual program surpluses and deficits are cumulative over successive years.

(4) A program deficit may be recovered through the utility's 199—20.9(476) AEP automatic adjustment clause.

(5) Any program surplus shall be used to offset prior years' program deficits previously recovered through the AEP automatic adjustment clause, and the offset amount shall be credited through the utility's AEP automatic adjustment clause.

c. Identification of any other AEP or renewable energy requirements being met with program AEP facilities and identification of any revenues derived from the separate sale of the renewable energy attributes of program AEP facilities.

d. Documentation that shows the energy produced by the utility's program AEP facilities in Iowa (whether contracted, leased, or owned), not including AEP facilities for which the utility has sought cost recovery under 199—20.9(476) prior to July 1, 2001, is sufficient to meet the requirement of the utility's Iowa alternate energy purchase program.

e. A description of program marketing and customer information activities, including schedules and copies of all marketing and information materials related to the program.

f. Program modifications and uses for any program surplus that are under consideration, including procurement or assignment of additional electricity from AEP facilities.

g. A copy of the utility's annual fuel report to customers under subrule 15.17(5).

15.17(5) Annual fuel reporting requirements for rate-regulated utilities.

a. Each electric utility subject to rate regulation by the board, excluding utilities that elect rate regulation pursuant to Iowa Code section 476.1A, shall annually report to all its Iowa customers its

percentage mix of fuel and energy inputs used to produce electricity. The report shall, to the extent practical, specify percentages of electricity produced by coal, nuclear energy, natural gas, oil, AEP electricity produced for the utility's alternate energy purchase program, non-program AEP electricity, and resources purchased from other companies. The percentages for AEP electricity shall further specify percentages of electricity produced by wind, solar, hydropower, biomass, and other technologies.

b. The report shall include an estimate of sulfur dioxide (SO₂), nitrogen oxide (NO_x), and carbon dioxide (CO₂) emissions for each known fuel and energy input type. The emission estimate shall be expressed in pounds per 1000 kWh.

15.17(6) *Tariff filing requirements for non-rate-regulated utilities.*

a. On or before January 1, 2004, each electric utility that is not subject to rate regulation by the board or that elects rate regulation pursuant to Iowa Code section 476.1A shall file with the board a tariff for the utility's alternate energy purchase program. Initial tariff filings and any subsequent modifications shall be filed for informational purposes only. Tariff modification filings need only include information about elements of the program that are being modified. The initial tariff filings shall include, as applicable:

- (1) The program tariff;
- (2) The program effective date;
- (3) A sample of the customer notification, including a description of the method of distribution;
- (4) Customer classes eligible for participation;
- (5) Identification of any specific AEP facilities to be included in the program, including: fuel type; nameplate capacity; estimated annual kWh output; estimated in-service date; ownership, including any utility affiliation; location; and, if the facility is located outside of Iowa, an explanation of how the facility qualifies under paragraph 15.17(1) "c"; and

(6) Forms and levels of customer contribution available to program participants.

b. Joint filings. An electric utility that is not subject to rate regulation by the board or that elects rate regulation pursuant to Iowa Code section 476.1A may file its tariff jointly with other non-rate-regulated utilities or through an agent. A joint tariff filing shall contain the information required by paragraph 15.17(6) "a," separately identified for each utility participating in the joint tariff. The information for each utility may be provided by reference to an attached document or to a section of the joint tariff filing. A joint tariff filing filed by an agent shall state the agent's relationship to each utility and include a document from each utility authorizing the agent to act on the utility's behalf.

199—15.18(476B) Certification of eligibility for wind energy tax credits under Iowa Code chapter 476B. Any person applying for certification of eligibility for state tax credits for wind energy pursuant to Iowa Code section 476B.5 as amended by 2005 Iowa Acts, chapter 179, section 166, is subject to this rule.

15.18(1) *Filing requirements.* Any person applying for certification of eligibility for wind energy tax credits must file with the board an application that contains substantially all of the following information:

a. Information regarding the applicant, including the legal name, address, telephone number, and (as applicable) facsimile transmission number and electronic mail address of the applicant.

b. Information regarding the ownership of the facility, including the legal name of each owner, information demonstrating the legal status of each owner, and the percentage of equity interest held by each owner, and a statement attesting that owners meeting the eligibility requirements of Iowa Code section 476B.5 are not owners of more than two eligible renewable energy facilities. In determining whether the two-facility limit is exceeded, the Board will consider not only the legal entity that owns the utility, if other than a natural person, but the equity owners of the legal entity. If the owner of the facility is other than a natural person, information regarding the equity owners must be provided.

c. A description of the facility, including at a minimum the following information:

- (1) Type of facility (that is, a qualified facility as defined in Iowa Code section 476B.1);
- (2) Total nameplate generating capacity rating. For applications filed on or after March 1, 2008, the facility must have a combined nameplate capacity of no less than 2 megawatts and no more than 30 megawatts. For applications filed on or after July 1, 2009, by a private college or university, community

college, institution under the control of the state board of regents, public or accredited nonpublic elementary and secondary school, or public hospital as defined in Iowa Code section 249J.3, the facility must have a combined nameplate capacity of no less than $\frac{3}{4}$ of a megawatt;

(3) A description of the location of the facility in Iowa, including an address or other geographic identifier;

(4) The date the facility is expected to be placed in service (that is, placed in service on or after July 1, 2005, but before July 1, 2012, for eligibility under Iowa Code chapter 476B as amended by 2005 Iowa Acts, chapter 179).

d. A signed statement from the owner attesting that the owner intends to either sell all the electricity generated by the facility, consume all the electricity on site, or a combination of both. For purposes of this rule, electricity consumed on site means any electricity produced by the facility and not sold.

e. If the owner intends to sell electricity generated by the facility, a copy of the executed power purchase agreement or other agreement to purchase electricity. If the power purchase agreement has not yet been finalized and executed, the board will accept as an other agreement an executed agreement signed by at least two parties that includes both a commitment to purchase electricity from the facility upon completion of the project and most of the essential elements of a contract.

The board will also accept a copy of an executed interconnection agreement service agreement, in lieu of a power purchase agreement, if the facility owner has instead agreed to sell electricity from the facility directly or indirectly to a wholesale power pool market.

f. A statement indicating the type of tax credit being sought; that is, indicating that the applicant is applying for tax credits pursuant to Iowa Code chapter 476B as amended by 2005 Iowa Acts, chapter 179 (1 cent per kWh, wind energy only tax credits).

15.18(2) *Review and notification.* Upon receipt of a complete application, the board will review it to make a preliminary determination regarding whether the facility is an eligible renewable energy facility. The board will notify the applicant by letter of the approval or denial of the application within 30 days of the date the application was filed. If the board fails to send the letter within 30 days, the application will be deemed denied. An applicant who receives a determination denying an application may file an appeal with the board within 30 days of the date of the denial, pursuant to the provisions of Iowa Code chapter 17A and Iowa Code section 476B.5. In the absence of a timely appeal, the preliminary determination shall be final.

15.18(3) *Incomplete application and additional information.* If an incomplete application is filed, the board may, upon request and for good cause shown, grant an extension of time to allow the applicant to provide additional information. Also, the board and its staff may request additional information at any time for purposes of determining initial or continuing eligibility for tax credits.

15.18(4) *Loss of eligibility status.* Within 18 months following board approval of eligibility, the applicant shall file information demonstrating that the eligible facility is operational and producing usable energy. If the board determines that the eligible facility was not operational within 18 months of board approval, the facility will lose eligibility status.

However, if the facility is not operational within 18 months due to the unavailability of necessary equipment, the applicant may apply for a 12-month extension of the filing requirement, attesting to the unavailability of necessary equipment. After granting a 12-month extension, if the board determines that the facility was not operational within 30 months of board approval, the facility will lose eligibility status. Otherwise, the facility may reapply to the board for new eligibility.

15.18(5) *Allocation of capacity among eligible applicants.* Iowa Code section 476B.5 establishes the maximum amount of nameplate generating capacity of facilities eligible for the tax credits. In the event the board receives applications for tax credits that, in total, exceed the statutory limits, the board will rule on the applications in the order they are received, based upon the date of receipt. Because the board does not track the time of day that filings are made with the board, if the board receives more than one application on a particular date such that the combined capacity of the applications exceeds applicable statutory limits, the board will allocate the final eligibility determinations proportionally among all applications received on that date. Alternatively, the board may withhold this allocation

unless a petition for allocation is filed with the board by one of the applicants who filed its application on that particular date. If such a petition is submitted, the board will notify all applicants who filed on that particular date, allowing each applicant to opt into the allocation within 45 days of the date of the filing of the petition. Applicants who opt in must comply with subrule 15.18(4) after receiving eligibility under the allocation or lose their eligibility status. Applicants who do not opt in will maintain their original application date.

15.18(6) *Waiting list for excess applications.* The board will maintain a waiting list of excess eligibility applications for facilities that might have received preliminary eligibility under subrule 15.18(2), but for the maximum capacity and capability restrictions under subrule 15.18(5). The priorities of the waiting list will be in the order the applications were received, based upon the dates of receipt. If additional capacity becomes available within the capacity restrictions under subrule 15.18(5), the board will review the applications on the waiting list based on their priorities, before reviewing new applications. Applications will be removed from the waiting list after they are either approved or denied. Beginning August 31, 2007, each applicant on the waiting list shall annually provide the board a statement of verification attesting that the information contained in the applicant's eligibility application remains true and correct, or stating that the information has changed and providing the new information.

This rule is intended to implement Iowa Code chapter 476B.
[ARC 8060B, IAB 8/26/09, effective 9/30/09]

199—15.19(476C) Certification of eligibility for wind energy and renewable energy tax credits under Iowa Code chapter 476C. Any person applying for certification of eligibility for state tax credits for wind energy or renewable energy pursuant to Iowa Code section 476C.3 is subject to this rule.

15.19(1) *Filing requirements.* Any person applying for certification of eligibility for wind energy or renewable energy tax credits must file with the board an application that contains substantially all of the following information:

a. Information regarding the applicant, including the legal name, address, telephone number, and (as applicable) facsimile transmission number and electronic mail address of the applicant.

b. Information regarding the ownership of the facility, including the legal name of each owner, information demonstrating the legal status of each owner, and the percentage of equity interest held by each owner. The "legal status of each owner" refers to either ownership of a small wind energy system operating in a small wind innovation zone as defined in Iowa Code section 476.48(1) and 199—15.22(476), or, alternatively, the ownership requirements of Iowa Code section 476C.1(6)"*b*," which provides that an eligible renewable energy facility must be at least 51 percent owned by one or more or any combination of the following:

- (1) A resident of Iowa;
 - (2) An authorized farm corporation, authorized limited liability company, or authorized trust, as defined in Iowa Code section 9H.1;
 - (3) A family farm corporation, family farm limited liability company, or family farm trust, as defined in Iowa Code section 9H.1;
 - (4) A revocable trust as defined in Iowa Code section 9H.1;
 - (5) A testamentary trust as defined in Iowa Code section 9H.1;
 - (6) A small business as defined in Iowa Code section 15.102;
 - (7) An electric cooperative association organized pursuant to Iowa Code chapter 499 that sells electricity to end users located in Iowa or has one or more members organized pursuant to Iowa Code chapter 499;
 - (8) A cooperative corporation organized pursuant to Iowa Code chapter 497 or a limited liability corporation organized pursuant to Iowa Code chapter 490A whose shares and membership are held by an entity that is not prohibited from owning agricultural land under Iowa Code chapter 9H; or
 - (9) A school district located in Iowa.
- c.* A statement attesting that each owner meeting the eligibility requirements of Iowa Code section 476C.1(6)"*b*" does not have an ownership interest in more than two eligible renewable energy facilities.

d. For any owner meeting the eligibility requirements of Iowa Code section 476C.1(6)“*b*” with an equity interest in the facility equal to or greater than 51 percent, a statement attesting that the owner does not have an equity interest greater than 10 percent in any other eligible renewable energy facility.

e. For any owner meeting the eligibility requirements of Iowa Code section 476C.1(6)“*b*” with an equity interest in the facility greater than 10 percent and less than 51 percent, a statement attesting that the owner does not have an equity interest equal to or greater than 51 percent in any other eligible renewable energy facility.

f. A description of the facility, including at a minimum the following information:

(1) Type of facility (that is, a wind energy conversion facility, biogas recovery facility, biomass conversion facility, methane gas recovery facility, solar energy conversion facility, or refuse conversion facility, as defined in Iowa Code section 476C.1);

(2) Total nameplate generating capacity rating, plus maximum hourly output capability for any energy production capacity equivalent as defined in Iowa Code section 476C.1. For applications filed on or after July 1, 2011, the facility’s combined nameplate capacity or energy production capacity equivalent must be no less than three-fourths of a megawatt if all or part of the facility’s renewable energy production is used for the owners’ on-site consumption, and no more than 60 megawatts if the facility is not a wind energy conversion facility;

(3) A description of the location of the facility in Iowa, including an address or other geographic identifier;

(4) The date the facility is expected to be placed in service; that is, placed in service on or after July 1, 2005, but before January 1, 2015, for eligibility under Iowa Code chapter 476C; and

(5) For eligibility under Iowa Code chapter 476C, demonstration that the facility’s combined MW nameplate generating capacity and maximum hourly output capability of energy production capacity equivalent (as defined in Iowa Code section 476C.1(7)), divided by the number of separate owners meeting the requirements of Iowa Code chapter 476C, equals no more than 2.5 MW of capacity per eligible owner.

g. A signed statement from the owners attesting that the owners intend to either sell all the renewable energy produced by the facility, consume all the renewable energy on site, or use all the renewable energy through a combination of sale and consumption. For purposes of the signed statement, renewable energy consumed on site means any renewable energy produced by the facility and not sold.

h. If the owners intend to sell renewable energy produced by the facility, a copy of the power purchase agreement or other agreement to purchase electricity, hydrogen fuel, methane or other biogas, or heat for a commercial purpose, which shall designate either the producer or the purchaser as eligible to apply for the renewable energy tax credit. If the power purchase agreement or other agreement has not yet been finalized and executed, the board will accept a binding statement from the applicant that designates which party will be eligible to apply for the renewable energy tax credit; that designation shall not be subject to change.

i. A statement indicating the type of tax credit being sought; that is, indicating that the applicant is applying for tax credits pursuant to Iowa Code chapter 476C (1.5 cents per kWh, wind and other renewable energy tax credits).

15.19(2) Review and notification. Upon receipt of a complete application, the board will review it to make a preliminary determination regarding whether the facility is an eligible renewable energy facility. The board will notify the applicant by letter of the approval or denial of the application within 30 days of the date the application was filed. If the board fails to send the letter within 30 days, the application will be deemed denied. An applicant who receives a determination denying an application may file an appeal with the board within 30 days of the date of the denial, pursuant to the provisions of Iowa Code chapter 17A and Iowa Code section 476C.3(2). In the absence of a timely appeal, the preliminary determination shall be final.

15.19(3) Incomplete application and additional information. If an incomplete application is filed, the board may, upon request and for good cause shown, grant an extension of time to allow the applicant to provide additional information. Also, the board and its staff may request additional information at any time for purposes of determining initial or continuing eligibility for tax credits.

15.19(4) Loss of eligibility status.

a. Within 30 months following board approval of eligibility, the applicant shall file information demonstrating that the eligible facility is operational and producing usable energy. If the board determines that the eligible facility was not operational within 30 months of board approval, the facility will lose eligibility status.

b. If the facility is a wind energy conversion facility and is not operational within 18 months due to the unavailability of necessary equipment, the applicant may apply for a 12-month extension of the 30-month limit, attesting to the unavailability of necessary equipment. After granting the 12-month extension, if the board determines that the facility was not operational within 42 months of board approval, the facility will lose eligibility status.

c. Prior to expiration of the time periods specified in paragraphs 15.19(4)“a” and “b,” the applicant may apply for a further 12-month extension if the facility is still expected to become operational. Extensions may be renewed for succeeding 12-month periods if the applicant applies for the extension prior to expiration of the current extension period. If the applicant does not apply for further extension, the facility will lose eligibility status.

d. If the owners of a facility discontinue efforts to achieve operational status, the owners shall notify the board. Upon the board’s receipt of such notification, the facility will lose eligibility status.

e. If the facility loses eligibility status, the applicant may reapply to the board for new eligibility.

15.19(5) Allocation of capacity among eligible applicants. Iowa Code section 476C.3(4) establishes the maximum amounts of nameplate generating capacities and energy production capacity equivalents eligible for the tax credits. In the event the board receives applications for tax credits that, in total, exceed the statutory limits, the board will rule on the applications in the order they are received, based upon the date of receipt. Because the board does not track the time of day that filings are made with the board, if the board receives more than one application on a particular date such that the combined capacity of the applications exceeds applicable statutory limits, the board will allocate the final eligibility determinations proportionally among all applications received on that date. Alternatively, the board may withhold this allocation unless a petition for allocation is filed with the board by one of the applicants who filed its application on that particular date. If such a petition is submitted, the board will notify all applicants who filed on that particular date, allowing each applicant to opt into the allocation within 45 days of the date of the filing of the petition. Applicants who opt in must comply with subrule 15.19(4) after receiving eligibility under the allocation or lose their eligibility status. Applicants who do not opt in will maintain their original application date.

15.19(6) Waiting lists for excess applications. The board will maintain waiting lists of excess eligibility applications for facilities that might have received preliminary eligibility under subrule 15.19(2), but for the maximum capacity and capability restrictions under subrule 15.19(5). The priorities of the waiting lists will be in the order the applications were received, based upon the dates of receipt. If additional capacity becomes available within the capacity restrictions under subrule 15.19(5), the board will review the applications on the waiting lists based on their priorities, before reviewing new applications. Applications will be removed from the waiting lists after they are either approved or denied. Beginning August 31, 2007, each applicant on a waiting list shall annually provide the board a statement of verification attesting that the information contained in the applicant’s eligibility application remains true and correct, or stating that the information has changed and providing the new information.

This rule is intended to implement Iowa Code chapter 476C.

[**ARC 8060B**, IAB 8/26/09, effective 9/30/09; **ARC 8949B**, IAB 7/28/10, effective 9/1/10; **ARC 9752B**, IAB 9/21/11, effective 10/26/11]

199—15.20(476B) Applications for wind energy tax credits under Iowa Code chapter 476B. The wind energy tax credits equal one cent per kilowatt-hour of electricity generated by eligible wind energy facilities under 199—15.18(476B), which is sold or used for on-site consumption by the owner, for tax years beginning on or after July 1, 2006. The owners of an eligible facility may apply for wind energy tax credits for up to ten tax years following the date the facility is placed in service. Wind energy tax credits will not be issued for wind energy sold or used for on-site consumption after June 30, 2022. For

purposes of this rule, wind energy used for on-site consumption means any electricity produced by an eligible facility and not sold.

For the first tax year for which tax credits can be claimed, the kilowatt-hours generated by and purchased from an eligible facility may exceed 12 months' production.

EXAMPLE: An eligible facility was placed in service on April 1, 2006, and the taxpayer files on a calendar-year basis. The first year for which tax credits can be claimed is the year ending December 31, 2007, since that is the first tax year that began on or after July 1, 2006. The credits for the 2007 tax year can include energy produced and purchased between April 1, 2006, and December 31, 2007.

15.20(1) *Application process for wind energy tax credits.* A wind energy facility must be approved as eligible by the board under 199—15.18(476B) in order to qualify for wind energy tax credits.

If the facility is located in a city or county neither of which has enacted an ordinance under Iowa Code section 427B.26, or if the facility is not eligible for special valuation pursuant to an ordinance adopted by the city or county under Iowa Code section 427B.26, the wind energy facility must also be approved by the city council or county board of supervisors of the city or county in which the facility is located, in accordance with Iowa Code section 476B.6(1) as amended by 2009 Iowa Acts, Senate File 456, section 4. Once the owners receive approval from their city council or county board of supervisors, additional approval from the city council or county board of supervisors is not required for subsequent tax years.

Tax credit applications for eligible facilities must be filed with the board no later than 30 days after the close of the tax year for which the credits are to be applied. The tax credit applications must be filed in paper format and are not subject to the electronic filing requirements of 199—14.2(17A,476). The tax credit applications will be held confidential by the board and the department of revenue as, among other things, documents containing customer-specific or personal information (199—paragraph 1.9(5)“c”) and information related to tax returns (Iowa Code section 422.20). The information will be held confidential by the board upon filing, and by the department of revenue upon receipt from the board, and will be subject to the provisions of 199—subparagraph 1.9(8)“b”(3). Accordingly, the applicant should mark each of the pages of the tax credit application “CONFIDENTIAL” in bold or large letters.

a. If a facility is jointly owned, then owners applying for the tax credits must file their application jointly. For each application, an original and two copies must be filed according to the following format, including a cover letter that cites this rule (199—15.20(476B)), and the following 13 information items separately identified by item number:

(1) A copy of the original application for facility eligibility under 199—15.18(476B), plus any subsequent amendments to the application.

(2) A copy of the board's determination approving the facility as eligible for tax credits under 199—15.18(476B).

(3) Either a copy of the city council's or county board of supervisors' approval, from the city or county in which the facility is located, issued pursuant to Iowa Code section 476B.6(1) as amended by 2009 Iowa Acts, Senate File 456, section 4; or a statement explaining why such approval is not required under Iowa Code section 476B.6(1) as amended by 2009 Iowa Acts, Senate File 456, section 4.

(4) A statement attesting that neither the owners nor the purchaser have received renewable energy tax credits for the facility under 199—15.21(476C).

(5) For any electricity sold, a copy of the executed power purchase agreement or other agreement to purchase electricity. Alternatively, a copy of an executed interconnection agreement or transmission service agreement is acceptable if the owners have elected to sell electricity from the facility directly or indirectly to a wholesale power pool market.

(6) For any electricity sold, the owner must provide a statement attesting that the electricity for which tax credits are sought has been generated by the eligible facility and sold to an unrelated purchaser. For purposes of the wind energy tax credits, the definition of “related person” is the same as specified in department of revenue 701—subrules 42.25(2) and 52.26(2). That is, the definition of “related person” uses the same criteria set forth in Section 45(e)(4) of the Internal Revenue Code relating to the federal renewable electricity production credit. Persons shall be treated as related to each other if such persons are treated as a single employer under Treasury Regulation §1.52-1. In the case of a corporation that is a

member of an affiliated group of corporations filing a federal consolidated return, such corporation shall be treated as selling electricity to an unrelated person if such electricity is sold to the person by another member of the affiliated group.

For any electricity used for on-site consumption, the owner must provide a signed statement attesting under penalty of perjury that the electricity for which tax credits are sought was generated by the eligible facility and not sold.

(7) The date that the eligible facility was placed in service (that is, between July 1, 2005, and July 1, 2012).

(8) The total number of kilowatt-hours of electricity generated by the facility during the tax year.

(9) For any electricity sold, invoices or other information that documents the number of kilowatt-hours of electricity generated by the eligible facility and sold to an unrelated purchaser during the tax year.

For any electricity used for on-site consumption, the number of kilowatt-hours of electricity generated by the eligible facility during the tax year and not sold.

(10) Information regarding the facility owners, including the name, address, and tax identification number of each owner, and the percentage of equity interest held by each owner during the period for which wind energy tax credits will be sought under Iowa Code chapter 476B as amended by 2009 Iowa Acts, Senate File 456. If an owner is other than a natural person, information regarding the equity owners must also be provided. This information shall be consistent with information provided in the original application for facility eligibility, as amended, under 199—15.18(476B).

(11) The type of tax for which the credits will be applied and the first tax year in which the credits will be applied.

(12) Identification of any applicants that are eligible to receive renewable electricity production credits authorized under Section 45 of the Internal Revenue Code. This identification should include a statement from the applicant attesting to the applicant's eligibility and any available supporting documentation.

(13) If any of the applicants is a partnership, limited liability company, S corporation, estate, trust, or any other reporting entity, all of whose income is taxed directly to its equity holders or beneficiaries for taxes imposed under Iowa Code chapter 422, division II or III, the application shall include a list of the partners, members, shareholders, or beneficiaries of the entity. This list shall include the name, address, tax identification number, and pro-rata share of earnings from the entity, for each of the partners, members, shareholders, or beneficiaries of the entity. The wind energy tax credits will flow through to the entity's partners, shareholders, or members in accordance with their pro-rata share of earnings from the entity.

If the entity is also eligible to receive renewable electricity production credits authorized under Section 45 of the Internal Revenue Code, the entity may designate specific partners if the business is a partnership, shareholders if the business is an S corporation, or members if the business is a limited liability company, to receive the wind energy tax credits issued under Iowa Code chapter 476B as amended by 2009 Iowa Acts, Senate File 456, and the percentage allocable to each. Such an entity may also designate a percentage of the tax credits allocable to an equity holder or beneficiary as a liquidating distribution or portion thereof, of a holder or beneficiary's interest in the applicant entity. Otherwise, in the absence of such designations, the wind energy tax credits will flow through to the entity's partners, shareholders, or members in accordance with their pro-rata share of earnings from the entity.

Alternatively, the tax credits will be issued directly to the entity if the entity is a partnership, limited liability company, S corporation, estate, trust, or any other reporting entity, all of whose income is taxed directly to its equity holders or beneficiaries for taxes imposed under Iowa Code chapter 422, division V, or under Iowa Code chapter 423, 432, or 437A.

b. The board will forward the tax credit applications to the department of revenue for review and processing. Along with each forwarded application, the board will provide staff analysis and opinion regarding:

(1) The completeness of the application.

(2) The facility's eligibility status under 199—15.18(476B).

(3) Whether the reported kilowatt-hours of electricity generated by the facility and sold or used by the owner for on-site consumption during the tax year seem accurate and eligible for wind energy tax credits.

15.20(2) *Review process and computation of wind energy tax credits.* The department of revenue will review the applications and opinions forwarded by the board, calculate the tax credits, and issue wind energy tax credit certificates to the facility owners, in accordance with department of revenue requirements and procedures under rules 701—42.25(422,476B), 701—52.26(422,476B), and 701—58.15(422,476B).

[ARC 8060B, IAB 8/26/09, effective 9/30/09]

199—15.21(476C) **Applications for renewable energy tax credits under Iowa Code chapter 476C.** The renewable energy tax credits equal 1.5 cents per kilowatt-hour of electricity, or 44 cents per 1,000 standard cubic feet of hydrogen fuel, or \$4.50 per 1 million British thermal units of methane gas or other biogas used to generate electricity, or \$4.50 per 1 million British thermal units of heat for a commercial purpose, generated by eligible renewable energy facilities under 199—15.19(476C), which is sold or used for on-site consumption by the owners, for tax years beginning on or after July 1, 2006. For renewable energy that is sold, either the owners of an eligible facility or a designated purchaser of renewable energy from the facility may apply for renewable energy tax credits for up to ten tax years following the date the facility is placed in service. For renewable energy used for on-site consumption, the owners of an eligible facility may apply for renewable energy tax credits for up to ten tax years following the date the facility is placed in service. Renewable energy tax credits will not be issued for renewable energy sold or used for on-site consumption after December 31, 2024. For purposes of this rule, renewable energy used for on-site consumption means any renewable energy produced by the facility and not sold.

For the first tax year for which tax credits can be claimed, the kilowatt-hours, standard cubic feet, or British thermal units generated by and purchased from an eligible facility may exceed 12 months' production.

EXAMPLE: An eligible facility was placed in service on April 1, 2006, and the taxpayer files on a calendar-year basis. The first year for which tax credits can be claimed is the year ending December 31, 2007, since that is the first tax year that began on or after July 1, 2006. The credit for the 2007 tax year can include renewable energy produced and purchased between April 1, 2006, and December 31, 2007.

15.21(1) *Application process for renewable energy tax credits.* A renewable energy facility must be approved as eligible by the board under 199—15.19(476C) in order to qualify for renewable energy tax credits. Tax credit applications must be filed with the board no later than 30 days after the close of the tax year for which the credits are to be applied. The tax credit applications must be filed in paper format and are not subject to the electronic filing requirements of 199—14.2(17A,476). The tax credit applications will be held confidential by the board and the department of revenue as, among other things, documents containing customer-specific or personal information (199—paragraph 1.9(5)“c”) and information related to tax returns (Iowa Code section 422.20). The information will be held confidential by the board upon filing, and by the department of revenue upon receipt from the board, and will be subject to the provisions of 199—subparagraph 1.9(8)“b”(3). Accordingly, the applicant should mark each of the pages of the tax credit application “CONFIDENTIAL” in bold or large letters.

a. Either the facility owners or the purchaser of renewable energy shall be eligible to apply for the tax credits related to renewable energy that is sold, as designated under paragraph 15.19(1)“h.” Only facility owners shall be eligible to apply for tax credits related to renewable energy used for on-site consumption. If a facility is jointly owned, then owners applying for the tax credits must file their application jointly. For each application, an original and two copies must be filed according to the following format, including a cover letter that cites this rule (199—15.21(476C)), and the following 12 information items separately identified by item number:

(1) A copy of the original application for facility eligibility under 199—15.19(476C), plus any subsequent amendments to the application.

(2) A copy of the board's determination approving the facility as eligible for tax credits under 199—15.19(476C).

(3) A statement attesting that the owners have not received wind energy tax credits for the facility under 199—15.20(476B).

(4) For any renewable energy sold, a copy of the power purchase agreement or other agreement to purchase from the facility electricity, hydrogen fuel, methane or other biogas, or heat for a commercial purpose. The agreement shall designate whether the producer or purchaser of renewable energy will be eligible to apply for the tax credits and shall be consistent with the designation originally filed under paragraph 15.19(1) "h."

(5) For any renewable energy sold, the owners must provide a statement attesting that the electricity, hydrogen fuel, methane or other biogas, or heat for a commercial purpose, for which tax credits are sought, has been generated by the eligible facility and sold to an unrelated purchaser. For purposes of the renewable energy tax credits, persons are related to each other if either person owns an 80 percent or more equity interest in the other person. For any renewable energy used for on-site consumption, the owners must provide a signed statement attesting under penalty of perjury that the claimed amount of electricity, hydrogen fuel, methane or other biogas, or heat for a commercial purpose for which tax credits are sought has been generated by the eligible facility and not sold.

(6) The date that the eligible facility was placed in service (that is, between July 1, 2005, and January 1, 2015).

(7) The total number of kilowatt-hours of electricity, standard cubic feet of hydrogen fuel, British thermal units of methane gas or other biogas used to generate electricity, or British thermal units of heat for a commercial purpose generated by the eligible facility during the tax year.

(8) For any renewable energy sold, invoices or other information that documents the number of kilowatt-hours of electricity, standard cubic feet of hydrogen fuel, British thermal units of methane gas or other biogas used to generate electricity, or British thermal units of heat for a commercial purpose generated by the eligible facility and sold to an unrelated purchaser during the tax year. For any renewable energy used for on-site consumption, the number of kilowatt-hours of electricity, standard cubic feet of hydrogen fuel, British thermal units of methane gas or other biogas used to generate electricity, or British thermal units of heat for a commercial purpose generated by the eligible facility during the tax year and not sold.

(9) Information regarding the facility owners or designated eligible purchaser, including the name, address, and tax identification number of each owner or purchaser. If the application is filed by the facility owners, this shall also include the percentage of equity interest held by each owner during the period for which renewable energy tax credits will be sought under Iowa Code chapter 476C. This information shall be consistent with ownership information provided in the original application for facility eligibility, as amended, under 199—15.19(476C).

(10) The type of tax for which the credits will be applied and the first tax year in which the credits will be applied.

(11) Identification of any applicants that are eligible to receive renewable electricity production credits authorized under Section 45 of the Internal Revenue Code. This identification should include a statement from the applicant attesting to the applicant's eligibility and any available supporting documentation.

(12) If any of the applicants is a partnership, limited liability company, S corporation, estate, trust, or any other reporting entity all of whose income is taxed directly to its equity holders or beneficiaries for taxes imposed under Iowa Code chapter 422, division II or III, the application shall include a list of the partners, members, shareholders, or beneficiaries of the entity. This list shall include the name, address, tax identification number, and pro-rata share of earnings from the entity for each of the partners, members, shareholders, or beneficiaries of the entity. The renewable energy tax credits will flow through to the entity's partners, shareholders, or members in accordance with their pro-rata share of earnings from the entity.

If the entity is also eligible to receive renewable electricity production credits authorized under Section 45 of the Internal Revenue Code, the entity may designate specific partners if the business is

a partnership, shareholders if the business is an S corporation, or members if the business is a limited liability company to receive the renewable energy tax credits issued under Iowa Code chapter 476C and the percentage allocable to each. Such an entity may also designate a percentage of the tax credits allocable to an equity holder or beneficiary as a liquidating distribution or portion thereof of a holder or beneficiary's interest in the applicant entity. Otherwise, in the absence of such designations, the renewable energy tax credits will flow through to the entity's partners, shareholders, or members in accordance with their pro-rata share of earnings from the entity.

Alternatively, the tax credits will be issued directly to the entity if the entity is a partnership, limited liability company, S corporation, estate, trust, or any other reporting entity, all of whose income is taxed directly to its equity holders or beneficiaries for taxes imposed under Iowa Code chapter 422, division V, or under Iowa Code chapter 423, 432, or 437A.

b. The board will forward the tax credit applications to the department of revenue for review and processing. Along with each forwarded application, the board will provide staff analysis and opinion regarding:

- (1) The completeness of the application.
- (2) The facility's eligibility status under 199—15.19(476C).
- (3) Whether the reported kilowatt-hours of electricity, standard cubic feet of hydrogen fuel, British thermal units of methane gas or other biogas used to generate electricity, or British thermal units of heat for a commercial purpose generated by the facility and sold or used by the owners for on-site consumption during the tax year seem accurate and eligible for renewable energy tax credits.

15.21(2) *Review process and computation of renewable energy tax credits.* The department of revenue will review the applications and opinions forwarded by the board, calculate the tax credits, and issue renewable energy tax credit certificates to the facility owners or designated purchaser, in accordance with department of revenue requirements and procedures under 701—42.26(422,476C), 701—52.27(422,476C), and 701—58.16(422,476C).

[ARC 8060B, IAB 8/26/09, effective 9/30/09; ARC 9752B, IAB 9/21/11, effective 10/26/11]

199—15.22(476) Small wind innovation zones.

15.22(1) *Definitions.* For purposes of this rule:

“*Electric utility*” means a public utility that furnishes electricity to the public for compensation.

“*Model interconnection agreement*” means the applicable standard interconnection agreement under 199—Chapter 45.

“*Model ordinance*” means the model ordinance developed pursuant to Iowa Code section 476.48(3), which when adopted will be posted on the Web sites of the Iowa League of Cities at www.iowaleague.org and the Iowa State Association of Counties at www.iowacounties.org.

“*Small wind energy system*” means a wind energy conversion system that collects and converts wind into energy to generate electricity, which has a nameplate generating capacity of 100 kilowatts or less. A small wind energy system located in a small wind innovation zone but in the exclusive service territory of an electric utility that is not subject to 199—Chapter 45 and has not adopted the standard forms, procedures, and interconnection agreements in 199—Chapter 45 is not eligible for the streamlined application process referred to in Iowa Code section 476.48(2) “*a.*”

“*Small wind innovation zone*” means a political subdivision of this state, including but not limited to a city, county, township, school district, community college, area education agency, institution under the control of the state board of regents, or any other local commission, association, or tribal council which adopts, or is encompassed within a local government which adopts, the model ordinance.

15.22(2) *Application for small wind innovation zone designation.* A political subdivision of this state, including but not limited to a city, county, township, school district, community college, area education agency, institution under the control of the state board of regents, or any other local commission, association, or tribal council, may apply to the board for designation as a small wind innovation zone under Iowa Code section 476.48. The application must include the following information:

- a. The name, location, description, and legal boundary of the political subdivision seeking designation as a small wind innovation zone;
- b. Contact information for the applicant filing on behalf of the political subdivision, including legal name, address, telephone number, and, as applicable, facsimile transmission number and electronic mail address;
- c. If the political subdivision is other than a local government:
 - (1) Identification of the local government (or governments) that encompasses the political subdivision;
 - (2) Confirmation that all identified local governments have either adopted or are about to adopt the model ordinance, including copies of model ordinances adopted by the local governments, or copies of pending amendments to existing zoning ordinances intended to comply with the model ordinance; and
 - (3) Dates the model ordinances were adopted or anticipated dates of adoption of pending amendments to existing zoning ordinances intended to comply with the model ordinance;
- d. If the political subdivision is a local government:
 - (1) A copy of the model ordinance adopted by the local government or copy of a pending amendment to an existing zoning ordinance intended to comply with the model ordinance; and
 - (2) Date the model ordinance was adopted or anticipated date of adoption of the pending amendment to an existing zoning ordinance intended to comply with the model ordinance;
- e. Identification of the electric utilities that provide service within the political subdivision; and
- f. Documentation from each electric utility that provides service within the political subdivision confirming that the electric utility is serving the political subdivision and that the utility is either:
 - (1) A utility subject to the provisions of 199—Chapter 45; or
 - (2) A utility not subject to the provisions of 199—Chapter 45, but which nonetheless agrees to use the standard forms, procedures, and standard interconnection agreements of 199—Chapter 45 for small wind energy systems in its service territory within the political subdivision; or
 - (3) A utility that is not subject to the provisions of 199—Chapter 45 and has not adopted them.

NOTE: Electric utilities shall provide political subdivisions the documentation required in paragraph 15.22(2)“f.”

15.22(3) Motion for modification of a model interconnection agreement in a small wind innovation zone. An electric utility that uses the standard interconnection agreements in 199—Chapter 45 and the owner of a small wind energy system in a small wind innovation zone may jointly seek to modify their version of the model interconnection agreement by jointly filing a motion for board approval. The motion must include the following information:

- a. The name, location, and description of the political subdivision designated as a small wind innovation zone;
- b. The interconnecting electric utility;
- c. Information regarding the owner of the small wind energy system, including legal name, address, telephone number, and, as applicable, facsimile transmission number and electronic mail address;
- d. Description of the small wind energy system, including location and nameplate generating capacity;
- e. A copy of the modified interconnection agreement clearly identifying the proposed modifications;
- f. A description of the reasons and circumstances that require the modifications; and
- g. Signed statements from the electric utility and the owner of the small wind energy system attesting that the proposed modifications to the interconnection agreement are mutually agreeable.

15.22(4) Annual reporting requirement. A current listing of small wind innovation zones shall be maintained on the board’s Web site at www.state.ia.us/iub. Beginning April 1, 2011, each electric utility that has one or more small wind innovation zones in its service territory shall file an annual report for the previous calendar year listing the nameplate kW capacity of each small wind energy system that was interconnected (or previously interconnected) with the utility and produced electricity in each of the

small wind innovation zones served by the utility. The information shall be provided in the following format:

Small Wind Innovation Zone	Customer Name	Nameplate kW Capacity
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[ARC 8949B, IAB 7/28/10, effective 9/1/10]

These rules are intended to implement Iowa Code sections 476.1, 476.8, 476.41 to 476.45, and 546.7, Section 210 of the Public Utility Regulatory Policies Act of 1978, and 18 CFR Part 292.

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CHAPTER 33
SPECIAL REGULATIONS AND CONSTRUCTION PERMIT REQUIREMENTS
FOR MAJOR STATIONARY SOURCES—PREVENTION OF SIGNIFICANT
DETERIORATION (PSD) OF AIR QUALITY

567—33.1(455B) Purpose. This chapter implements the major New Source Review (NSR) program contained in Part C of Title I of the federal Clean Air Act as amended on November 15, 1990, and as promulgated under 40 CFR 51.166 and 52.21 as amended through July 20, 2011. This is a preconstruction review and permitting program applicable to new or modified major stationary sources of air pollutants regulated under Part C of the Clean Air Act as amended on November 15, 1990. In areas that do not meet the national ambient air quality standards (NAAQS), the nonattainment NSR program applies. The requirements for the nonattainment NSR program are set forth in 567—22.5(455B) and 567—22.6(455B). In areas that meet the NAAQS, the PSD program applies. Collectively, the nonattainment NSR and PSD programs are referred to as the major NSR program.

Rule 567—33.2(455B) is reserved.

Rule 567—33.3(455B) sets forth the definitions, standards and permitting requirements that are specific to the PSD program.

Rules 567—33.4(455B) through 567—33.8(455B) are reserved.

Rule 567—33.9(455B) includes the conditions under which a source subject to PSD may obtain a plantwide applicability limitation (PAL) on emissions.

In addition to the requirements in this chapter, stationary sources may also be subject to the permitting requirements in 567—Chapter 22, including requirements for Title V operating permits.
[ARC 9906B, IAB 12/14/11, effective 11/16/11]

567—33.2(455B) Reserved.

567—33.3(455B) Special construction permit requirements for major stationary sources in areas designated attainment or unclassified (PSD).

33.3(1) Definitions. Definitions included in this subrule apply to the provisions set forth in this rule (PSD program requirements). For purposes of this rule, the definitions herein shall apply, rather than the definitions contained in 40 CFR 52.21 and 51.166, except for the PAL program definitions referenced in rule 567—33.9(455B). For purposes of this rule, the following terms shall have the meanings indicated in this subrule:

“*Act*” means the Clean Air Act, 42 U.S.C. Sections 7401, et seq., as amended through November 15, 1990.

“*Actual emissions*” means:

1. The actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with paragraphs “2” through “4,” except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under rule 567—33.9(455B). Instead, the requirements specified under the definitions for “projected actual emissions” and “baseline actual emissions” shall apply for those purposes.

2. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit’s actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

3. The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

4. For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

“*Administrator*” means the administrator for the United States Environmental Protection Agency (EPA) or designee.

“*Allowable emissions*” means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits or enforceable permit conditions which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

1. The applicable standards as set forth in 567—subrules 23.1(2) through 23.1(5) (new source performance standards, emissions standards for hazardous air pollutants, and federal emissions guidelines) or an applicable federal standard not adopted by the state, as set forth in 40 CFR Parts 60, 61 and 63;

2. The applicable state implementation plan (SIP) emissions limitation, including those with a future compliance date; or

3. The emissions rate specified as an enforceable permit condition, including those with a future compliance date.

“*Baseline actual emissions*,” for the purposes of this chapter, means the rate of emissions, in tons per year, of a regulated NSR pollutant, as “regulated NSR pollutant” is defined in this subrule, and as determined in accordance with paragraphs “1” through “4.”

1. For any existing electric utility steam generating unit, “baseline actual emissions” means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the five-year period immediately preceding the date on which the owner or operator begins actual construction of the project. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

- (a) The average rate shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions.

- (b) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emissions limitation that was legally enforceable during the consecutive 24-month period.

- (c) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period may be used for each regulated NSR pollutant.

- (d) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraph “1”(b) of this definition.

2. For an existing emissions unit, other than an electric utility steam generating unit, “baseline actual emissions” means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the ten-year period immediately preceding either the date on which the owner or operator begins actual construction of the project, or the date on which a complete permit application is received by the department for a permit required either under this chapter or under a SIP approved by the Administrator, whichever is earlier, except that the ten-year period shall not include any period earlier than November 15, 1990.

- (a) The average rate shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions.

- (b) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emissions limitation that was legally enforceable during the consecutive 24-month period.

- (c) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emissions limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emissions limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under 40 CFR Part 63, the baseline

actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G) as amended through November 29, 2005.

(d) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period may be used for each regulated NSR pollutant.

(e) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraphs “2”(b) and “2”(c) of this definition.

3. For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit’s potential to emit.

4. For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in paragraph “1”; for other existing emissions units in accordance with the procedures contained in paragraph “2”; and for a new emissions unit in accordance with the procedures contained in paragraph “3.”

“Baseline area” means:

1. Any intrastate area (and every part thereof) designated as attainment or unclassifiable under Section 107(d)(1)(A)(ii) or (iii) of the Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact for the pollutant for which the baseline date is established, as follows: equal to or greater than 1 $\mu\text{g}/\text{m}^3$ (annual average) for sulfur dioxide (SO_2), nitrogen dioxide (NO_2) or PM_{10} ; or equal to or greater than 0.3 $\mu\text{g}/\text{m}^3$ (annual average) for $\text{PM}_{2.5}$.

2. Area redesignations under Section 107(d)(1)(A)(ii) or (iii) of the Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification which establishes a minor source baseline date or is subject to regulations specified in this rule, in 40 CFR 52.21 (PSD requirements), or in department rules approved by EPA under 40 CFR Part 51, Subpart I, and would be constructed in the same state as the state proposing the redesignation.

3. Any baseline area established originally for the total suspended particulate increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that such baseline area shall not remain in effect if the permitting authority rescinds the corresponding minor source baseline date in accordance with the definition of “baseline date” specified in this subrule.

“Baseline concentration” means:

1. The ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(a) The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in paragraph “2” of this definition;

(b) The allowable emissions of major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

2. The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(a) Actual emissions from any major stationary source on which construction commenced after the major source baseline date; and

(b) Actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

“Baseline date” means:

1. Either “major source baseline date” or “minor source baseline date” as follows:

(a) The “major source baseline date” means, in the case of PM_{10} and sulfur dioxide, January 6, 1975; in the case of nitrogen dioxide, February 8, 1988; and in the case of $\text{PM}_{2.5}$, October 20, 2010.

(b) The “minor source baseline date” means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21 as amended through October 20, 2010, or subject to this rule (PSD program requirements), or subject to a department rule approved by EPA under 40 CFR Part 51, Subpart I, submits a complete application under the relevant regulations. The trigger date for PM₁₀ and sulfur dioxide is August 7, 1977. For nitrogen dioxide, the trigger date is February 8, 1988. For PM_{2.5}, the trigger date is October 20, 2011.

2. The “baseline date” is established for each pollutant for which increments or other equivalent measures have been established if:

(a) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under Section 107(d)(1)(A)(ii) or (iii) of the Act for the pollutant on the date of its complete application under 40 CFR 52.21 as amended through October 20, 2010, or under regulations specified in this rule (PSD program requirements); and

(b) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or in the case of a major modification, there would be a significant net emissions increase of the pollutant.

Any minor source baseline date established originally for the total suspended particulate increments shall remain in effect and shall apply for purposes of determining the amount of available PM₁₀ increments, except that the reviewing authority may rescind any such minor source baseline date where it can be shown, to the satisfaction of the reviewing authority, that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM₁₀ emissions.

“*Begin actual construction*” means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities, other than preparatory activities, which mark the initiation of the change.

“*Best available control technology*” or “*BACT*” means an emissions limitation, including a visible emissions standard, based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the reviewing authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combination techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 567—subrules 23.1(2) through 23.1(5) (standards for new stationary sources, federal standards for hazardous air pollutants, and federal emissions guidelines), or federal regulations as set forth in 40 CFR Parts 60, 61 and 63 but not yet adopted by the state. If the department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation and shall provide for compliance by means which achieve equivalent results.

“*Building, structure, facility, or installation*” means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

“*CFR*” means the Code of Federal Regulations, with standard references in this chapter by title and part, so that “40 CFR 51” or “40 CFR Part 51” means “Title 40 Code of Federal Regulations, Part 51.”

“*Clean coal technology*” means any technology, including technologies applied at the precombustion, combustion, or postcombustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

“*Clean coal technology demonstration project*” means a project using funds appropriated under the heading “Department of Energy—Clean Coal Technology,” up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

“*Commence*,” as applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has:

1. Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or
2. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

“*Complete*” means, in reference to an application for a permit, that the application contains all the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the department from requesting or accepting any additional information.

“*Construction*” means any physical change or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emissions unit, that would result in a change in emissions.

“*Continuous emissions monitoring system*” or “*CEMS*” means all of the equipment that may be required to meet the data acquisition and availability requirements of this chapter, to sample, to condition (if applicable), to analyze, and to provide a record of emissions on a continuous basis.

“*Continuous emissions rate monitoring system*” or “*CERMS*” means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

“*Continuous parameter monitoring system*” or “*CPMS*” means all of the equipment necessary to meet the data acquisition and availability requirements of this chapter, to monitor the process device operational parameters and the control device operational parameters (e.g., control device secondary voltages and electric currents) and other information (e.g., gas flow rate, O₂ or CO₂ concentrations), and to record the average operational parameter value(s) on a continuous basis.

“*Electric utility steam generating unit*” means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

“*Emissions unit*” means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric utility steam generating unit. For purposes of this chapter, there are two types of emissions units:

1. A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than two years from the date such emissions unit first operated.
2. An existing emissions unit is any emissions unit that does not meet the requirements in “1” above. A replacement unit is an existing emissions unit.

“*Enforceable permit condition*,” for the purpose of this chapter, means any of the following limitations and conditions: requirements developed pursuant to new source performance standards, prevention of significant deterioration standards, emissions standards for hazardous air pollutants, requirements within the SIP, and any permit requirements established pursuant to this chapter, any

permit requirements established pursuant to 40 CFR 52.21 or Part 51, Subpart I, as amended through October 20, 2010, or under conditional, construction or Title V operating permit rules.

"Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

"Federally enforceable" means all limitations and conditions which are enforceable by the Administrator and the department, including those federal requirements not yet adopted by the state, developed pursuant to 40 CFR Parts 60, 61 and 63; requirements within 567—subrules 23.1(2) through 23.1(5); requirements within the SIP; any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, as amended through October 20, 2010, including operating permits issued under an EPA-approved program, that are incorporated into the SIP and expressly require adherence to any permit issued under such program.

"Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"High terrain" means any area having an elevation 900 feet or more above the base of the stack of a source.

"Indian governing body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

"Indian reservation" means any federally recognized reservation established by treaty, agreement, executive order, or Act of Congress.

"Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or non-air quality environmental impacts.

"Lowest achievable emissions rate" or *"LAER"* means, for any source, the more stringent rate of emissions based on the following:

1. The most stringent emissions limitation which is contained in the SIP for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

2. The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source. In no event shall the application of the term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

"Low terrain" means any area other than high terrain.

"Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase of a regulated NSR pollutant and a significant net emissions increase of that pollutant from the major stationary source.

1. Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds or NO_x shall be considered significant for ozone.

2. A physical change or change in the method of operation shall not include:

- (a) Routine maintenance, repair and replacement
- (b) Use of an alternative fuel or raw material by reason of any order under Section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

- (c) Use of an alternative fuel by reason of an order or rule under Section 125 of the Act;

- (d) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

- (e) Use of an alternative fuel or raw material by a stationary source that the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally

enforceable permit condition, or that the source is approved to use under any federally enforceable permit condition;

(f) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975;

(g) Any change in ownership at a stationary source;

(h) Reserved.

(i) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with the requirements within the SIP; and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after the project is terminated;

(j) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis;

(k) The reactivation of a very clean coal-fired electric utility steam generating unit.

3. This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under rule 567—33.9(455B) for a PAL for that pollutant. Instead, the definition under rule 567—33.9(455B) shall apply.

“Major source baseline date” is defined under the definition of “baseline date.”

“Major stationary source” means:

(1) (a) Any one of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant:

- Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

- Coal cleaning plants (with thermal dryers);

- Kraft pulp mills;

- Portland cement plants;

- Primary zinc smelters;

- Iron and steel mill plants;

- Primary aluminum ore reduction plants;

- Primary copper smelters;

- Municipal incinerators capable of charging more than 250 tons of refuse per day;

- Hydrofluoric, sulfuric, and nitric acid plants;

- Petroleum refineries;

- Lime plants;

- Phosphate rock processing plants;

- Coke oven batteries;

- Sulfur recovery plants;

- Carbon black plants (furnace process);

- Primary lead smelters;

- Fuel conversion plants;

- Sintering plants;

- Secondary metal production plants;

- Chemical process plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS code 325193 or 312140);

- Fossil-fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input;

- Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

- Taconite ore processing plants;

- Glass fiber processing plants; and

- Charcoal production plants.

(b) Notwithstanding the stationary source size specified in paragraph “1”(a), any stationary source which emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant; or

(c) Any physical change that would occur at a stationary source not otherwise qualifying under this definition as a major stationary source if the change would constitute a major stationary source by itself.

(2) A major source that is major for volatile organic compounds or NO_x shall be considered major for ozone.

(3) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this rule whether it is a major stationary source, unless the source belongs to one of the categories of stationary sources listed in paragraph "1"(a) of this definition or to any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Act.

"Minor source baseline date" is defined under the definition of "baseline date."

"Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the SIP.

"Net emissions increase" means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the following exceeds zero:

- The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated according to the applicability requirements under subrule 33.3(2); and

- Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this definition of "net emissions increase" shall be determined as provided for under the definition of "baseline actual emissions," except that paragraphs "1"(c) and "2"(d) of the definition of "baseline actual emissions," which describe provisions for multiple emissions units, shall not apply.

1. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if the increase or decrease in actual emissions occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs.

2. An increase or decrease in actual emissions is creditable only if:

- (a) The increase or decrease in actual emissions occurs within the contemporaneous time period, as noted in paragraph "1" of this definition; and

- (b) The department has not relied on the increase or decrease in actual emissions in issuing a permit for the source under this rule, which permit is in effect when the increase in actual emissions from the particular change occurs.

3. An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if the increase or decrease in actual emissions is required to be considered in calculating the amount of maximum allowable increases remaining available.

4. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

5. A decrease in actual emissions is creditable only to the extent that:

- (a) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

- (b) The decrease in actual emissions is enforceable as a practical matter at and after the time that actual construction on the particular change begins; and

- (c) The decrease in actual emissions has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

6. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

7. The definition of "actual emissions," paragraph "2," shall not apply for determining creditable increases and decreases.

“*Nonattainment area*” means an area so designated by the Administrator, acting pursuant to Section 107 of the Act.

“*Permitting authority*” means the Iowa department of natural resources or the director thereof.

“*Pollution prevention*” means any activity that, through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal. “Pollution prevention” does not mean recycling (other than certain “in-process recycling” practices), energy recovery, treatment, or disposal.

“*Potential to emit*” means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

“*Predictive emissions monitoring system*” or “*PEMS*” means all of the equipment necessary to monitor the process device operational parameters and the control device operational parameters (e.g., control device secondary voltages and electric currents) and other information (e.g., gas flow rate, O₂ or CO₂ concentrations), and calculate and record the mass emissions rate (e.g., lb/hr) on a continuous basis.

“*Prevention of significant deterioration (PSD) program*” means a major source preconstruction permit program that has been approved by the Administrator and incorporated into the SIP or means the program in 40 CFR 52.21. Any permit issued under such a program is a major NSR permit.

“*Project*” means a physical change in, or change in method of operation of, an existing major stationary source.

“*Projected actual emissions,*” for the purposes of this chapter, means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (12-month period) beginning on the first day of the month following the date when the unit resumes regular operation after the project, or in any one of the ten years following that date, if the project involves increasing the emissions unit’s design capacity or its potential to emit that regulated NSR pollutant, and full utilization of the unit would result in a significant emissions increase, or a significant net emissions increase at the major stationary source. For purposes of this definition, “regular” shall be determined by the department on a case-by-case basis.

In determining the projected actual emissions before beginning actual construction, the owner or operator of the major stationary source:

1. Shall consider all relevant information including, but not limited to, historical operational data, the company’s own representations, the company’s expected business activity and the company’s highest projections of business activity, the company’s filings with the state or federal regulatory authorities, and compliance plans under the approved plan; and

2. Shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions; and

3. Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit’s emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

4. In lieu of using the method set out in paragraphs “1” through “3,” may elect to use the emissions unit’s potential to emit, in tons per year.

“*Reactivation of a very clean coal-fired electric utility steam generating unit*” means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation in which the unit:

1. Has not been in operation for the two-year period prior to the enactment of the Act, and the emissions from such unit continue to be carried in the permitting authority’s emissions inventory at the time of the enactment;

2. Was equipped prior to shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

3. Is equipped with low-NO_x burners prior to the time of commencement of operations following reactivation; and

4. Is otherwise in compliance with the requirements of the Act.

“Regulated NSR pollutant” means the following:

1. Any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the Administrator:

(a) Volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas;

(b) Sulfur dioxide is a precursor to PM_{2.5} in all attainment and unclassifiable areas;

(c) Nitrogen oxides are presumed to be precursors to PM_{2.5} in all attainment and unclassifiable areas, unless the department demonstrates to EPA’s satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to the area’s ambient PM_{2.5} concentrations;

(d) Volatile organic compounds are presumed not to be precursors to PM_{2.5} in any attainment and unclassifiable areas, unless the department demonstrates to EPA’s satisfaction or EPA demonstrates that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area’s ambient PM_{2.5} concentrations;

2. Any pollutant that is subject to any standard promulgated under Section 111 of the Act;

3. Any Class I or Class II substance subject to a standard promulgated under or established by Title VI of the Act; or

4. Any pollutant that otherwise is subject to regulation under the Act as defined in 33.3(1), definition of “subject to regulation.”

5. Notwithstanding paragraphs “1” through “4,” the definition of “regulated NSR pollutant” shall not include any or all hazardous air pollutants that are either listed in Section 112 of the Act or added to the list pursuant to Section 112(b)(2) of the Act and that have not been delisted pursuant to Section 112(b)(3) of the Act, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under Section 108 of the Act.

6. Particulate matter (PM) emissions, PM_{2.5} emissions and PM₁₀ emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures.

“Replacement unit” means an emissions unit for which all the criteria listed in paragraphs “1” through “4” of this definition are met. No creditable emissions reductions shall be generated from shutting down the existing emissions unit that is replaced.

1. The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1) as amended through December 16, 1975, or the emissions unit completely takes the place of an existing emissions unit.

2. The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

3. The replacement does not change the basic design parameter(s) of the process unit.

4. The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

“Repowering” means:

1. Replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion; integrated gasification combined cycle; magnetohydrodynamics; direct and indirect coal-fired turbines; integrated gasification fuel cells; or, as determined by the Administrator in consultation with the Secretary of Energy, a derivative of one or more of these technologies; and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater

waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

2. Repowering shall also include any oil or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

3. The department shall give expedited consideration to permit applications for any source that satisfies the requirements of this definition and is granted an extension under Section 409 of the Act.

“*Reviewing authority*” means the department, or the Administrator in the case of EPA-implemented permit programs under 40 CFR 52.21.

“*Secondary emissions*” means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purposes of this chapter, “secondary emissions” must be specific, well-defined, and quantifiable, and must impact the same general areas as the stationary source modification which causes the secondary emissions. “Secondary emissions” includes emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. “Secondary emissions” does not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

“*Significant*” means:

1. In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

- Carbon monoxide: 100 tons per year (tpy)
- Nitrogen oxides: 40 tpy
- Sulfur dioxide: 40 tpy
- Particulate matter: 25 tpy of particulate matter emissions
- PM₁₀: 15 tpy
- PM_{2.5}: 10 tpy of direct PM_{2.5} emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions (unless the department demonstrates to EPA’s satisfaction that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to the area’s ambient PM_{2.5} concentrations)
- Ozone: 40 tpy of volatile organic compounds or NO_x
- Lead: 0.6 tpy
- Fluorides: 3 tpy
- Sulfuric acid mist: 7 tpy
- Hydrogen sulfide (H₂S): 10 tpy
- Total reduced sulfur (including H₂S): 10 tpy
- Reduced sulfur compounds (including H₂S): 10 tpy
- Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): 3.2×10^{-6} megagrams per year (3.5×10^{-6} tons per year)
- Municipal waste combustor metals (measured as particulate matter): 14 megagrams per year (15 tons per year)
- Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): 36 megagrams per year (40 tons per year)
- Municipal solid waste landfill emissions (measured as nonmethane organic compounds): 45 megagrams per year (50 tons per year)

2. “Significant” means, for purposes of this rule and in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant not listed in paragraph “1,” any emissions rate.

3. Notwithstanding paragraph “1,” “significant,” for purposes of this rule, means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within ten kilometers of a Class I area and have an impact on such area equal to or greater than 1 µg/m³ (24-hour average).

“*Significant emissions increase*” means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

“*State implementation plan*” or “*SIP*” means the plan adopted by the state of Iowa and approved by the Administrator which provides for implementation, maintenance, and enforcement of such primary and secondary ambient air quality standards as they are adopted by the Administrator, pursuant to the Act.

“*Stationary source*” means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.

“*Subject to regulation*” means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally applicable regulation codified by the Administrator in 40 CFR Subchapter C (Air Programs) that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity, except that:

1. Greenhouse gases (GHGs), the air pollutant defined in 40 CFR §86.1818-12(a) (as amended through September 15, 2011) as the aggregate group of six greenhouse gases that includes carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation except as provided in paragraphs “4” and “5,” and shall not be subject to regulation if the stationary source maintains its total sourcewide emissions below the GHG PAL level, meets the requirements in rule 567—33.9(455B), and complies with the PAL permit containing the GHG PAL.

2. For purposes of paragraphs “3,” “4,” and “5,” the term “tpy CO₂ equivalent emissions (CO₂e)” shall represent an amount of GHGs emitted and shall be computed as follows:

(a) Multiply the mass amount of emissions (tpy) for each of the six greenhouse gases in the pollutant GHGs by the associated global warming potential of the gas published at 40 CFR Part 98, Subpart A, Table A-1, “Global Warming Potentials,” (as amended on October 30, 2009). For purposes of this definition, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).

(b) Sum the resultant value from paragraph (a) for each gas to compute a tpy CO₂e.

3. The term “emissions increase,” as used in this paragraph and in paragraphs “4” and “5,” shall mean that both a significant emissions increase (as calculated using the procedures specified in 33.3(2) “c” through 33.3(2) “h”) and a significant net emissions increase (as specified in 33.3(1), in the definitions of “net emissions increase” and “significant”) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO₂e and shall be calculated assuming the pollutant GHGs are a regulated NSR pollutant, and “significant” is defined as 75,000 tpy CO₂e rather than calculated by applying the value specified in 33.3(1), in paragraph “2” of the definition of “significant.”

4. Beginning January 2, 2011, the pollutant GHGs are subject to regulation if:

(a) The stationary source is a new major stationary source for a regulated NSR pollutant that is not a GHG, and also will emit or will have the potential to emit 75,000 tpy CO₂e or more, or

(b) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not a GHG, and also will have an emissions increase of a regulated NSR pollutant and an emissions increase of 75,000 tpy CO₂e or more; and

5. Beginning July 1, 2011, in addition to the provisions in paragraph “4,” the pollutant GHGs shall also be subject to regulation:

(a) At a new stationary source that will emit or have the potential to emit 100,000 tpy CO₂e, or

(b) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO₂e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO₂e or more.

“*Temporary clean coal technology demonstration project*” means a clean coal technology demonstration project that is operated for a period of five years or less and that complies with the SIP and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after the project is terminated.

“*Title V permit*” means an operating permit under Title V of the Act.

“*Volatile organic compounds*” or “*VOC*” means any compound included in the definition of “volatile organic compounds” found at 40 CFR 51.100(s) as amended through January 21, 2009.

33.3(2) Applicability. The requirements of this rule (PSD program requirements) apply to the construction of any new “major stationary source” as defined in subrule 33.3(1) or any project at an existing major stationary source in an area designated as attainment or unclassifiable under Section 107(d)(1)(A)(ii) or (iii) of the Act. In addition to the provisions set forth in rules 567—33.3(455B) through 567—33.9(455B), the provisions of 40 CFR Part 51, Appendix W (Guideline on Air Quality Models) as amended through November 9, 2005, are adopted by reference.

a. The requirements of subrules 33.3(10) through 33.3(18) apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this rule (PSD program requirements) otherwise provides.

b. No new major stationary source or major modification to which the requirements of subrule 33.3(10) through paragraph 33.3(18) “*e*” apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements.

c. Except as otherwise provided in paragraphs 33.3(2) “*i*” and “*j*,” and consistent with the definition of “major modification” contained in subrule 33.3(1), a project is a major modification for a “regulated NSR pollutant” if it causes two types of emissions increases: a “significant emissions increase”; and a “net emissions increase” which is “significant.” The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

d. The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to paragraphs “*e*” through “*h*” of this subrule. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition of “net emissions increase.” Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

e. Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the “projected actual emissions” and the “baseline actual emissions” for each existing emissions unit equals or exceeds the significant amount for that pollutant.

f. Actual-to-potential test for projects that involve only construction of a new emissions unit(s). A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the “potential to emit” from each new emissions unit following completion of the project and the “baseline actual emissions” for a new emissions unit before the project equals or exceeds the significant amount for that pollutant.

g. Reserved.

h. Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in paragraphs “*e*” through “*g*” of this subrule, as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant.

i. For any major stationary source with a PAL for a regulated NSR pollutant, the major stationary source shall comply with rule requirements under 567—33.9(455B).

j. Reserved.

33.3(3) Ambient air increments. The provisions for ambient air increments as specified in 40 CFR 52.21(c) as amended through October 20, 2010, are adopted by reference.

33.3(4) *Ambient air ceilings.* The provisions for ambient air ceilings as specified in 40 CFR 52.21(d) as amended through November 29, 2005, are adopted by reference.

33.3(5) *Restrictions on area classifications.* The provisions for restrictions on area classifications as specified in 40 CFR 52.21(e) as amended through November 29, 2005, are adopted by reference.

33.3(6) *Exclusions from increment consumption.* The provisions by which the SIP may provide for exclusions from increment consumption as specified in 40 CFR 51.166(f) as amended through November 29, 2005, are adopted by reference. The following phrases contained in 40 CFR 51.166(f) are not adopted by reference: “the plan may provide that,” “the plan provides that,” and “it shall also provide that.” Additionally, the term “the plan” shall mean “SIP.”

33.3(7) *Redesignation.* The provisions for redesignation as specified in 40 CFR 52.21(g) as amended through November 29, 2005, are adopted by reference.

33.3(8) *Stack heights.* The provisions for stack heights as specified in 40 CFR 52.21(h) as amended through November 29, 2005, are adopted by reference.

33.3(9) *Exemptions.* The provisions for allowing exemptions from certain requirements for PSD-subject sources as specified in 40 CFR 52.21(i) as amended through October 20, 2010, are adopted by reference.

33.3(10) *Control technology review.* The provisions for control technology review as specified in 40 CFR 52.21(j) as amended through November 29, 2005, are adopted by reference.

33.3(11) *Source impact analysis.* The provisions for a source impact analysis as specified in 40 CFR 52.21(k) as amended through October 20, 2010, are adopted by reference.

33.3(12) *Air quality models.* The provisions for air quality models as specified in 40 CFR 52.21(l) as amended through November 29, 2005, are adopted by reference.

33.3(13) *Air quality analysis.* The provisions for an air quality analysis as specified in 40 CFR 52.21(m) as amended through November 29, 2005, are adopted by reference.

33.3(14) *Source information.* The provisions for providing source information as specified in 40 CFR 52.21(n) as amended through November 29, 2005, are adopted by reference.

33.3(15) *Additional impact analyses.* The provisions for an additional impact analysis as specified in 40 CFR 52.21(o) as amended through November 29, 2005, are adopted by reference.

33.3(16) *Sources impacting federal Class I areas—additional requirements.* The provisions for sources impacting federal Class I areas as specified in 40 CFR 51.166(p) as amended through October 20, 2010, are adopted by reference. The following phrases contained in 40 CFR 51.166(p) are not adopted by reference: “the plan may provide that,” “the plan shall provide that,” “the plan shall provide” and “mechanism whereby.”

33.3(17) *Public participation.*

a. The department shall notify all applicants within 30 days as to the completeness of the application or any deficiency in the application or information submitted. In the event of such a deficiency, the date of receipt of the application shall be the date on which the department received all required information.

b. Within one year after receipt of a complete application, the department shall:

(1) Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved.

(2) Make available in at least one location in each region in which the proposed source would be constructed a copy of all materials the applicant submitted, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.

(3) Notify the public, by advertisement in a newspaper of general circulation in each region in which the proposed source would be constructed, of the application, of the preliminary determination, of the degree of increment consumption that is expected from the source or modification, and of the opportunity for comment at a public hearing as well as written public comment. At least 30 days shall be provided for public comment and for notification of any public hearing.

(4) Send a copy of the notice of public comment to the applicant, to the Administrator and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: any other state or local air pollution control agencies; the chief executives of the city and

county where the source would be located; any comprehensive regional land use planning agency; and any state, federal land manager, or Indian governing body whose lands may be affected by emissions from the source or modification.

(5) Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source, alternatives to the proposed source or modification, the control technology required, and other appropriate considerations. At least 30 days' notice shall be provided for any public hearing.

(6) Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. The department shall make all comments available for public inspection at the same locations where the department made available preconstruction information relating to the proposed source or modification.

(7) Make a final determination whether construction should be approved, approved with conditions, or disapproved.

(8) Notify the applicant in writing of the final determination and make such notification available for public inspection at the same locations where the department made available preconstruction information and public comments relating to the proposed source or modification.

c. Reopening of the public comment period.

(1) If comments submitted during the public comment period raise substantial new issues concerning the permit, the department may, at its discretion, take one or more of the following actions:

1. Prepare a new draft permit, appropriately modified;
2. Prepare a revised fact sheet;
3. Prepare a revised fact sheet and reopen the public comment period; or
4. Reopen or extend the public comment period to provide interested persons an opportunity to comment on the comments submitted.

(2) The public notice provided by the department pursuant to this rule shall define the scope of the reopening. Department review of any comments filed during a reopened comment period shall be limited to comments pertaining to the substantial new issues causing the reopening.

33.3(18) Source obligation.

a. Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the plan and any other requirements under local, state or federal law.

b. At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, the requirements of subrules 33.3(10) through 33.3(19) shall apply to the source or modification as though construction had not yet commenced on the source or modification.

c. Any owner or operator who constructs or operates a source or modification not in accordance with the application pursuant to the provisions in rule 567—33.3(455B) or with the terms of any approval to construct, or any owner or operator of a source or modification subject to the provisions in rule 567—33.3(455B) who commences construction after April 15, 1987 (the effective date of Iowa's PSD program), without applying for and receiving department approval, shall be subject to appropriate enforcement action.

d. Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The department may extend the 18-month period upon a satisfactory showing that an extension is justified. These provisions do not apply to the time between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

e. Reserved.

f. Except as otherwise provided in subparagraph (8), the following specific provisions shall apply with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source, other than projects at a source with a PAL, in circumstances where there

is a “reasonable possibility,” within the meaning of subparagraph (8), that a project that is not part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method for calculating projected actual emissions as specified in subrule 33.3(1), paragraphs “1” through “3” of the definition of “projected actual emissions.”

(1) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

1. A description of the project;
2. Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and
3. A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph “3” of the definition of “projected actual emissions” in subrule 33.3(1), an explanation describing why such amount was excluded, and any netting calculations, if applicable.

(2) No less than 30 days before beginning actual construction, the owner or operator shall meet with the department to discuss the owner’s or operator’s determination of projected actual emissions for the project and shall provide to the department a copy of the information specified in paragraph “f.” The owner or operator is not required to obtain a determination from the department regarding the project’s projected actual emissions prior to beginning actual construction.

(3) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in subparagraph (1) to the department. The requirements in subparagraphs (1), (2) and (3) shall not be construed to require the owner or operator of such a unit to obtain any determination from the department before beginning actual construction.

(4) The owner or operator shall:

1. Monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in subparagraph (1);
2. Calculate the annual emissions, in tons per year on a calendar-year basis, for a period of five years following resumption of regular operations and maintain a record of regular operations after the change, or for a period of ten years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit (for purposes of this requirement, “regular” shall be determined by the department on a case-by-case basis); and
3. Maintain a written record containing the information required in this subparagraph.

(5) The written record containing the information required in subparagraph (4) shall be retained by the owner or operator for a period of ten years after the project is completed.

(6) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the department within 60 days after the end of each year during which records must be generated under subparagraph (4) setting out the unit’s annual emissions during the calendar year that preceded submission of the report.

(7) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in subparagraph (1), exceed the baseline actual emissions, as documented and maintained pursuant to subparagraph (4), by an amount that is “significant” as defined in subrule 33.3(1) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to subparagraph (4). Such report shall be submitted to the department within 60 days after the end of such year. The report shall contain the following:

1. The name, address and telephone number of the major stationary source;
2. The annual emissions as calculated pursuant to subparagraph (4); and
3. Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

(8) A “reasonable possibility” under this paragraph (paragraph 33.3(18) “f”) occurs when the owner or operator calculates the project to result in either:

1. A projected actual emissions increase of at least 50 percent of the amount that is a “significant emissions increase,” as defined under subrule 33.3(1) (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

2. A projected actual emissions increase that, when added to the amount of emissions excluded under subrule 33.3(1), paragraph “3” of the definition of “projected actual emissions,” equals at least 50 percent of the amount that is a “significant emissions increase,” as defined under subrule 33.3(1) (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of this numbered paragraph, and not also within the meaning of numbered paragraph “1” of this subparagraph (subparagraph (8)), then the provisions of subparagraphs (3) through (7) do not apply to the project.

g. The owner or operator of the source shall make the information required to be documented and maintained pursuant to paragraph “f” available for review upon request for inspection by the department or the general public pursuant to the requirements for Title V operating permits contained in 567—subrule 22.107(6).

33.3(19) Innovative control technology. The provisions for innovative control technology as specified in 40 CFR 51.166(s) as amended through November 29, 2005, are adopted by reference. The following phrases contained in 40 CFR 51.166(s) are not adopted by reference: “the plan may provide that” and “the plan shall provide that.”

33.3(20) Conditions for permit issuance. Except as explained below, a permit may not be issued to any new “major stationary source” or “major modification” as defined in subrule 33.3(1) that would locate in any area designated as attainment or unclassifiable for any national ambient air quality standard pursuant to Section 107 of the Act, when the source or modification would cause or contribute to a violation of any national ambient air quality standard. A major stationary source or major modification will be considered to cause or contribute to a violation of a national ambient air quality standard when such source or modification would, at a minimum, exceed the following significance levels at any locality that does not or would not meet the applicable national standard:

Significant Impact Levels (SILs)					
	Averaging Time				
	Annual	24 hrs.	8 hrs.	3 hrs.	1 hr.
Pollutant	($\mu\text{g}/\text{m}^3$)	($\mu\text{g}/\text{m}^3$)	($\mu\text{g}/\text{m}^3$)	($\mu\text{g}/\text{m}^3$)	($\mu\text{g}/\text{m}^3$)
SO ₂	1.0	5	—	25	—
PM ₁₀	1.0	5	—	—	—
PM _{2.5}	0.3	1.2	—	—	—
NO ₂	1.0	—	—	—	—
CO	—	—	500	—	2000

A permit may be granted to a major stationary source or major modification as identified above if the major stationary source or major modification reduces the impact of its emissions upon air quality by obtaining sufficient emissions reductions to compensate for its adverse ambient air impact where the major stationary source or major modification would otherwise contribute to a violation of any national ambient air quality standard. This subrule shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that the source is located in an area designated under Section 107 of the Act as nonattainment for that pollutant.

33.3(21) Administrative amendments.

a. Upon request for an administrative amendment, the department may take final action on any such request and may incorporate the requested changes without providing notice to the public or to affected states, provided that the department designates any such permit revisions as having been made pursuant to subrule 33.3(21).

- b.* An administrative amendment is a permit revision that does any of the following:
- (1) Corrects typographical errors;
 - (2) Corrects word processing errors;
 - (3) Identifies a change in name, address or telephone number of any person identified in the permit or provides a similar minor administrative change at the source; or
 - (4) Allows for a change in ownership or operational control of a source where the department determines that no other change in the permit is necessary, provided that a written agreement that contains a specific date for transfer of permit responsibility, coverage, and liability between the current permittee and the new permittee has been submitted to the department.

33.3(22) *Permit rescission.* Any permit issued under 40 CFR 52.21 or this chapter or any permit issued under rule 567—22.4(455B) shall remain in effect unless and until it is rescinded. The department will consider requests for rescission that meet the conditions specified under paragraphs “*a*” and “*b*” of this subrule. If the department rescinds a permit or a condition in a permit issued under 40 CFR 52.21, this chapter, or rule 567—22.4(455B), the public shall be given adequate notice of the proposed rescission. Publication of an announcement of rescission in a newspaper of general circulation in the affected region 60 days prior to the proposed date for rescission shall be considered adequate notice.

a. The department may rescind a permit or a portion of a permit upon request from an owner or operator of a stationary source who holds a permit for a source or modification that was issued under 40 CFR 52.21 as in effect on July 30, 1987, or earlier, provided the application also meets the provisions in paragraph “*b*” of this subrule.

b. If the application for rescission meets the provisions in paragraph “*a*” of this subrule, the department may rescind a permit if the owner or operator shows that the PSD provisions under 40 CFR 52.21 would not apply to the source or modification.

[ARC 8215B, IAB 10/7/09, effective 11/11/09; ARC 9224B, IAB 11/17/10, effective 12/22/10; ARC 9906B, IAB 12/14/11, effective 11/16/11; ARC 0260C, IAB 8/8/12, effective 9/12/12; ARC 0783C, IAB 6/12/13, effective 7/17/13]

567—33.4 to 33.8 Reserved.

567—33.9(455B) Plantwide applicability limitations (PALs). This rule provides an existing major source the option of establishing a plantwide applicability limitation (PAL) on emissions, provided the conditions in this rule are met. The provisions for a PAL as set forth in 40 CFR 52.21(aa) as amended through July 12, 2012, are adopted by reference, except that the term “Administrator” shall mean “the department of natural resources.”

[ARC 0783C, IAB 6/12/13, effective 7/17/13]

567—33.10(455B) Exceptions to adoption by reference. All references to Clean Units and Pollution Control Projects set forth in 40 CFR Sections 52.21 and 51.166 are not adopted by reference.

These rules are intended to implement Iowa Code chapter 455B.

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[Filed ARC 0783C (Notice ARC 0648C, IAB 3/20/13), IAB 6/12/13, effective 7/17/13]

BEHAVIORAL SCIENTISTS

CHAPTER 31	LICENSURE OF MARITAL AND FAMILY THERAPISTS AND MENTAL HEALTH COUNSELORS
CHAPTER 32	CONTINUING EDUCATION FOR MARITAL AND FAMILY THERAPISTS AND MENTAL HEALTH COUNSELORS
CHAPTER 33	DISCIPLINE FOR MARITAL AND FAMILY THERAPISTS AND MENTAL HEALTH COUNSELORS

CHAPTER 31
LICENSURE OF MARITAL AND FAMILY THERAPISTS
AND MENTAL HEALTH COUNSELORS

[Prior to 1/30/02, see 645—Chapter 30]

645—31.1(154D) Definitions. For purposes of these rules, the following definitions shall apply:

“*ACA*” means the American Counseling Association.

“*Active license*” means a license that is current and has not expired.

“*AMFTRB*” means the Association of Marital and Family Therapy Regulatory Boards.

“*Board*” means the board of behavioral science.

“*CCE*” means the Center for Credentialing and Education, Inc.

“*Course*” means three graduate semester credit hours.

“*CRCC*” means the Commission on Rehabilitation Counselor Certification.

“*Department*” means the department of public health.

“*Grace period*” means the 30-day period following expiration of a license when the license is still considered to be active. In order to renew a license during the grace period, a licensee is required to pay a late fee.

“*Inactive license*” means a license that has expired because it was not renewed by the end of the grace period. The category of “inactive license” may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

“*Licensee*” means any person licensed to practice as a marital and family therapist or mental health counselor in the state of Iowa.

“*License expiration date*” means September 30 of even-numbered years.

“*Licensure by endorsement*” means the issuance of an Iowa license to practice mental health counseling or marital and family therapy to an applicant who is or has been licensed in another state.

“*Mandatory training*” means training on identifying and reporting child abuse or dependent adult abuse required of marital and family therapists and mental health counselors who are mandatory reporters. The full requirements on mandatory reporting of child abuse and the training requirements are found in Iowa Code section 232.69. The full requirements on mandatory reporting of dependent adult abuse and the training requirements are found in Iowa Code section 235B.16.

“*Mental health setting*” means a behavioral health setting where an applicant is providing mental health services including the diagnosis, treatment, and assessment of emotional and mental health disorders and issues.

“*NBCC*” means the National Board for Certified Counselors.

“*Reactivate*” or “*reactivation*” means the process as outlined in rule 645—31.16(17A,147,272C) by which an inactive license is restored to active status.

“*Reciprocal license*” means the issuance of an Iowa license to practice mental health counseling or marital and family therapy to an applicant who is currently licensed in another state which has a mutual agreement with the Iowa board of behavioral science to license persons who have the same or similar qualifications to those required in Iowa.

“*Reinstatement*” means the process as outlined in 645—11.31(272C) by which a licensee who has had a license suspended or revoked or who has voluntarily surrendered a license may apply to have the license reinstated, with or without conditions. Once the license is reinstated, the licensee may apply for active status.

“Temporary license” means a license to practice marital and family therapy or mental health counseling under direct supervision of a qualified supervisor as determined by the board by rule to fulfill the postgraduate supervised clinical experience requirement in accordance with this chapter.
[ARC 9547B, IAB 6/1/11, effective 7/6/11]

645—31.2(154D) Requirements for permanent and temporary licensure. The following criteria shall apply to licensure:

31.2(1) The applicant shall complete a board-approved application. Application forms may be obtained from the board’s Web site (<http://www.idph.state.ia.us/licensure>) or directly from the board office. All applications shall be sent to the Board of Behavioral Science, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

31.2(2) The applicant shall complete the application form according to the instructions contained in the application. If the application is not completed according to the instructions, the application will not be reviewed by the board.

31.2(3) Each application shall be accompanied by the appropriate fees payable to the Board of Behavioral Science. The fees are nonrefundable.

31.2(4) No application will be considered by the board until official copies of academic transcripts sent directly from the school to the board of behavioral science have been received by the board or an equivalency evaluation completed by the Center for Credentialing and Education, Inc. (CCE) has been received by the board. The applicant shall present proof of meeting the educational requirements. Documentation of such proof shall be on file in the board office with the application and include one of the following:

a. For licensure as a marital and family therapist, an official transcript verifying completion of a marital and family therapy program accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) as defined in subrule 31.4(1) or an equivalency evaluation of the applicant's educational credentials completed by CCE as defined in subrule 31.4(2).

b. For licensure as a mental health counselor, an official transcript verifying completion of a mental health counseling program accredited by the Council on Accreditation of Counseling and Related Educational Programs (CACREP) as defined in subrule 31.6(1) or an equivalency evaluation of the applicant's educational credentials completed by CCE as defined in subrule 31.6(2).

31.2(5) The candidate for permanent licensure shall have the examination score sent directly from the testing service to the board. If the candidate for temporary licensure has not completed the examination prior to issuance of a temporary license, the candidate must successfully complete the examination before the temporary license expires.

31.2(6) The candidate for permanent licensure shall submit the required attestation of supervision forms documenting clinical experience as required in rule 645—31.5(154D) for marital and family therapy and rule 645—31.7(154D) for mental health counseling.

31.2(7) The candidate for temporary licensure for the purpose of fulfilling the postgraduate supervised clinical experience requirement must submit the Supervised Clinical Experience: Approval and Attestation form to the board and receive approval of the candidate's supervisor(s) prior to licensure. The temporary licensee must notify the board immediately in writing of any proposed change in supervisor(s) and obtain approval of any change in supervisor(s). Within 30 days of completion of the supervised clinical experience, the attestation of the completed supervised experience must be submitted to the board office.

31.2(8) A temporary license for the purpose of fulfilling the postgraduate supervised clinical experience requirement is valid for three years and may be renewed at the discretion of the board.

31.2(9) A licensee who was issued an initial permanent license within six months prior to the renewal shall not be required to renew the license until the renewal date two years later.

31.2(10) Submitting complete application materials. An application for a temporary or permanent license will be considered active for two years from the date the application is received. If the applicant does not submit all materials within this time period or if the applicant does not meet the requirements for the license, the application shall be considered incomplete. An applicant whose application is filed

incomplete must submit a new application, supporting materials, and the application fee. The board shall destroy incomplete applications after two years.

[ARC 8152B, IAB 9/23/09, effective 10/28/09; ARC 0777C, IAB 6/12/13, effective 7/17/13]

645—31.3(154D) Examination requirements. The following criteria shall apply to the written examination(s):

31.3(1) In order to qualify for licensing, the applicant:

a. For a marital and family therapist license shall take and pass the Association of Marital and Family Therapy Regulatory Board (AMFTRB) Examination in Marital and Family Therapy.

b. For a mental health counselor license shall take and pass the National Counselor Examination of the NBCC, or the National Clinical Mental Health Counselor Examination of the NBCC, or the Certified Rehabilitation Counselor Examination of the CRCC.

31.3(2) Examination information will be provided when the applicant has been approved to take the examination.

31.3(3) The board will notify the applicant in writing of examination results.

31.3(4) Persons determined by the board not to have performed satisfactorily may apply for reexamination.

31.3(5) The passing score on the written examination shall be the passing point criterion established by the appropriate national testing authority at the time the test was administered.

645—31.4(154D) Educational qualifications for marital and family therapists. The applicant must complete the required semester credit hours, or equivalent quarter hours, of graduate level coursework in each of the content areas identified in 31.4(2); no course may be used more than once. The applicant must present proof of completion of the following educational requirements for licensure as a marital and family therapist:

31.4(1) *Accredited program.* Applicants must present with the application an official transcript verifying completion of a master's degree of 60 semester hours (or 80 quarter hours or equivalent) or a doctoral degree in marital and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) from a college or university accredited by an agency recognized by the United States Department of Education. Applicants who entered a program of study prior to July 1, 2010, must present with the application an official transcript verifying completion of a master's degree of 45 semester hours or the equivalent; or

31.4(2) *Content-equivalent program.* Applicants must present an official transcript verifying completion of a master's degree of 60 semester hours (or 80 quarter hours or equivalent) or a doctoral degree in a mental health, behavioral science, or a counseling-related field from a college or university accredited by an agency recognized by the United States Department of Education, which is content-equivalent to a graduate degree in marital and family therapy. Applicants who entered a program of study prior to July 1, 2010, must present with the application an official transcript verifying completion of a master's degree of 45 semester hours or the equivalent. After March 31, 2009, graduates from non-COAMFTE-accredited marital and family therapy programs shall provide an equivalency evaluation of their educational credentials by the Center for Credentialing and Education, Inc. (CCE), Web site <http://cce-global.org>. The professional curriculum must be equivalent to that stated in these rules. Applicants shall bear the expense of the curriculum evaluation. In order to qualify as a "content-equivalent" degree, a graduate transcript must document:

a. At least 9 semester hours or the equivalent in each of the three areas listed below:

(1) Theoretical foundations of marital and family therapy systems. Any course which deals primarily in areas such as family life cycle; theories of family development; marriage or the family; sociology of the family; families under stress; the contemporary family; family in a social context; the cross-cultural family; youth/adult/aging and the family; family subsystems; individual, interpersonal relationships (marital, parental, sibling).

(2) Assessment and treatment in family and marital therapy. Any course which deals primarily in areas such as family therapy methodology; family assessment; treatment and intervention methods;

overview of major clinical theories of marital and family therapy, such as communications, contextual, experiential, object relations, strategic, structural, systemic, transgenerational.

(3) Human development. Any course which deals primarily in areas such as human development; personality theory; human sexuality. One course must be psychopathology.

b. At least 3 semester hours or the equivalent in each of the two areas listed below:

(1) Ethics and professional studies. Any course which deals primarily in areas such as professional socialization and the role of the professional organization; legal responsibilities and liabilities; independent practice and interprofessional cooperation; ethical issues in marital and family counseling; and family law.

(2) Research. Any course which deals primarily in areas such as research design, methods, statistics; research in marital and family studies and therapy.

If the applicant has taught a graduate-level course as outlined above at a college or university accredited by an agency recognized by the United States Department of Education or the Council on Professional Accreditation, that course will be credited toward the course requirements.

c. A graduate-level clinical practicum in marital and family therapy of at least 300 clock hours is required for all applicants.

[ARC 7673B, IAB 4/8/09, effective 4/30/09; ARC 9547B, IAB 6/1/11, effective 7/6/11]

645—31.5(154D) Clinical experience requirements for marital and family therapists.

31.5(1) The supervised clinical experience shall:

a. Be a minimum of two years or the equivalent of full-time, postgraduate supervised professional work experience in marital and family therapy.

b. Be completed following completion of the practicum, internship, and all graduate coursework, with the exception of the thesis.

c. Include successful completion of at least 3,000 hours of marital and family therapy that shall include at least 1,500 hours of direct client contact and 200 hours of clinical supervision. Applicants who entered a program of study prior to July 1, 2010, shall include successful completion of 200 hours of clinical supervision concurrent with 1,000 hours of marital and family therapy conducted in person with couples, families and individuals.

d. Include a minimum of 25 percent of all clinical supervision in person. Up to 75 percent of all supervision may be completed by electronic means with no more than 50 percent completed by telephone. Supervision by electronic means is acceptable if:

(1) The first two meetings are face-to-face and in person; and

(2) The system utilized is a confidential, interactive, secure, real-time system that provides for visual and audio interaction between the licensee and the supervisor.

e. Include in the 200 hours of clinical supervision at least 100 hours of individual supervision.

f. Follow and maintain a plan throughout the supervisory period established by the supervisor and the licensee. Such a plan must be kept by the licensee for a period of five years following receipt of the permanent license and must be submitted to the board upon request. The plan for supervision shall include:

(1) The name, license number, date of licensure, address, telephone number, and e-mail address (when available) of the supervisor;

(2) The name, license number, address, telephone number, and e-mail address (when available) of supervisee;

(3) Employment setting in which experience will occur;

(4) The nature, duration and frequency of supervision;

(5) The number of hours of supervision per month;

(6) The supervisor/licensees type (individual/group) and mode (face-to-face/electronic) of supervision;

(7) The methodology for secure transmission of case information;

(8) The beginning date of supervised professional practice and estimated date of completion;

(9) The goals and objectives for the supervised professional practice; and

- (10) The signatures of the supervisor and licensee, and the dates of signatures.
- g. Have only supervised clinical contact credited for this requirement.
- 31.5(2)** To meet the requirements of the supervised clinical experience:
- a. The supervisee must:
- (1) Meet with the supervisor for a minimum of four hours per month;
 - (2) Offer documentation of supervised hours signed by the supervisor;
 - (3) Compute part-time employment on a prorated basis for the supervised professional experience;
 - (4) Have the background, training, and experience that is appropriate to the functions performed;
 - (5) Have supervision that is clearly distinguishable from personal psychotherapy and is contracted in order to serve professional/vocational goals;
 - (6) Have individual supervision that shall be in person with no more than one supervisor to two supervisees;
 - (7) Have group supervision that may be completed with up to ten supervisees and a supervisor; and
 - (8) Not participate in the following activities which are deemed unacceptable for clinical supervision:
 1. Peer supervision, i.e., supervision by a person of equivalent, but not superior, qualifications, status, and experience.
 2. Supervision, by current or former family members, or any other person, in which the nature of the personal relationship prevents, or makes difficult, the establishment of a professional relationship.
 3. Administrative supervision, e.g., clinical practice performed under administrative rather than clinical supervision of an institutional director or executive.
 4. A primarily didactic process wherein techniques or procedures are taught in a group setting, classroom, workshop, or seminar.
 5. Consultation, staff development, or orientation to a field or program, or role-playing of family interrelationships as a substitute for current clinical practice in an appropriate clinical situation.
- b. The supervisor shall:
- (1) Be an Iowa-licensed marital and family therapist with a minimum of three years of clinical experience following licensure; or
 - (2) Be a supervisor or supervisor candidate approved by the American Association for Marriage and Family Therapy Commission on Supervision; or
 - (3) Be licensed under Iowa Code chapter 147 and have a minimum of three years of full-time professional work experience, including experience in marital and family therapy, as approved by the board; and
 - (4) Meet a minimum of four hours per month with the supervisee; and
 - (5) Provide training that is appropriate to the functions to be performed; and
 - (6) Ensure that therapeutic work is completed under the professional supervision of a supervisor; and
 - (7) Not supervise any marital and family therapy or permit the supervisee to engage in any therapy which the supervisor cannot perform competently.

31.5(3) An applicant who has obtained American Association for Marriage and Family Therapy (AAMFT) clinical membership is considered to have met the clinical experience requirements of rule 645—31.5(154D). The applicant shall request that proof of current clinical membership be sent directly from AAMFT to the board.

[ARC 7673B, IAB 4/8/09, effective 4/30/09; ARC 8152B, IAB 9/23/09, effective 10/28/09; ARC 9547B, IAB 6/1/11, effective 7/6/11; ARC 0777C, IAB 6/12/13, effective 7/17/13]

645—31.6(154D) Educational qualifications for mental health counselors. The applicant must complete three semester credit hours, or equivalent quarter hours, of graduate level coursework in each of the content areas identified in 31.6(2); no course may be used to fulfill more than one content area. The applicant must present proof of completion of the following educational requirements for licensure as a mental health counselor:

31.6(1) Accredited program. Applicants must present with the application an official transcript verifying completion of a master's degree of 60 semester hours (or equivalent quarter hours) or a doctoral degree in counseling with emphasis in mental health counseling from a mental health counseling program accredited by the Council on Accreditation of Counseling and Related Educational Programs (CACREP) from a college or university accredited by an agency recognized by the United States Department of Education. Applicants who entered a program of study prior to July 1, 2010, must present with the application an official transcript verifying completion of a master's degree of 45 semester hours or the equivalent; or

31.6(2) Content-equivalent program. Applicants must present an official transcript verifying completion of a master's degree or a doctoral degree from a college or university accredited by an agency recognized by the United States Department of Education which is content-equivalent to a master's degree in counseling with emphasis in mental health counseling. Graduates from non-CACREP accredited mental health counseling programs shall provide an equivalency evaluation of their educational credentials by the Center for Credentialing and Education, Inc. (CCE), Web site <http://cce-global.org>. The professional curriculum must be equivalent to that stated in these rules. Applicants shall bear the expense of the curriculum evaluation.

a. The degree of an applicant who entered a program of study prior to July 1, 2012, will be considered "content-equivalent" if the degree includes 45 semester hours (or equivalent quarter hours) and successful completion of graduate-level coursework in each of the areas in subparagraphs (1) to (12). If the applicant has taught a graduate-level course in any of the areas in subparagraphs (1) to (12) at a college or university accredited by an agency recognized by the United States Department of Education, that course may be credited toward the coursework requirement.

- (1) Counseling theories.
- (2) Supervised counseling practicum.
- (3) Human growth and development. Studies that provide an understanding of the nature and needs of individuals at all developmental levels. Studies in this area include, but are not limited to, the following:
 1. Theories of human development across the life span;
 2. Major theories of personality development; and
 3. Human behavior, including an understanding of developmental crises, disability, psychopathology, and cultural factors as they affect both normal and abnormal behavior.
- (4) Social and cultural foundations. Studies that provide an understanding of issues and trends in a multicultural and diverse society. Studies in this area include, but are not limited to, the following:
 1. Multicultural and pluralistic trends, including characteristics and concerns of diverse groups;
 2. Attitudes and behavior based on factors such as age, race, religious preference, physical disability, sexual orientation, ethnicity and culture, gender, socioeconomic status, and intellectual ability; and
 3. Individual and group interventions with diverse populations.
- (5) Helping relationships. Studies that provide an understanding of counseling and consultation processes. Studies in this area include, but are not limited to, the following:
 1. Helping skills and counseling and consultation theories, including coverage of relevant research and factors considered in applications;
 2. Counselor or consultant characteristics and behaviors that influence helping processes, including gender and ethnicity differences, verbal and nonverbal behaviors and personal characteristics, orientations, and skills; and
 3. Client or consultee characteristics and behaviors that influence helping processes, including gender and ethnicity differences, verbal and nonverbal behaviors and personal characteristics, traits, capabilities, life circumstances, and developmental levels.
- (6) Groups. Studies that provide an understanding of group development, dynamics, counseling theories, and group counseling methods and skills. Studies in this area include, but are not limited to, the following:

1. Principles of group dynamics, including group process components, developmental stage theories, and group members' roles and behaviors;
2. Group leadership styles and approaches, including characteristics of various types of group leaders and leadership styles;
3. Theories of group counseling, including commonalities, distinguishing characteristics, and pertinent research and literature; and
4. Group counseling methods, including group counselor orientations and behaviors, ethical considerations, appropriate selection criteria and methods, and methods of evaluation of effectiveness.

(7) Career and lifestyle development. Studies that provide an understanding of career development and the interrelationships among work, family, and other life factors. Studies in this area include, but are not limited to, the following:

1. Career development theories and decision-making models;
2. Career, avocational, educational and labor market sources, print media, computer-assisted career guidance, and computer-based career information;
3. Career development program planning;
4. Interrelationships among work, family, and other life factors such as multicultural and gender issues, as related to career development;
5. Career and educational placement, follow-up and evaluation; and
6. Assessment instruments relevant to career planning and decision making.

(8) Diagnosis and assessment treatment procedures. Studies that provide an understanding of individual and group approaches to assessment and evaluation. Studies in this area include, but are not limited to, the following:

1. Theoretical and historical bases for assessment techniques and methods of interpretation of appraisal data and information;
2. Types of educational and psychological appraisal as appropriate to the helping process;
3. Validity, including evidence for establishing content, construct, and empirical validity;
4. Reliability, including methods of establishing stability and internal and equivalence reliability;
5. Major appraisal methods, including environmental assessment, performance assessment, individual and group test and inventory methods, behavioral observations, and computer-managed and computer-assisted methods;
6. Psychometric statistics, including types of test scores, measures of central tendency, indices of variability, standard errors and correlations; and
7. Gender, ethnicity, language, disability, and cultural factors related to the assessment and evaluation of individuals and groups.

(9) Research and program evaluation. Studies that provide an understanding of types of research methods, basic statistics, and ethical and legal considerations in research. Studies in this area include, but are not limited to, the following:

1. Basic types of research methods, including qualitative, quantitative-descriptive, and quantitative-descriptive-experimental designs;
2. Basic statistics, including both univariate and bivariate hypothesis testing;
3. Uses of computers for data management and analyses; and
4. Ethical and legal considerations in research.

(10) Professional orientation. Studies that provide an understanding of all aspects of professional functioning, including history, roles, organizational structures, ethics, standards, and credentialing. Studies in this area include, but are not limited to, the following:

1. History of the helping professions, including significant factors and events;
2. Professional roles and functions, including similarities with and differences from other types of professionals;
3. Professional organizations (primarily ACA, its divisions, and its branches), including membership benefits, activities, services to members, and current emphases;
4. Ethical standards of the ACA and their evolution, legal issues, and applications to various professional activities (e.g., appraisal and group work);

5. Professional preparation standards and their evolution and current applications; and
6. Professional credentialing, including certification, licensure, and accreditation practices and standards, and the effects of public policy on these issues.

(11) Supervised counseling internship that provides an opportunity for the trainee to perform under supervision a variety of activities that a regularly employed staff member in a setting would be expected to perform. A regularly employed staff member is defined as a person occupying the professional role to which the trainee is aspiring. The internship follows a supervised practicum experience. A three-semester-hour internship includes the following:

1. A minimum of 120 hours of direct service with clientele appropriate to the program of study;
2. A minimum of 1 hour per week of individual supervision, throughout the internship, usually performed by the on-site supervisor; and
3. A minimum of 1½ hours per week of group supervision, throughout the internship, usually performed by a program faculty member supervisor.

(12) Psychopathology. Studies that provide an understanding of the description, classification and diagnosis of behavior disorders and dysfunction. Studies in this area include, but are not limited to, the following:

1. Study of cognitive, behavioral, physiological and interpersonal mechanisms for adapting to change and to stressors;
2. Role of genetic, physiological, cognitive, environmental and interpersonal factors and their interactions on development of the form, severity, course and persistence of the various types of disorders and dysfunction;
3. Research methods and findings pertinent to the description, classification, diagnosis, origin, and course of disorders and dysfunction;
4. Theoretical perspectives relevant to the origin, development, and course and outcome for the forms of behavior disorders and dysfunction; and
5. Methods of intervention or prevention used to minimize and modify maladaptive behaviors, disruptive and distressful cognition, or compromised interpersonal functioning associated with various forms of maladaptation.

b. The degree of an applicant who entered a program of study on or after July 1, 2012, will be considered “content-equivalent” if the degree includes 60 semester hours (or equivalent quarter hours) and successful completion of graduate-level coursework in each of the areas in subparagraphs (1) to (12). If the applicant has taught a graduate-level course in any of the areas in subparagraphs (1) to (12) at a college or university accredited by an agency recognized by the United States Department of Education, that course may be credited toward the coursework requirement.

(1) Professional orientation and ethical practice. Studies that provide an understanding of all of the following aspects of professional functioning:

1. History and philosophy of the counseling profession, including mental health counseling;
2. Professional roles, functions, and relationships of the mental health counselor with other human services providers, including strategies for interagency/interorganization collaboration and communication;
3. Counselors’ roles and responsibilities as members of an interdisciplinary emergency management response team during a local, regional, or national crisis, disaster or other trauma-causing event;
4. Self-care strategies appropriate to the counselor role;
5. Counseling supervision models, practices, and processes;
6. Professional organizations (i.e., primarily ACA, its divisions, branches, and affiliates), including membership benefits, activities, services to members, and current emphases;
7. Professional credentialing, including certification, licensure, and accreditation practices and standards, and the effects of public policy on these issues;
8. The role and process of the professional mental health counselor advocating on behalf of the profession;

9. Advocacy processes needed to address institutional and social barriers that impede access, equity, and success for clients; and

10. Ethical standards of ACA and related entities, and applications of ethical and legal considerations in professional counseling.

(2) Social and cultural diversity. Studies that provide an understanding of the cultural context of relationships, issues, and trends in a multicultural and diverse society including all of the following:

1. Multicultural and pluralistic trends, including characteristics and concerns within and among diverse groups nationally and internationally;

2. Attitudes, beliefs, understandings, and acculturative experiences, including specific experiential learning activities designed to foster students' understanding of self and culturally diverse clients;

3. Theories of multicultural counseling, identity development, and social justice;

4. Individual, couple, family, group, and community strategies for working with and advocating for diverse populations, including multicultural competencies;

5. Counselors' roles in developing cultural self-awareness, promoting cultural social justice, advocacy, and conflict resolution and other culturally supported behaviors that promote optimal wellness and growth of the human spirit, mind or body; and

6. Counselors' roles in eliminating biases, prejudices, and processes of intentional and unintentional oppression and discrimination.

(3) Human growth and development. Studies that provide an understanding of the nature and needs of persons at all developmental levels and in multicultural contexts, including all of the following:

1. Theories of individual and family development and transitions across the life span;

2. Theories of learning and personality development including current understandings about neurobiological behavior;

3. Effects of crises, disasters, and other trauma-causing events on persons of all ages;

4. Theories and models of individual, cultural, couple, family, and community resilience;

5. A general framework for understanding exceptional abilities and strategies for differentiated interventions;

6. Human behavior, including an understanding of developmental crises, disability, psychopathology, and situational and environmental factors that affect both normal and abnormal behavior;

7. Theories and etiology of addictions and addictive behaviors, including strategies for prevention, intervention, and treatment; and

8. Strategies for facilitating optimum development over the life span.

(4) Career development. Studies that provide an understanding of career development and related life factors, including all of the following:

1. Career development theories and decision-making models;

2. Career, avocational, educational, occupational and labor market information resources and career information systems;

3. Career development program planning, organization, implementation, administration, and evaluation;

4. Interrelationships among and between work, family, and other life roles and factors including the role of multicultural issues in career development;

5. Career and educational planning, placement, follow-up, and evaluation;

6. Assessment instruments and techniques relevant to career planning and decision making; and

7. Career counseling processes, techniques, and resources, including those applicable to specific populations.

(5) Helping relationships. Studies that provide an understanding of counseling processes in a multicultural society, including all of the following:

1. An orientation to wellness and prevention as desired counseling goals;

2. Counselor characteristics and behaviors that influence helping processes;

3. An understanding of essential interviewing and counseling skills;

4. Counseling theories that provide the student with a model(s) to conceptualize client presentation and select appropriate counseling interventions. Students shall be exposed to models of counseling that are consistent with current professional research and practice in the field so that they can begin to develop a personal model of counseling;

5. A systems perspective that provides an understanding of family and other systems theories and major models of family and related interventions;

6. A general framework for understanding and practicing consultation; and

7. Crisis intervention and suicide prevention models, including the use of psychological first-aid strategies.

(6) Group work. Studies that provide both theoretical and experiential understanding of group purpose, development, dynamics, theories, methods, skills, and other group approaches in a multicultural society, including all of the following:

1. Principles of group dynamics, including group process components, developmental stage theories, group members' roles and behaviors, and therapeutic factors of group work;

2. Group leadership or facilitation styles and approaches, including characteristics of various types of group leaders and leadership styles;

3. Theories of group counseling, including commonalities, distinguishing characteristics, and pertinent research and literature;

4. Group counseling methods, including group counselor orientations and behaviors, appropriate selection criteria and methods, and methods of evaluation of effectiveness; and

5. Experiences in which students participate as group members in a small group activity, approved by the program, for a minimum of 10 clock hours over the course of one academic term.

(7) Assessment. Studies that provide an understanding of individual and group approaches to assessment and evaluation in a multicultural society, including the following:

1. Historical perspectives concerning the nature and meaning of assessment;

2. Basic concepts of standardized and nonstandardized testing and other assessment techniques including norm-referenced and criterion-referenced assessment, environmental assessment, performance assessment, individual and group test and inventory methods, and behavioral observations;

3. Statistical concepts, including scales of measurement, measures of central tendency, indices of variability, shapes and types of distributions, and correlations;

4. Reliability (i.e., theory of measurement error, models of reliability, and the use of reliability information);

5. Validity (i.e., evidence of validity, types of validity, and the relationship between reliability and validity);

6. Social and cultural factors related to the assessment and evaluation of individuals, groups, and specific populations;

7. Ethical strategies for selecting, administering, and interpreting assessment and evaluation instruments and techniques in counseling; and

8. An understanding of general principles and methods of case conceptualization, assessment, or diagnoses of mental and emotional status.

(8) Research and program evaluation. Studies that provide an understanding of research methods, statistical analysis, needs assessment, and program evaluation, including all of the following:

1. The importance of research in advancing the counseling profession;

2. Research methods such as qualitative, quantitative, single-case designs, action research, and outcome-based research;

3. Statistical methods used in conducting research and program evaluation;

4. Principles, models, and applications of needs assessment, program evaluation, and use of findings to effect program modifications;

5. Use of research to inform evidence-based practice; and

6. Ethical and culturally relevant strategies for interpreting and reporting the results of research and program evaluation studies.

(9) Diagnosis and treatment planning. Studies that provide an understanding of individual and group approaches to assessment and evaluation in a multicultural society. Studies in this area include, but are not limited to, the following:

1. The principles of the diagnostic process, including differential diagnosis, and the use of current diagnostic tools, such as the current edition of the Diagnostic and Statistical Manual;
2. The established diagnostic criteria for mental or emotional disorders that describe treatment modalities and placement criteria within the continuum of care;
3. The impact of co-occurring substance use disorders on medical and psychological disorders;
4. The relevance and potential biases of commonly used diagnostic tools as related to multicultural populations;
5. The appropriate use of diagnostic tools, including the current edition of the Diagnostic and Statistical Manual, to describe the symptoms and clinical presentation of clients with mental or emotional impairments;
6. The ability to conceptualize accurate multi-axial diagnoses of disorders presented by clients and discuss the differential diagnosis with collaborating professionals; and
7. The ability to differentiate between diagnosis and developmentally appropriate reactions during crises, disasters, and other trauma-causing events.

(10) Psychopathology. Studies that provide an understanding of emotional and mental disorders experienced by persons of all ages, characteristics of disorders, and common nosologies of emotional and mental disorders utilized within the U.S. health care system for diagnosis and treatment planning. Studies in this area include, but are not limited to, the following:

1. Study of cognitive, behavioral, physiological and interpersonal mechanisms for adapting to change and to stressors;
2. Role of genetic, physiological, cognitive, environmental and interpersonal factors and their interactions on development of the form, severity, course and persistence of the various types of disorders and dysfunction;
3. Research methods and findings pertinent to the description, classification, diagnosis, origin, and course of disorders and dysfunction;
4. Theoretical perspectives relevant to the origin, development, and course and outcome for the forms of behavior disorders and dysfunction; and
5. Methods of intervention or prevention used to minimize and modify maladaptive behaviors, disruptive and distressful cognition, or compromised interpersonal functioning associated with various forms of maladaptation.

(11) Practicum. A graduate-level clinical supervised counseling practicum in a mental health setting in which students must complete supervised practicum experiences that total a minimum of 100 clock hours over a minimum ten-week academic term. The practicum provides for the development of counseling skills under supervision. The student's practicum includes all of the following:

1. At least 40 hours of direct service with actual clients that contributes to the development of counseling skills;
2. Weekly interaction with an average of 1 hour per week of individual or triadic supervision throughout the practicum by a program faculty member, a student supervisor, or a site supervisor who is working in biweekly consultation with a program faculty member in accordance with the supervision contract;
3. An average of 1½ hours per week of group supervision that is provided on a regular schedule throughout the practicum by a program faculty member or a student supervisor; and
4. Evaluation of the student's counseling performance throughout the practicum including documentation of a formal evaluation after the student completes the practicum.

(12) Internship. A graduate-level clinical supervised counseling internship in a mental health setting that requires students to complete a supervised internship of 600 clock hours that is begun after the student's successful completion of the practicum. The internship is intended to reflect the comprehensive work experience of a professional counselor appropriate to clinical mental health counseling. The internship provides an opportunity for the student to perform, under supervision, a

variety of counseling activities that a mental health counselor is expected to perform. The student's internship includes all of the following:

1. At least 240 hours of direct service with clientele, including experience leading groups;
2. Weekly interaction that averages 1 hour per week of individual supervision or triadic supervision throughout the internship, usually performed by the on-site supervisor;
3. An average of 1½ hours per week of group supervision, provided on a regular schedule throughout the internship, usually performed by a program faculty member supervisor;
4. The opportunity for the student to become familiar with a variety of professional activities in addition to direct service (e.g., record keeping, supervision, information and referral, in-service and staff meetings);
5. The opportunity for the student to develop program-appropriate audio/video recordings for use in supervision or to receive live supervision of the student's interactions with clients;
6. The opportunity for the student to gain supervised experience in the use of a variety of professional resources such as assessment instruments, technologies, print and nonprint media, professional literature, and research; and
7. Evaluation of the student's counseling performance throughout the internship including documentation of a formal evaluation by a program faculty member in consultation with the site supervisor after the student completes the internship.

31.6(3) *Foreign-trained marital and family therapists or mental health counselors.* Foreign-trained marital and family therapists or mental health counselors shall:

- a. Provide an equivalency evaluation of their educational credentials by the following: International Educational Research Foundations, Inc., Credentials Evaluation Service, P.O. Box 3665, Culver City, CA 90231-3665; telephone (310)258-9451; Web site www.ierf.org or E-mail at info@ierf.org. The professional curriculum must be equivalent to that stated in these rules. A candidate shall bear the expense of the curriculum evaluation.
- b. Provide a notarized copy of the certificate or diploma awarded to the applicant from a mental health counselor program in the country in which the applicant was educated.
- c. Receive a final determination from the board regarding the application for licensure.

[ARC 7673B, IAB 4/8/09, effective 4/30/09; ARC 9547B, IAB 6/1/11, effective 7/6/11]

645—31.7(154D) Clinical experience requirements for mental health counselors.

31.7(1) The supervised clinical experience shall:

- a. Be a minimum of two years or the equivalent of full-time, postgraduate supervised professional work experience in mental health counseling.
- b. Be completed following completion of the practicum, internship, and all graduate coursework, with the exception of the thesis.
- c. Include successful completion of at least 3,000 hours of mental health counseling that shall include at least 1,500 hours of direct client contact and 200 hours of clinical supervision. Applicants who entered a program of study prior to July 1, 2010, shall include successful completion of 200 hours of clinical supervision concurrent with 1,000 hours of mental health counseling conducted in person with couples, families and individuals.
- d. Include a minimum of 25 percent of all clinical supervision in person. Up to 75 percent of all supervision may be completed by electronic means with no more than 50 percent completed by telephone. Supervision by electronic means is acceptable if:
 - (1) The first two meetings are face-to-face and in person; and
 - (2) The system utilized is a confidential, interactive, secure, real-time system that provides for visual and audio interaction between the licensee and the supervisor.
- e. Include in the 200 hours of clinical supervision at least 100 hours of individual supervision.
- f. Follow and maintain a plan throughout the supervisory period established by the supervisor and the licensee. Such a plan must be kept by the licensee for a period of five years following receipt of the permanent license and must be submitted to the board upon request. The plan for supervision shall include:

- (1) The name, license number, date of licensure, address, telephone number, and e-mail address (when available) of the supervisor;
- (2) The name, license number, address, telephone number, and e-mail address (when available) of supervisee;
- (3) Employment setting in which experience will occur;
- (4) The nature, duration and frequency of supervision;
- (5) The number of hours of supervision per month;
- (6) The supervisor/licensees type (individual/group) and mode (face-to-face/electronic) of supervision;
- (7) The methodology for secure transmission of case information;
- (8) The beginning date of supervised professional practice and estimated date of completion;
- (9) The goals and objectives for the supervised professional practice; and
- (10) The signatures of the supervisor and licensee, and the dates of signatures.

g. Have only supervised clinical contact credited for this requirement.

31.7(2) To meet the requirements of the supervised clinical experience:

a. The supervisee must:

- (1) Meet with the supervisor a minimum of four hours per month;
- (2) Offer documentation of supervised hours signed by the supervisor;
- (3) Compute part-time employment on a prorated basis for the supervised professional experience;
- (4) Have the background, training, and experience that are appropriate to the functions performed;
- (5) Have supervision that is clearly distinguishable from personal counseling and is contracted in order to serve professional/vocational goals;
- (6) Have individual supervision that shall be in person with no more than one supervisor to two supervisees;
- (7) Have group supervision that may be completed with up to ten supervisees and a supervisor; and
- (8) Not participate in the following activities which are deemed unacceptable for clinical supervision:
 1. Peer supervision, i.e., supervision by a person of equivalent, but not superior, qualifications, status, and experience.
 2. Supervision, by current or former family members, or any other person, in which the nature of the personal relationship prevents, or makes difficult, the establishment of a professional relationship.
 3. Administrative supervision, e.g., clinical practice performed under administrative rather than clinical supervision of an institutional director or executive.
 4. A primarily didactic process wherein techniques or procedures are taught in a group setting, classroom, workshop, or seminar.
 5. Consultation, staff development, or orientation to a field or program, or role-playing of family interrelationships as a substitute for current clinical practice in an appropriate clinical situation.

b. The supervisor:

- (1) May be a licensed mental health counselor in Iowa with at least three years of postlicensure clinical experience; or
- (2) Shall be approved by the National Board for Certified Counselors (NBCC) as a supervisor; or
- (3) May be an alternate supervisor who possesses qualifications equivalent to a licensed mental health counselor with at least three years of postlicensure clinical experience, including mental health professionals licensed to practice independently; and
- (4) Shall meet a minimum of four hours per month with the supervisee; and
- (5) Shall provide training that is appropriate to the functions to be performed; and
- (6) Shall ensure that therapeutic work is done under the professional supervision of a supervisor; and
- (7) Shall not supervise any mental health counselor or permit the supervisee to engage in any therapy which the supervisor cannot perform competently.

31.7(3) Rescinded IAB 7/6/05, effective 8/10/05.

31.7(4) An applicant who has obtained Certified Clinical Mental Health Counselor status with the National Board for Certified Counselors (NBCC) is considered to have met the clinical experience requirements of rule 645—31.7(154D). The applicant shall ensure that proof of current certified clinical mental health counselor status be sent directly from NBCC to the board.

[ARC 7673B, IAB 4/8/09, effective 4/30/09; ARC 8152B, IAB 9/23/09, effective 10/28/09; ARC 9547B, IAB 6/1/11, effective 7/6/11; ARC 0777C, IAB 6/12/13, effective 7/17/13]

645—31.8(154D) Licensure by endorsement. An applicant who has been a licensed marriage and family therapist or mental health counselor under the laws of another jurisdiction may file an application for licensure by endorsement with the board office. The board may receive by endorsement any applicant from the District of Columbia or another state, territory, province or foreign country who:

1. Submits to the board a completed application;
2. Pays the licensure fee;
3. Shows evidence of licensure requirements that are similar to those required in Iowa;
4. Provides official transcripts sent directly from the school to the board verifying completion of a master's degree of 45 hours or equivalent if the applicant entered a program of study prior to July 1, 2010, or verifying completion of a master's degree of 60 hours or equivalent if the applicant entered a program of study on or after July 1, 2010, or the appropriate doctoral degree. After March 31, 2009, graduates from a non-CACREP-accredited mental health counselor program or a non-COAMFTE-accredited marital and family therapy program shall provide an equivalency evaluation of their educational credentials by the Center for Credentialing and Education, Inc. (CCE), Web site <http://cce-global.org>. The professional curriculum must be equivalent to that stated in these rules. Applicants shall bear the expense of the curriculum evaluation;

5. Supplies satisfactory evidence of the candidate's qualifications in writing on the prescribed forms by the candidate's supervisors. If verification of clinical experience is not available, the board may consider submission of documentation from the state in which the applicant is currently licensed or equivalent documentation of supervision; and

6. Provides verification(s) of license(s) from every jurisdiction in which the applicant has been licensed, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

- Licensee's name;
- Date of initial licensure;
- Current licensure status; and
- Any disciplinary action taken against the license.

[ARC 7673B, IAB 4/8/09, effective 4/30/09; ARC 0777C, IAB 6/12/13, effective 7/17/13]

645—31.9(147) Licensure by reciprocal agreement. Rescinded IAB 1/14/09, effective 2/18/09.

645—31.10(147) License renewal.

31.10(1) The biennial license renewal period for a license to practice marital and family therapy or mental health counseling shall begin on October 1 of an even-numbered year and end on September 30 of the next even-numbered year. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive notice from the board does not relieve the licensee of the responsibility for renewing the license.

31.10(2) An individual who was issued an initial license within six months of the license renewal date will not be required to renew the license until the subsequent renewal two years later.

31.10(3) A licensee seeking renewal shall:

- a. Meet the continuing education requirements of rule 645—32.2(272C) and the mandatory reporting requirements of subrule 31.10(4). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and

- b. Submit the completed renewal application and renewal fee before the license expiration date.

c. An individual who was issued a license within six months of the license renewal date will not be required to renew the license until the next renewal two years later.

31.10(4) Mandatory reporter training requirements.

a. A licensee who, in the scope of professional practice or in the licensee's employment responsibilities, examines, attends, counsels or treats children in Iowa shall indicate on the renewal application completion of two hours of training in child abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."

b. A licensee who, in the course of employment, examines, attends, counsels or treats adults in Iowa shall indicate on the renewal application completion of two hours of training in dependent adult abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."

c. A licensee who, in the scope of professional practice or in the course of employment, examines, attends, counsels or treats both adults and children in Iowa shall indicate on the renewal application completion of training in abuse identification and reporting for dependent adults and children in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."

Training may be completed through separate courses as identified in paragraphs "a" and "b" or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse. The course shall be a curriculum approved by the Iowa department of public health abuse education review panel.

d. The licensee shall maintain written documentation for five years after mandatory training as identified in paragraphs "a" to "c," including program date(s), content, duration, and proof of participation.

e. The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

- (1) Is engaged in active duty in the military service of this state or the United States.
- (2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in 645—Chapter 4.

f. The board may select licensees for audit of compliance with the requirements in paragraphs "a" to "e."

31.10(5) Upon receiving the information required by this rule and the required fee, board staff shall administratively issue a two-year license and shall send the licensee a wallet card by regular mail. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

31.10(6) A person licensed to practice as a marital and family therapist or mental health counselor shall keep the person's license certificate and wallet card displayed in a conspicuous public place at the primary site of practice.

31.10(7) Late renewal. The license shall become late when the license has not been renewed by the expiration date on the wallet card. The licensee shall be assessed a late fee as specified in 645—subrule 5.3(3). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

31.10(8) Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice mental health counseling or marital and family therapy in Iowa until the license is reactivated. A licensee who practices mental health counseling or marital and family therapy in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

[ARC 9547B, IAB 6/1/11, effective 7/6/11]

645—31.11(272C) Exemptions for inactive practitioners. Rescinded IAB 7/6/05, effective 8/10/05.

645—31.12(147) Licensee record keeping.

31.12(1) A licensee shall maintain sufficient, timely, and accurate documentation in client records.

31.12(2) For purposes of this rule, “client” means the individual, couple, family, or group to whom a licensee provides direct clinical services.

31.12(3) A licensee’s records shall reflect the services provided, facilitate the delivery of services, and ensure continuity of services in the future.

31.12(4) Clinical services. A licensee who provides clinical services in any employment setting, including private practice, shall:

a. Store records in accordance with state and federal statutes and regulations governing record retention and with the guidelines of the licensee’s employer or agency, if applicable. If no other legal provisions govern record retention, a licensee shall store all client records for a minimum of seven years after the date of the client’s discharge or death, or, in the case of a minor, for three years after the client reaches the age of majority under state law or seven years after the date of the client’s discharge or death, whichever is longer.

b. Maintain timely records that include subjective and objective data, an assessment, a treatment plan, and any revisions to the assessment or plan made during the course of treatment.

c. Provide the client with reasonable access to records concerning the client. A licensee who is concerned that a client’s access to the client’s records could cause serious misunderstanding or harm to the client shall provide assistance in interpreting the records and consultation with the client regarding the records. A licensee may limit a client’s access to the client’s records, or portions of the records, only in exceptional circumstances when there is compelling evidence that such access would cause serious harm to the client. Both the client’s request for access and the licensee’s rationale for withholding some or all of a record shall be documented in the client’s records.

d. Take steps to protect the confidentiality of other individuals identified or discussed in any records to which a client is provided access.

31.12(5) Electronic record keeping. The requirements of this rule apply to electronic records as well as to records kept by any other means. When electronic records are kept, the licensee shall ensure that a duplicate hard-copy record or a backup, unalterable electronic record is maintained.

31.12(6) Correction of records.

a. Hard-copy records. Original notations shall be legible, written in ink, and contain no erasures or whiteouts. If incorrect information is placed in the original record, it must be crossed out with a single, nondeleting line and be initialed and dated by the licensee.

b. Electronic records. If a record is stored in an electronic format, the record may be amended with a signed addendum attached to the record.

31.12(7) Confidentiality and transfer of records. Marital and family therapists or mental health counselors shall preserve the confidentiality of client records in accordance with their respective rules of conduct and with federal and state law. Upon receipt of a written release or authorization signed by the client, the licensee shall furnish such therapy records, or copies of the records, as will be beneficial for the future treatment of that client. A fee may be charged for duplication of records, but a licensee may not refuse to transfer records for nonpayment of any fees. A written request may be required before transferring the record(s).

31.12(8) Retirement, death or discontinuance of practice.

a. If a licensee is retiring or discontinuing practice and is the owner of a practice, the licensee shall notify in writing all active clients and, upon knowledge and agreement of the clients, shall make reasonable arrangements with those clients to transfer client records, or copies of those records, to the succeeding licensee.

b. Upon a licensee’s death:

(1) The licensee’s employer or representative must ensure that all client records are transferred to another licensee or entity that is held to the same standards of confidentiality and agrees to act as custodian of the records.

(2) The licensee's employer or representative shall notify each active client that the client's records will be transferred to another licensee or entity that will retain custody of the records and that, at the client's written request, the records will be sent to the licensee or entity of the client's choice.

31.12(9) Nothing stated in this rule shall prohibit a licensee from conveying or transferring the licensee's client records to another licensed individual who is assuming a practice, provided that written notice is furnished to all clients.

645—31.13(147) Duplicate certificate or wallet card. Rescinded IAB 1/14/09, effective 2/18/09.

645—31.14(147) Reissued certificate or wallet card. Rescinded IAB 1/14/09, effective 2/18/09.

645—31.15(17A,147,272C) License denial. Rescinded IAB 1/14/09, effective 2/18/09.

645—31.16(17A,147,272C) License reactivation. To apply for reactivation of an inactive license, a licensee shall:

31.16(1) Submit a reactivation application on a form provided by the board.

31.16(2) Pay the reactivation fee that is due as specified in 645—Chapter 5.

31.16(3) Provide verification of current competence to practice mental health counseling or marital and family therapy by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 40 hours of continuing education obtained within the two years immediately preceding the application for reactivation.

b. If the license has been on inactive status for more than five years, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 80 hours of continuing education obtained within the two years immediately preceding the application for reactivation.

[ARC 0777C, IAB 6/12/13, effective 7/17/13]

645—31.17(17A,147,272C) License reinstatement. A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in accordance with 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with 645—31.16(17A,147,272C) prior to practicing mental health counseling or marital and family therapy in this state.

645—31.18(154D) Marital and family therapy and mental health counselor services subject to regulation. Marital and family therapy and mental health counselor services provided to an individual

in this state through telephonic, electronic or other means, regardless of the location of the marital and family therapy and mental health counselor, shall constitute the practice of marital and family therapy and mental health counseling and shall be subject to regulation in Iowa.

These rules are intended to implement Iowa Code chapters 17A, 147, 154D and 272C.

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[Filed ARC 0777C (Notice ARC 0679C, IAB 4/3/13), IAB 6/12/13, effective 7/17/13]

[◇] Two or more ARCs

¹ February 18, 2009, effective date of amendments to 645—31.4(154D) to 645—31.8(154D), **ARC 7476B**, Items 5 to 9, delayed 70 days by the Administrative Rules Review Committee at its meeting held February 6, 2009.

CHAPTER 33
DISCIPLINE FOR MARITAL AND FAMILY THERAPISTS
AND MENTAL HEALTH COUNSELORS

[Prior to 1/30/02, see 645—Chapter 31]

645—33.1(154D) Definitions.

“*Board*” means the board of behavioral science.

“*Discipline*” means any sanction the board may impose upon licensees.

“*Licensee*” means a person licensed to practice as a marital and family therapist or mental health counselor in Iowa.

645—33.2(154D,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645—33.3(147,272C) when the board determines that the licensee is guilty of any of the following acts or offenses:

33.2(1) Failure to comply with the national association’s code of ethics.

a. Marital and family therapists. Failure to comply with the current American Association for Marriage and Family Therapy (AAMFT) Code of Ethics, which is hereby adopted by reference. Copies of the Code of Ethics may be obtained from the AAMFT’s Web site.

b. Mental health counselors. Failure to comply with the current Code of Ethics of the American Counseling Association (ACA), which is hereby adopted by reference. Copies of the Code of Ethics may be obtained from the ACA Web site.

33.2(2) Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice in this state, which includes the following:

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

b. Attempting to file or filing with the board or the department of public health any false or forged diploma or certificate or affidavit or identification or qualification in making an application for a license in this state.

33.2(3) Professional incompetency. Professional incompetency includes, but is not limited to:

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

b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other practitioners in the state of Iowa acting in the same or similar circumstances.

c. A failure to exercise the degree of care which is ordinarily exercised by the average practitioner acting in the same or similar circumstances.

d. Failure to conform to the minimal standard of acceptable and prevailing practice of the licensed marital and family therapist or mental health counselor in this state.

e. Mental or physical inability reasonably related to and adversely affecting the licensee’s ability to practice in a safe and competent manner.

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

33.2(4) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

33.2(5) Practice outside the scope of the profession.

33.2(6) Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation.

33.2(7) Habitual intoxication or addiction to the use of drugs.

a. The inability of a licensee to practice with reasonable skill and safety by reason of the excessive use of alcohol on a continuing basis.

b. The excessive use of drugs which may impair a licensee's ability to practice with reasonable skill or safety.

33.2(8) Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

33.2(9) Falsification of client records.

33.2(10) Acceptance of any fee by fraud or misrepresentation.

33.2(11) Negligence by the licensee in the practice of the profession. Negligence by the licensee in the practice of the profession includes a failure to exercise due care including negligent delegation of duties or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair the ability to safely and skillfully practice the profession.

33.2(12) Conviction of a crime related to the profession or occupation of the licensee or the conviction of any crime that would affect the licensee's ability to practice within the profession, regardless of whether the judgment of conviction or sentence was deferred. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

33.2(13) Violation of a regulation or law of this state, another state, or the United States, which relates to the practice of the profession.

33.2(14) Revocation, suspension, or other disciplinary action taken by a licensing authority of this state, another state, territory, or country; or failure by the licensee to report in writing to the board revocation, suspension, or other disciplinary action taken by a licensing authority within 30 days of the final action. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, the report shall be expunged from the records of the board.

33.2(15) Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the practice of the profession in another state, district, territory or country.

33.2(16) Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

33.2(17) Failure to notify the board within 30 days after the occurrence of any judgment or settlement of a malpractice claim or action.

33.2(18) Engaging in any conduct that subverts or attempts to subvert a board investigation.

33.2(19) Failure to comply with a subpoena issued by the board, or to otherwise fail to cooperate with an investigation of the board.

33.2(20) Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order.

33.2(21) Failure to pay costs assessed in any disciplinary action.

33.2(22) Submission of a false report of continuing education or failure to submit the biennial report of continuing education.

33.2(23) Failure to report another licensee to the board for any violations listed in these rules, pursuant to Iowa Code section 272C.9.

33.2(24) Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice as a marital and family therapist or a mental health counselor.

33.2(25) Failure to report a change of name or address within 30 days after it occurs.

33.2(26) Representing oneself as a licensed marital and family therapist or mental health counselor when one's license has been suspended or revoked, or when one's license is on inactive status.

33.2(27) Permitting another person to use the licensee's license for any purpose.

33.2(28) Permitting an unlicensed employee or person under the licensee's control to perform activities requiring a license.

33.2(29) Unethical conduct. In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct may include, but need not be limited to, the following:

a. Verbally or physically abusing a patient, client or coworker.

b. Improper sexual contact with, or making suggestive, lewd, lascivious or improper remarks or advances to a patient, client or coworker.

c. Betrayal of a professional confidence.

d. Engaging in a professional conflict of interest.

33.2(30) Sexual relationships.

a. Current clients. A licensee shall not engage in sexual activities or sexual contact with a client, regardless of whether such contact is consensual or nonconsensual.

b. Former clients. A licensee shall not engage in sexual activities or sexual contact with a former client within the five years following termination of the client relationship. A licensee shall not engage in sexual activities or sexual contact with a former client, regardless of the length of time elapsed since termination of the client relationship, if the client has a history of physical, emotional, or sexual abuse or if the client has ever been diagnosed with any form of psychosis or personality disorder or if the client is likely to remain in need of therapy due to the intensity or chronicity of a problem.

c. A licensee shall not engage in sexual activities or sexual contact with a client's or former client's spouse or significant other.

d. A licensee shall not engage in sexual activities or sexual contact with a client's or former client's relative within the second degree of consanguinity (client's parent, grandparent, child, grandchild, or sibling) when there is a risk of exploitation or potential harm to a client or former client.

e. A licensee shall not provide clinical services to an individual with whom the licensee has had prior sexual contact.

33.2(31) Physical contact. A licensee shall not engage in physical contact with a client when there is a possibility of psychological harm to the client as a result of the contact. A licensee who engages in appropriate physical contact with a client is responsible for setting clear, appropriate, and culturally and age-sensitive boundaries which govern such contact.

33.2(32) Failure to comply with universal precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control of the United States Department of Health and Human Services.

33.2(33) Violation of the terms of an initial agreement with the impaired practitioner review committee or violation of the terms of an impaired practitioner recovery contract with the impaired practitioner review committee.

[ARC 9547B, IAB 6/1/11, effective 7/6/11; ARC 0777C, IAB 6/12/13, effective 7/17/13]

645—33.3(147,272C) Method of discipline. The board has the authority to impose the following disciplinary sanctions:

1. Revocation of license.
2. Suspension of license until further order of the board or for a specific period.
3. Prohibit permanently, until further order of the board, or for a specific period the engaging in specified procedures, methods, or acts.
4. Probation.
5. Require additional education or training.
6. Require a reexamination.
7. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.
8. Impose civil penalties not to exceed \$1000.
9. Issue a citation and warning.
10. Such other sanctions allowed by law as may be appropriate.

645—33.4(272C) Discretion of board. The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

1. The relative serious nature of the violation as it relates to ensuring a high standard of professional care to the citizens of this state;
2. The facts of the particular violation;

3. Any extenuating facts or other countervailing considerations;
4. The number of prior violations or complaints;
5. The seriousness of prior violations or complaints;
6. Whether remedial action has been taken; and
7. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

645—33.5(154D) Order for mental, physical, or clinical competency examination or alcohol or drug screening. Rescinded IAB 1/14/09, effective 2/18/09.

These rules are intended to implement Iowa Code chapters 17A, 147, 154D and 272C.

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CHAPTER 401
SPECIAL REGISTRATION PLATES

761—401.1(321) Definition. “Special registration plates” means those registration plates issued under Iowa Code sections 321.34 and 321.105 other than regular or sample plates. Special registration plates shall be issued in accordance with Iowa Code sections 321.34 and 321.105, this chapter of rules, and other applicable provisions of law.

761—401.2(321) Application, issuance and renewal.

401.2(1) Original application.

a. Except for collegiate plates, application for letter-number designated special registration plates that do not have eligibility requirements shall be made directly to the county treasurer’s office; no application form is required for these plates.

b. Collegiate plates, personalized plates, and special registration plates that have eligibility requirements must be requested using an application form prescribed by the department. Unless otherwise specified, completed application forms for these plates shall be submitted to the department at the following address: Office of Vehicle Services, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278. Application forms may be obtained from the office of vehicle services or from any county treasurer’s office. Application forms are also available on the department’s Web site at <http://www.iowadot.gov/mvd>.

c. The issuance fee, if any, shall be submitted with the application.

401.2(2) Issuance.

a. Special registration plates shall be issued only to a person who is an owner or lessee of the vehicle and is entitled to the special registration plates.

b. Special registration plates shall not be issued unless the vehicle is currently registered and the registration plates previously issued are surrendered to the county treasurer. Special registration plates are void if they are not assigned to a vehicle within 90 days after the date the department orders them. A new application and a new issuance fee are required if the plates are reordered after the 90-day period.

c. and *d.* Rescinded IAB 11/7/07, effective 12/12/07.

401.2(3) Renewal. Special registration plates are renewed at the office of the county treasurer of the county of residence of the applicant. The renewal fee, if any, is termed a “validation” fee. The validation fee shall be paid when the regular annual registration fee is due and is in addition to the regular annual registration fee. If renewal is delinquent for more than one month:

a. A new application and a new issuance fee are required.

b. The department may issue the combination of characters on personalized plates to another applicant.

401.2(4) Fees. The issuance and validation fees for the various types of special registration plates that are available are set out in Iowa Code section 321.34.

[ARC 9048B, IAB 9/8/10, effective 10/13/10]

761—401.3 Reserved.

761—401.4(321) Gift certificates. Gift certificates for collegiate plates, personalized plates, and special registration plates that have eligibility requirements may be purchased using the prescribed plate application form. Gift certificates for special registration plates that counties have in their inventories may be purchased from county treasurers’ offices.

761—401.5(321) Amateur radio call letter plates. Application for amateur radio call letter plates shall be made to the county treasurer on a form prescribed by the department. The number of the amateur radio license issued by the Federal Communications Commission shall be listed on the application.

761—401.6(321) Personalized plates.

401.6(1) Application. Application for personalized plates shall be submitted to the department on a form prescribed by the department.

401.6(2) Characters. The personalized plates shall consist of no less than two nor more than seven characters except that personalized plates for motorcycles and small trailers shall consist of no less than two nor more than six characters.

a. The characters “A” to “Z” and “1” to “9” may be used. Zeros shall not be used.

b. The personalized plates shall not duplicate combinations of characters reserved or issued for any other vehicle plate series under Iowa Code chapter 321.

c. No combination of characters denoting a governmental agency shall be issued.

d. The department shall not issue any combination of characters it determines is:

- (1) Sexual in connotation;
- (2) A term of vulgarity, contempt, prejudice, hostility, insult, or racial or ethnic degradation;
- (3) Recognized as a swear word;
- (4) A reference to an illegal substance;
- (5) A reference to a criminal act;
- (6) Offensive; or
- (7) A foreign word falling into any of these categories.

401.6(3) Renewal. Rescinded IAB 11/23/05, effective 12/28/05.

401.6(4) Reassignment. Rescinded IAB 11/23/05, effective 12/28/05.

401.6(5) Gift certificate. Rescinded IAB 11/23/05, effective 12/28/05.

761—401.7(321) Collegiate plates.

401.7(1) Application. Application for collegiate plates shall be submitted to the department on a form prescribed by the department. The applicant may request letter-number designated collegiate plates or personalized collegiate plates. Collegiate plates for motorcycles and small trailers are not available.

401.7(2) Characters. Personalized collegiate plates shall be issued in accordance with subrule 401.6(2) except that personalized collegiate plates are not available for motorcycles and small trailers.

401.7(3) Renewal. Rescinded IAB 11/23/05, effective 12/28/05.

401.7(4) Reassignment. Rescinded IAB 11/23/05, effective 12/28/05.

401.7(5) Gift certificate. Rescinded IAB 11/23/05, effective 12/28/05.

761—401.8(321) Medal of Honor plates.

401.8(1) Application for Medal of Honor plates shall be submitted to the department on a form prescribed by the department. The applicant shall attach a copy of the official government document verifying receipt of the medal of honor.

401.8(2) Medal of Honor plates are limited to five characters. Personalized plates are not available.

761—401.9(321) Firefighter plates.

401.9(1) Initial application for firefighter plates. Application for firefighter plates shall be submitted to the department on a form prescribed by the department. Both the fire chief and another fire officer of the paid or volunteer fire department shall sign the application form, certifying that the applicant is a current or retired member of the fire department. The signatures must be original and notarized. If the fire chief and fire officer deny an application, the department may conduct an investigation and make a determination to approve or deny the application.

401.9(2) Renewal of firefighter plates for a current member. A new application is required in order to renew firefighter plates issued to a current member. The application shall be submitted to the county treasurer’s office.

401.9(3) Renewal of firefighter plates for a retired member.

a. A new application is not required in order to renew firefighter plates issued to a retired member if the initial application for firefighter plates is made after January 1, 2005.

b. For firefighter plates issued to a retired member prior to January 1, 2005, a new application is required in order to renew firefighter plates until the plates have been renewed once after January 1, 2005. The application shall be submitted to the county treasurer's office.

401.9(4) Plates. Firefighter plates are limited to five characters. Personalized plates are not available. When a new series of firefighter plates is issued to replace a current series or the plate has been lost, stolen, or damaged, an applicant may obtain replacement plates containing the applicant's previous plate number upon payment of the statutory fee.

401.9(5) Definitions. The following definitions apply to this rule:

"*Current*" means a member who has at least one year of service and is in good standing, as determined by the fire chief.

"*Fire officer*" means a member of the same fire department as the applicant and who is second in command to the fire chief.

"*Retired*" or "*officially retired*" means a former member who has a minimum of ten years' total service in good standing, as determined by the fire chief.

[ARC 0778C, IAB 6/12/13, effective 7/17/13]

761—401.10(321) Emergency medical services plates.

401.10(1) Application for emergency medical services (EMS) plates shall be submitted to the department on a form prescribed by the department. The applicant and the applicant's service director shall sign the application form certifying that the applicant is a current member of a paid or volunteer emergency medical services agency. The signatures must be original and notarized. For purposes of this subrule, "service director" means a service director as defined in Iowa department of public health rule 641—132.1(147A).

401.10(2) A vehicle owner whose membership in a paid or volunteer emergency medical services agency is terminated shall within 30 days after termination surrender the EMS plates to the county treasurer in exchange for regular registration plates.

401.10(3) EMS plates are limited to five characters. Personalized plates are not available. When a new series of EMS plates is issued to replace a current series or the plate has been lost, stolen, or damaged, an applicant may obtain replacement plates containing the applicant's previous plate number upon payment of the statutory fee.

[ARC 0136C, IAB 5/30/12, effective 7/4/12; ARC 0778C, IAB 6/12/13, effective 7/17/13]

761—401.11(321) Natural resources plates. Letter-number designated natural resources plates are limited to five characters. Personalized natural resources plates shall consist of no less than two nor more than five characters and shall be issued in accordance with subrule 401.6(2), paragraphs "a" to "d."

761—401.12(321) Natural resources plates—personalized. Rescinded IAB 11/23/05, effective 12/28/05.

761—401.13(321) Disabled veteran plates.

401.13(1) Disabled veteran plates are issued in accordance with Iowa Code sections 321.34, 321.105 and 321.166.

401.13(2) To apply for disabled veteran plates for a motor vehicle, the disabled veteran shall submit to the county treasurer a certification from the U.S. Department of Veterans Affairs that the United States government has provided or has assisted in providing the motor vehicle to the disabled veteran. The certification is required when the motor vehicle is first registered. Another certification may be required for the first registration of a newly acquired vehicle or when the veteran moves to another county.

401.13(3) The disabled veteran plates shall be surrendered to the county treasurer in exchange for regular registration plates within 30 days after the death of the disabled veteran. The motor vehicle to which the plates are assigned shall become subject to the payment of regular registration fees on the first day of the month following the death of the disabled veteran. The registration fees shall be prorated for the remaining unexpired months of the registration year.

761—401.14 Reserved.

761—401.15(321) Processed emblem application and approval process. Following is the application and approval process for special plate requests under Iowa Code subsection 321.34(13).

401.15(1) Application to request a new special registration plate with a processed emblem shall be submitted to the department on a form prescribed by the department.

401.15(2) The application shall contain:

- a. The applicant's name, address, and telephone number.
- b. The name of the processed emblem.
- c. A clear and concise explanation of the purpose of the special plate and all eligibility requirements.
- d. The total number of the special plates the applicant anticipates being purchased.

401.15(3) The application shall be accompanied by:

- a. A color copy of the processed emblem.
 - (1) The processed emblem shall be limited to 3" × 3½" on the registration plate, but the emblem submitted may be of a larger size.
 - (2) The processed emblem shall not have any sexual connotation, nor shall it be vulgar, prejudiced, hostile, insulting, or racially or ethnically degrading.
- b. A certification by the person who has legal rights to the emblem allowing use of the emblem. This certification shall also include a statement holding the department harmless for using the processed emblem on a registration plate.

401.15(4) The office of vehicle services may consult with other organizations, law enforcement authorities, and the general public concerning the processed emblem.

401.15(5) Within 60 days after receiving the application, the office of vehicle services shall advise the applicant of the department's approval or denial of the application. The department reserves the right to approve or disapprove any processed emblem.

401.15(6) If the department approves the application, the applicant shall be advised that 500 paid special plate applications must be submitted to the department before the new plate will be manufactured and issued. If 500 paid applications are not submitted within one year after the date the department approved the plate, the department may cancel its approval or grant an extension.

401.15(7) If the special plate is approved and at a later date it is determined that a false application was submitted, the department shall revoke the special plates. No refunds shall be paid.

[ARC 9048B, IAB 9/8/10, effective 10/13/10]

761—401.16(321) Special plates with processed emblems—general. Special registration plates with processed emblems are limited to five characters. Personalized special registration plates with processed emblems shall consist of no less than two nor more than five characters and shall be issued in accordance with subrule 401.6(2), paragraphs "a" to "d."

761—401.17(321) State agency-sponsored processed emblem plates.

401.17(1) *Application and approval process for a new plate.* A state agency recommending a new special registration plate with a processed emblem shall submit its request to the department on a form prescribed by the department. The application and approval process is set out in rule 761—401.15(321). The application shall include clear and concise eligibility requirements for plate applicants.

401.17(2) *Plate application.* Once new state agency-sponsored processed emblem plates have been approved, manufactured and issued, the plates may be ordered as described below.

- a. When the plates have no eligibility requirements:
 - (1) Application for letter-number designated plates shall be submitted to the county treasurer.
 - (2) Application for personalized plates shall be submitted to the department on a form prescribed by the department.

b. When the plates have eligibility requirements, application for either letter-number designated or personalized plates shall be submitted to the sponsoring state agency for approval on a form prescribed by the department. The sponsoring state agency shall forward approved applications to the department.

401.17(3) Characters. State agency-sponsored processed emblem plates are limited to five characters. Personalized state agency-sponsored processed emblem plates shall consist of no less than two nor more than five characters and shall be issued in accordance with subrule 401.6(2), paragraphs "a" to "d."

401.17(4) Renewal. Rescinded IAB 11/23/05, effective 12/28/05.

401.17(5) Reassignment. Rescinded IAB 11/23/05, effective 12/28/05.

401.17(6) Gift certificate. Rescinded IAB 11/23/05, effective 12/28/05.

761—401.18(321) Combat infantryman badge, combat action badge, combat action ribbon, air force combat action medal, combat medical badge, fallen peace officers and civil war sesquicentennial plates. Following is the application and approval process for special plate requests under Iowa Code section 321.34 as amended by 2011 Iowa Acts, House File 651, section 2.

401.18(1) Design.

a. The plates shall be a standard background plate with a distinguishing processed emblem specific to each plate type, consistent with processed emblems approved pursuant to rule 761—401.15(321).

b. The distinguishing processed emblem shall be limited to 3" × 3½" on the registration plate.

c. A distinguishing processed emblem owned or subject to legal rights of another person will not be used unless the department receives certification from the person that allows use of the emblem. The certification must include a statement holding the department harmless for using the emblem on a registration plate.

d. The office of vehicle services may consult with other organizations, law enforcement authorities, and the general public concerning distinguishing processed emblems.

401.18(2) Production. None of the special registration plates subject to this rule will be manufactured or issued until 250 paid applications are submitted to the department. This minimum order requirement applies to each of the special registration plates subject to this rule. Each application must be accompanied by a statutory start-up fee.

401.18(3) Discontinuance. If 250 paid applications for any special registration plate subject to this rule are not submitted within one year after the date the department makes the plate available for application, the department shall report that fact to the legislature at the next regular session of the general assembly and request authority to discontinue the special registration plate.

401.18(4) Application process.

a. Applications for either letter-number designated or personalized combat infantryman badge, combat action badge, combat action ribbon, air force combat action medal, or combat medical badge special registration plates shall be submitted to the department on a form prescribed by the department. The applicant shall attach to the application a copy of an official government document verifying award of the combat infantryman badge, combat action badge, combat action ribbon, air force combat action medal or combat medical badge to the applicant.

b. Applications for letter-number designated civil war sesquicentennial or fallen peace officers special registration plates shall be submitted to the county treasurer.

c. Applications for personalized civil war sesquicentennial or fallen peace officers special registration plates shall be submitted to the department on a form prescribed by the department.

401.18(5) Characters. Plates are limited to five characters. Personalized plates shall consist of no less than two nor more than five characters and shall be issued in accordance with subrule 401.6(2), paragraphs "a" to "d."

401.18(6) Right of approval. The department reserves the right to approve or disapprove any application.

[ARC 9833B, IAB 11/2/11, effective 12/7/11]

761—401.19(321) Legion of Merit plates. Application for special plates with a Legion of Merit processed emblem shall be submitted to the department on a form prescribed by the department. The applicant shall attach a copy of the official government document verifying receipt of the Legion of Merit. Personalized plates with a Legion of Merit processed emblem are not available. Pursuant to Iowa Code section 321.34, an applicant is eligible for one set of Legion of Merit plates at a reduced annual registration fee of \$15 for one vehicle owned. However, an applicant may obtain additional Legion of Merit plates upon payment of the regular annual registration fee.
[ARC 9048B, IAB 9/8/10, effective 10/13/10]

761—401.20(321) Persons with disabilities plates.

401.20(1) Application. Application for special plates with a persons with disabilities processed emblem shall be submitted to the county treasurer on a form prescribed by the department.

a. The application shall include a signed statement written on the physician's, chiropractor's, physician assistant's or advanced registered nurse practitioner's letterhead. The statement shall certify that the owner or the owner's child is a person with a disability, as defined in Iowa Code section 321L.1, and that the disability is permanent.

b. If the person with a disability is a child, the parent or guardian shall complete the proof of residency certification on the application or complete and submit a separate proof of residency Form 411120, certifying that the child resides with the owner.

c. A new application form is not required when an individual's application for issuance of persons with disabilities plates, disabled veteran plates, nonexpiring removable windshield placards or parking stickers has previously been approved.

d. In lieu of submitting the signed medical statement required under paragraph 401.20(1) "a," an individual who is eligible for disabled veteran plates but has not been issued them may submit certification from the U.S. Department of Veterans Affairs that the United States government has provided or assisted in providing a motor vehicle to the individual.

401.20(2) Definition.

"Child" includes, but is not limited to, stepchild, foster child, or legally adopted child who is younger than 18 years of age, or a dependent person 18 years of age or older who is unable to maintain the person's self.

401.20(3) Renewal. The owner shall, at renewal time, provide a self-certification stating that the owner or the owner's child is still a person with a disability and, if the person with a disability is the owner's child, that the child still resides with the owner.
[ARC 0136C, IAB 5/30/12, effective 7/4/12]

761—401.21(321) Ex-prisoner of war plates.

401.21(1) Application for special plates with an ex-prisoner of war processed emblem shall be submitted to the department on a form prescribed by the department. The applicant shall attach a copy of an official government document verifying that the applicant was a prisoner of war. If the document is not available, a person who has knowledge that the applicant was a prisoner of war shall sign a statement to that effect on the application form.

401.21(2) The surviving spouse of a person who was issued ex-prisoner of war plates may continue to use or apply for the plates. If the surviving spouse remarries, the surviving spouse shall surrender the plates to the county treasurer in exchange for regular registration plates within 30 days after the date on the marriage certificate. Ex-prisoner of war plates may not be reissued once this event occurs.

401.21(3) Personalized plates with an ex-prisoner of war processed emblem are not available.

761—401.22(321) National guard plates. Application for special plates with a national guard processed emblem shall be submitted to the department on a form prescribed by the department. The unit commander of the applicant shall sign the application form confirming that the applicant is a member of the Iowa national guard.

761—401.23(321) Pearl Harbor plates. Application for special plates with a Pearl Harbor processed emblem shall be submitted to the department on a form prescribed by the department. The applicant shall attach a copy of an official government document verifying that the applicant was stationed at Pearl Harbor, Hawaii, as a member of the armed forces on December 7, 1941.

761—401.24(321) Purple Heart, Silver Star and Bronze Star plates. Application for special plates with a Purple Heart, Silver Star, or Bronze Star processed emblem shall be submitted to the department on a form prescribed by the department. To verify receipt of the medal, the applicant shall attach a copy of one of the following:

1. The official military order confirming the medal.
2. The report of discharge or federal Form DD214.
3. Other documentation approved by the Iowa office of the adjutant general.

761—401.25(321) U.S. armed forces retired plates. Application for special plates with a United States armed forces retired processed emblem shall be submitted to the department on a form prescribed by the department. A person is considered to be retired if the person is recognized by the United States armed forces as retired from the United States armed forces. To verify retirement from the United States armed forces, the applicant shall attach a copy of one of the following:

1. The official military order confirming retirement from the armed forces.
2. The report of discharge or federal Form DD214.
3. Other documentation approved by the Iowa office of the adjutant general.

761—401.26 Reserved.

761—401.27(321) Iowa heritage plates. Rescinded IAB 11/23/05, effective 12/28/05.

761—401.28(321) Education plates. Rescinded IAB 11/23/05, effective 12/28/05.

761—401.29(321) Love our kids plates. Rescinded IAB 11/23/05, effective 12/28/05.

761—401.30(321) Motorcycle rider education plates. Rescinded IAB 11/23/05, effective 12/28/05.

761—401.31(321) Veteran plates. Application for special plates with a veteran processed emblem shall be submitted to the commission of veterans affairs on a form prescribed by the department of transportation. The commission of veterans affairs shall determine whether the applicant is a veteran and, if so, certify this fact on the application form.

761—401.32(321) Surrender of plates. Special registration plates issued to a person who is no longer eligible for the plates shall be surrendered to the county treasurer in exchange for regular registration plates within 30 days after the date of the event that made the person ineligible. If the vehicle was exempt from the payment of regular registration fees due to the type of special registration plates issued, the vehicle shall become subject to the payment of regular registration fees on the first day of the month following the date of the event that made the person ineligible. The regular registration fees shall be prorated for the remaining unexpired months of the registration year.

761—401.33(321) Validation fees. Validation fees shall not be prorated. The annual validation fee is due when there is a change in registration month.

761—401.34(321) Reassignment of plates.

401.34(1) A vehicle owner or lessee who has special registration plates assigned to a currently registered vehicle may request that the plates be reassigned to another currently registered vehicle owned or leased by that person or owned or leased by another person. However, special registration

plates that have eligibility requirements may not be reassigned to a vehicle owned or leased by another person.

401.34(2) To reassign plates to a vehicle owned or leased by another person, a written request for reassignment signed by both the assignor and assignee shall be submitted to the county treasurer of the assignee's county of residence. The special registration plates shall be issued to the assignee by the county treasurer of the assignee's county of residence in exchange for the registration plates previously issued.

401.34(3) When ownership of a vehicle is transferred to another person, the owner shall, within 30 days after the transfer, either surrender the special registration plates to the county treasurer or request reassignment of the plates, as explained in subrules 401.34(1) and 401.34(2).

401.34(4) When the lease for a vehicle is terminated, the lessee shall, within 30 days after the termination, either surrender the special registration plates to the county treasurer or request reassignment of the plates, as explained in subrules 401.34(1) and 401.34(2).

761—401.35(321) Revocation of special registration plates. Special registration plates shall be revoked if they have been issued in conflict with the statutes or rules governing the plates' issuance. Revoked plates shall be surrendered to the department within 30 days of the date of revocation.

761—401.36(321) Refund of fees. No refund of fees for special registration plates shall be allowed unless the special plates were issued in conflict with the statutes or rules governing their issuance.

These rules are intended to implement Iowa Code sections 35A.11 as amended by 2011 Iowa Acts, House File 651, section 1, 321.34 as amended by 2011 Iowa Acts, House File 651, section 2, 321.105, 321.166 and 321L.1.

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CHAPTER 425
MOTOR VEHICLE AND TRAVEL TRAILER DEALERS,
MANUFACTURERS, DISTRIBUTORS AND WHOLESALERS
[Prior to 7/17/96, see 761—Chapters 420 and 422]

761—425.1(322) Introduction.

425.1(1) This chapter applies to the licensing of motor vehicle and travel trailer dealers, manufacturers, distributors and wholesalers. Also included in this chapter are the criteria for the issuance and use of dealer plates.

425.1(2) The office of vehicle services administers this chapter. The mailing address is: Office of Vehicle Services, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278.

a. Applications required by the chapter shall be submitted to the office of vehicle services.

b. Information about dealer plates and the licensing of motor vehicles and travel trailer dealers, manufacturers, distributors and wholesalers is available from the office of vehicle services or on the department's Web site at <http://www.iowadot.gov/mvd>.

[ARC 9048B, IAB 9/8/10, effective 10/13/10]

761—425.2 Reserved.

761—425.3(322) Definitions. The following definitions, in addition to those found in Iowa Code sections 322.2 and 322C.2, apply to this chapter of rules:

“Certificate of title” means a document issued by the appropriate official which contains a statement of the owner's title, the name and address of the owner, a description of the vehicle, a statement of all security interests, and additional information required under the laws or rules of the jurisdiction in which the document was issued, and which is recognized as a matter of law as a document evidencing ownership of the vehicle described. The terms “title certificate,” “title only” and “title” shall be synonymous with the term “certificate of title.”

“Consumer use” means use of a motor vehicle or travel trailer for business or pleasure, not for sale at retail, by a person who has obtained a certificate of title and has registered the vehicle under Iowa Code chapter 321.

“Dealer,” unless otherwise specified, means a person who is licensed to engage in this state in the business of selling motor vehicles or travel trailers at retail under Iowa Code chapter 322 or 322C.

“Engage in this state in the business” or similar wording means doing any of the following acts for the purpose of selling motor vehicles or travel trailers at retail: to acquire, sell, exchange, hold, offer, display, broker, accept on consignment or conduct a retail auction, or to act as an agent for the purpose of doing any of these acts. A person selling at retail more than six motor vehicles or six travel trailers during a 12-month period may be presumed to be engaged in the business. See rule 761—425.20(322) for provisions regarding fleet sales and retail auction sales.

“Manufacturer's certificate of origin” means a certification signed by the manufacturer, distributor or importer that the vehicle described has been transferred to the person or dealer named, and that the transfer is the first transfer of the vehicle in ordinary trade and commerce. The terms “manufacturer's statement,” “importer's statement or certificate,” “MSO” and “MCO” shall be synonymous with the term “manufacturer's certificate of origin.” See rule 761—400.1(321) for more information.

“Principal place of business” means a building actually occupied where the public and the department may contact the owner or operator during regular business hours. In lieu of a building, a travel trailer dealer may use a manufactured or mobile home as an office if taxes are current or a travel trailer as an office if registration fees are current. The principal place of business must be located in this state.

“Registered dealer” means a dealer licensed under Iowa Code chapter 322 or 322C who possesses a current dealer certificate under Iowa Code section 321.59.

“Regular business hours” means to be consistently open to the public on a weekly basis at hours reported to the office of vehicle services. Except as provided in Iowa Code section 322.36, regular

business hours for a motor vehicle or travel trailer dealer shall include a minimum of 32 posted hours between 7 a.m. and 9 p.m., Monday through Friday.

“*Salesperson*” means a person employed by a motor vehicle or travel trailer dealer for the purpose of buying or selling vehicles.

“*Vehicle*,” unless otherwise specified, means a motor vehicle or travel trailer.

“*Wholesaler*” means a person who sells new vehicles to dealers and not at retail.

This rule is intended to implement Iowa Code chapters 322 and 322C.

[ARC 9048B, IAB 9/8/10, effective 10/13/10; ARC 0136C, IAB 5/30/12, effective 7/4/12; ARC 0778C, IAB 6/12/13, effective 7/17/13]

761—425.4 to 425.9 Reserved.

761—425.10(322) Application for dealer’s license.

425.10(1) *Application forms.* To apply for a license as a motor vehicle or travel trailer dealer, the applicant shall complete an application on forms prescribed by the department.

425.10(2) *Surety bond.*

a. The applicant shall obtain a surety bond in the following amounts and file the original with the office of vehicle services:

(1) For a motor vehicle dealer’s license, \$50,000.

(2) For a travel trailer dealer’s license, \$25,000. However, an applicant for a travel trailer dealer’s license is not required to file a bond if the person is licensed as a motor vehicle dealer under the same name and at the same principal place of business.

b. The surety bond shall provide for notice to the office of vehicle services at least 30 days before cancellation.

c. The office of vehicle services shall notify the bonding company of any conviction of the dealer for a violation of dealer laws.

d. If the bond is canceled, the office of vehicle services shall notify the dealer by first-class mail that the dealer’s license shall be revoked on the same date that the bond is canceled unless the bond is reinstated or a new bond is filed.

e. If an applicant whose dealer’s license was revoked pursuant to paragraph “*d*” establishes that the applicant obtained a reinstated or new bond meeting the requirements of subrule 425.10(2) that was effective on or before the date of cancellation, but due to mistake or inadvertence failed to file the original bond with the office of vehicle services, the applicant may file the original of the reinstated or new bond. Upon filing, the department will rescind the revocation of the dealer’s license.

425.10(3) *Franchise.*

a. An applicant who intends to sell new motor vehicles or travel trailers shall submit to the office of vehicle services a copy of a signed franchise agreement with the manufacturer or distributor of each make the applicant intends to sell.

b. If a signed franchise agreement is not available at the time of application, the department may accept written evidence of a franchise which includes all of the following:

(1) The name and address of the applicant and the manufacturer or distributor.

(2) The make of motor vehicle or travel trailer that the applicant is authorized to sell.

(3) The applicant’s area of responsibility as stipulated in the franchise and certified on a form prescribed by the department.

(4) The signature of the manufacturer or distributor.

425.10(4) *Corporate applicants.* If the applicant is a corporation, the applicant shall certify on the application that the corporation complies with all applicable state requirements for incorporation.

425.10(5) *Principal place of business.* The applicant shall maintain a principal place of business, which must be staffed during regular business hours. See rules 761—425.12(322) and 761—425.14(322) for further requirements.

425.10(6) *Zoning.* The applicant shall provide to the office of vehicle services written evidence, issued by the office responsible for the enforcement of zoning ordinances in the city or county where

the applicant's business is located, which states that the applicant's principal place of business and any extensions comply with all applicable zoning provisions or are a legal nonconforming use.

425.10(7) *Separate licenses required.*

a. A separate license is required for each city or township in which an applicant for a motor vehicle dealer's license maintains a place of business.

b. A separate license is required for each county in which an applicant for a travel trailer dealer's license maintains a place of business.

425.10(8) *Financial liability.* The applicant for a motor vehicle dealer's license shall certify on the application that the applicant has the required financial liability coverage in the limits as set forth in Iowa Code subsection 322.4(1). It is the applicant's responsibility to ensure the required financial liability coverage is continuous with no lapse in coverage as long as the applicant maintains a valid dealer's license.

425.10(9) *Ownership information.*

a. If the owner of the business is an individual, the application shall include the legal name, bona fide address, and telephone number of the individual. If the owner is a partnership, the application shall include the legal name, bona fide address, and telephone number of two partners. If the owner is a corporation, the application shall include the legal name, bona fide address, and telephone number of two corporate officers. In all cases, the telephone number must be a number where the individual, partner, or corporate officer can be reached during normal business hours.

b. The application shall include the federal employer identification number of the business. However, if the business is owned by an individual who is not required to have a federal employer identification number, the application shall include the individual's social security number, Iowa nonoperator's identification number or Iowa driver's license number.

425.10(10) Reserved.

425.10(11) *Verification of compliance.* The department shall verify the applicant's compliance with all statutory and regulatory dealer licensing requirements.

This rule is intended to implement Iowa Code sections 322.1 to 322.15 and 322C.1 to 322C.6.
[ARC 9048B, IAB 9/8/10, effective 10/13/10]

761—425.11 Reserved.

761—425.12(322) Motor vehicle dealer's place of business.

425.12(1) *Verification of compliance.* Before a motor vehicle dealer's license is issued, a representative of the department may physically inspect an applicant's principal place of business to verify compliance with this rule.

425.12(2) *Telephone service and office area.* A motor vehicle dealer's principal place of business shall include telephone service and an adequate office area, separate from other facilities, for keeping business records, manufacturers' certificates of origin, certificates of title or other evidence of ownership for all motor vehicles offered for sale. Telephone service must be a land line and not cellular phone service. Evidence of ownership may include a copy of an original document if the original document is held by a lienholder.

425.12(3) *Facility for displaying motor vehicles.* A motor vehicle dealer's principal place of business shall include a suitable space reserved for display purposes where motor vehicles may be viewed by prospective buyers. The facility shall be:

a. Within a building. EXCEPTION: For used motor vehicle dealers and for dealers selling new trucks or motor homes exclusively, the display facility may be an outdoor area with an all-weather surface. An all-weather surface does not include grass or exposed soil.

b. Of a minimum size.

(1) For display of motorcycles and motorized bicycles, the minimum size of the display facility is 10 feet by 15 feet.

(2) For display of other motor vehicles, the minimum size of the display facility is 18 feet by 30 feet.

425.12(4) Facility for reconditioning and repairing motor vehicles. A motor vehicle dealer's principal place of business shall include a facility for reconditioning and repairing motor vehicles. The facility shall be an area that:

- a. Is equipped to repair and recondition one or more motor vehicles of a type sold by the dealer.
- b. Is within a building.
- c. Has adequate access.
- d. Is separated from the display and office areas by solid, floor-to-ceiling walls and solid, full-length doors.
- e. Is of a minimum size.

(1) The minimum size facility for motorcycles and motorized bicycles is an unobstructed rectangular area measuring 10 feet by 15 feet.

(2) The minimum size facility for other types of motor vehicles is an unobstructed rectangular area measuring 14 feet by 24 feet.

425.12(5) Motor vehicle dealer who is also a recycler. If a motor vehicle dealer also does business as a recycler, there shall be separate parking for motor vehicles being offered for sale at retail from motor vehicles that are salvage.

This rule is intended to implement Iowa Code sections 322.1 to 322.15.
[ARC 9048B, IAB 9/8/10, effective 10/13/10; ARC 0778C, IAB 6/12/13, effective 7/17/13]

761—425.13 Reserved.

761—425.14(322) Travel trailer dealer's place of business.

425.14(1) Telephone service and office area. A travel trailer dealer's principal place of business shall include telephone service and an adequate office area, separate from other facilities, for keeping business records, manufacturers' certificates of origin, certificates of title or other evidence of ownership for all travel trailers offered for sale. Telephone service must be a land line and not cellular phone service. Evidence of ownership may include a copy of an original document if the original document is held by a lienholder.

425.14(2) Facility for displaying travel trailers. A travel trailer dealer's principal place of business shall include a space of sufficient size to permit the display of one or more travel trailers. The display facility may be an indoor area or an outdoor area with an all-weather surface. An all-weather surface does not include grass or exposed soil. If an outdoor display facility is maintained, it may be used only to display, recondition or repair travel trailers or to park vehicles.

425.14(3) Facility for repairing and reconditioning travel trailers. A travel trailer dealer's principal place of business shall include a facility for reconditioning and repairing travel trailers. The facility:

- a. Shall be equipped and of sufficient size to repair and recondition one or more travel trailers of a type sold by the dealer.
- b. Shall have adequate access.
- c. May be an indoor area or an outdoor area with an all-weather surface. An all-weather surface does not include grass or exposed soil.
- d. May occupy the same area as the display facility.

425.14(4) Travel trailer dealer also licensed as a motor vehicle dealer. If a travel trailer dealer is also licensed as a motor vehicle dealer under the same name and at the same principal place of business, separate facilities for displaying, repairing and reconditioning travel trailers are not required.

This rule is intended to implement Iowa Code sections 322C.1 to 322C.6.

761—425.15 and 425.16 Reserved.

761—425.17(322) Extension lot license. Extension lots of motor vehicle and travel trailer dealers must be licensed. Application to license an extension lot shall be made on a form prescribed by the department.

425.17(1) For a motor vehicle dealer, an extension lot is a car lot for the sale of motor vehicles that is located within the same city or township as, but is not adjacent to, the motor vehicle dealer's principal place of business.

425.17(2) For a travel trailer dealer, an extension lot is a travel trailer lot for the sale of travel trailers that is located within the same county as, but is not adjacent to, the travel trailer dealer's principal place of business.

425.17(3) An extension lot must be owned or leased by the dealer.

425.17(4) Parcels of property are adjacent if the parcels are owned or leased by the dealer and the parcels are either adjoining or are separated only by an alley, street or highway that is not a fully controlled access facility.

This rule is intended to implement Iowa Code sections 322.1 to 322.15 and 322C.1 to 322C.6.

761—425.18(322) Supplemental statement of changes. A motor vehicle dealer shall file a written statement with the office of vehicle services at least ten days before any change of name, location, hours, or method or plan of doing business. A license is not valid until the changes listed in the statement have been approved by the office of vehicle services.

This rule is intended to implement Iowa Code sections 322.1 to 322.15.

761—425.19 Reserved.

761—425.20(322) Fleet vehicle sales and retail auction sales.

425.20(1) Fleet sales. Any person who has acquired vehicles for consumer use in a business shall obtain the appropriate dealer's license when more than six vehicles are offered for sale at retail in a 12-month period.

425.20(2) Retail auction sales. Any person who sells at public auction more than six vehicles in a 12-month period shall obtain the appropriate dealer's license. All certificates of title for the vehicles offered for sale at public auction shall be duly assigned to the dealer.

425.20(3) Place of business. A dealer's license issued under this rule does not require a place of business.

425.20(4) Exceptions.

a. The state of Iowa, counties, cities and other governmental subdivisions are not required to obtain a dealer's license to sell their vehicles at retail.

b. This rule does not apply to a vehicle owner, or to an auctioneer representing the owner, selling vehicles at a retail auction if the vehicles were acquired by the owner for consumer use, the vehicles are incidental to the auction, and only one owner's vehicles are sold.

This rule is intended to implement Iowa Code sections 322.1 to 322.15 and 322C.1 to 322C.6.

761—425.21 to 425.23 Reserved.

761—425.24(322) Miscellaneous requirements.

425.24(1) The department shall not issue a license under Iowa Code chapter 322 or 322C to any other person at a principal place of business of a person currently licensed under Iowa Code chapter 322 or 322C.

425.24(2) A motor vehicle or travel trailer dealer shall not represent or advertise the dealership under any name or style other than the name which appears on the dealer's license.

425.24(3) Other business activities are allowed at a place of business of a dealer, but those activities shall not include the sale of firearms, dangerous weapons as defined in Iowa Code section 702.7, or alcoholic beverages as defined in Iowa Code subsection 123.3(4).

This rule is intended to implement Iowa Code sections 322.1 to 322.15 and 322C.1 to 322C.6.

[ARC 9048B, IAB 9/8/10, effective 10/13/10]

761—425.25 Reserved.

761—425.26(322) Fairs, shows and exhibitions.

425.26(1) Definitions. As used in this rule:

“*Display*” means having new motor vehicles or new travel trailers available for public viewing at fairs, vehicle shows or vehicle exhibitions. The dealer may also post, display or provide product information through literature or other descriptive media. However, the product information shall not include prices, except for the manufacturer’s sticker price. “Display” does not mean offering new vehicles for sale or negotiating sales of new vehicles.

“*Fair*” means a county fair or a scheduled gathering for a predetermined period of time at a specific location for the exhibition, display or sale of various wares, products, equipment, produce or livestock, but not solely new vehicles, and sponsored by a person other than a single dealer.

“*Offer*” new vehicles “*for sale,*” “*negotiate sales*” of new vehicles, or similar wording, means doing any of the following at a fair, show or exhibition: posting prices in addition to the manufacturer’s sticker price, discussing prices or trade-ins, arranging for payments or financing, and initiating contracts.

“*Vehicle exhibition*” means a scheduled event conducted at a specific location where various types, makes or models of new vehicles are displayed either at the same time or consecutively in time, and sponsored by a person other than a single dealer.

“*Vehicle show*” means a scheduled event conducted for a predetermined period of time at a specific location for the purpose of displaying at the same time various types, makes or models of new vehicles, which may be in conjunction with other events or displays, and sponsored by a person other than a single dealer.

425.26(2) Permits for motor vehicle dealers.

a. A “display only” fair, show or exhibition permit allows a motor vehicle dealer to display new motor vehicles at a specified fair, vehicle show or vehicle exhibition in any Iowa county. The permit is valid on Sundays.

b. A “full” fair, show or exhibition permit allows a motor vehicle dealer to display and offer new motor vehicles for sale and negotiate sales of new motor vehicles at a specified fair, vehicle show or vehicle exhibition that is held in the same county as the motor vehicle dealer’s principal place of business. EXCEPTION: A motor vehicle dealer who is licensed to sell motor homes may be issued a permit to offer for sale Class “A” and Class “C” motor homes at a specified fair, show or exhibition in any Iowa county. A “full” fair, show or exhibition permit is not valid on Sundays.

c. The following restrictions are applicable to both types of permits:

(1) Permits will be issued to motor vehicle dealers only for fairs, vehicle shows or vehicle exhibitions where more than one motor vehicle dealer may participate.

(2) A permit is limited to the line makes for which the motor vehicle dealer is licensed in Iowa.

425.26(3) Reserved.

425.26(4) Permits for travel trailer dealers. A fair, show or exhibition permit allows a travel trailer dealer to display and offer new travel trailers for sale and negotiate sales of new travel trailers at a specified fair, vehicle show, or vehicle exhibition in any Iowa county.

a. The permit is valid on Sundays.

b. The permit is limited to the line makes for which the travel trailer dealer is licensed in Iowa.

c. A travel trailer dealer who does not have a permit may display vehicles at fairs, vehicle shows and vehicle exhibitions.

425.26(5) Permit application. A motor vehicle or travel trailer dealer shall apply for a fair, show or exhibition permit on an application form prescribed by the department. The application shall include the dealer’s name, address and license number and the following information about the fair, show or exhibition: name, location, sponsor(s) and duration, including the opening and closing dates.

425.26(6) Display of permit. The motor vehicle or travel trailer dealer shall display the permit at the fair, show or exhibition in close proximity to the vehicles being exhibited.

425.26(7) Variance. Rescinded IAB 11/7/07, effective 12/12/07.

425.26(8) Display without permit. Rescinded IAB 7/10/02, effective 8/14/02.

This rule is intended to implement Iowa Code subsections 322.5(2) and 322C.3(9).

761—425.27 and 425.28 Reserved.

761—425.29(322) Classic car permit. A classic car permit allows a motor vehicle dealer to display and sell classic cars at a specified county fair, vehicle show or vehicle exhibition that is held in the same county as the motor vehicle dealer's principal place of business. "Classic car" is defined in Iowa Code subsection 322.5(3).

425.29(1) The permit period is the duration of the event, not to exceed five days. The permit is valid on Sundays. Only one permit may be issued to each motor vehicle dealer for an event. No more than three permits may be issued to a motor vehicle dealer in any one calendar year.

425.29(2) Application for a classic car permit shall be made on a form prescribed by the department. The application shall include the dealer's name, address and license number and the following information about the county fair, vehicle show or vehicle exhibition: name, location, sponsor(s) and duration, including the opening and closing dates.

425.29(3) The motor vehicle dealer shall display the permit in a prominent place at the location of the county fair, vehicle show or vehicle exhibition.

This rule is intended to implement Iowa Code subsection 322.5(3).

761—425.30(322) Motor truck display permit. Application for a permit under Iowa Code subsection 322.5(4) shall be made on a form prescribed by the department. The application shall include information or documentation showing that the nonresident motor vehicle dealer is eligible for issuance of a permit and that the event meets the statutory conditions for permit issuance.

This rule is intended to implement Iowa Code subsection 322.5(4).

761—425.31(322) Firefighting and rescue show permit.

425.31(1) Application for a firefighting and rescue show permit shall be made on a form prescribed by the department. The application shall include the name, address and license number of the applicant, the type of vehicles being displayed, and the following information about the vehicle show or exhibition: name, location, sponsor(s), and duration, including the opening and closing dates.

425.31(2) The permit is not valid on Sundays. Only one permit shall be issued to each licensee for an event.

425.31(3) The permit holder shall display the permit in a prominent place at the location of the vehicle show or exhibition.

This rule is intended to implement Iowa Code subsection 322.5(5).

[ARC 9048B, IAB 9/8/10, effective 10/13/10]

761—425.32 to 425.39 Reserved.

761—425.40(322) Salespersons of dealers.

425.40(1) Every motor vehicle and travel trailer dealer shall:

a. Keep a current written record of all salespersons acting in its behalf. The record shall be open to inspection by any peace officer or any employee of the department.

b. Maintain a current record of authorized persons allowed to sign all documents required under Iowa Code chapter 321 for vehicle sales.

425.40(2) No person shall either directly or indirectly claim to represent a dealer unless the person is listed as a salesperson by that dealer.

This rule is intended to implement Iowa Code sections 322.3, 322.13, and 322C.4.

761—425.41 to 425.49 Reserved.

761—425.50(322) Manufacturers, distributors, and wholesalers. This rule applies to the licensing of manufacturers, distributors, and wholesalers of new motor vehicles and travel trailers.

425.50(1) *Application for license.* To apply for a license, the applicant shall complete an application form prescribed by the department. A list of the applicant's franchised dealers in Iowa and a sample copy of a completed manufacturer's certificate of origin that is issued by the firm shall accompany the

application. A distributor or wholesaler shall also provide a copy of written authorization from the manufacturer to act as its distributor or wholesaler.

425.50(2) Licensing requirements.

- a. Rescinded IAB 11/3/99, effective 12/8/99.
- b. New motor homes delivered to Iowa dealers must contain the systems and meet the standards specified in Iowa Code paragraph 321.1(36C) "d."
- c. A licensee shall ensure that any new retail outlet is properly licensed as a dealer before any vehicles are delivered to the outlet.
- d. A licensee shall notify the office of vehicle services in writing at least ten days prior to any:
 - (1) Change in name, location or method of doing business, as shown on the license.
 - (2) Issuance of a franchise to a dealer in this state to sell new vehicles at retail.
 - (3) Rescinded IAB 11/3/99, effective 12/8/99.
 - (4) Change in the trade name of a travel trailer manufactured for delivery in this state.
- e. A licensee shall notify the office of vehicle services in writing at least ten days before any new make of vehicle is offered for sale at retail in this state.

This rule is intended to implement Iowa Code sections 322.27 to 322.30 and 322C.7 to 322C.9.

761—425.51(322) Factory or distributor representatives. Rescinded IAB 11/3/99, effective 12/8/99.

761—425.52(322) Used vehicle wholesalers. Rescinded IAB 11/7/07, effective 12/12/07.

761—425.53(322) Wholesaler's financial liability coverage. A new motor vehicle wholesaler shall certify on the license application that it has the required financial liability coverage in the limits set forth in Iowa Code section 322.27A. It is the wholesaler's responsibility to ensure that the required financial liability coverage is continuous with no lapse in coverage as long as the wholesaler maintains a valid wholesaler's license.

This rule is intended to implement Iowa Code section 322.27A.

761—425.54 to 425.59 Reserved.

761—425.60(322) Right of inspection.

425.60(1) Peace officers have the authority to inspect vehicles or component parts of vehicles, business records, and manufacturers' certificates of origin, certificates of title and other evidence of ownership for all vehicles offered for sale.

425.60(2) The department has the right at any time to verify compliance of a person licensed under Iowa Code chapter 322 or 322C or issued a certificate under Iowa Code section 321.59 with all statutory and regulatory requirements.

This rule is intended to implement Iowa Code sections 321.62, 321.95, 322.13, and 322C.1.

761—425.61 Reserved.

761—425.62(322) Denial, suspension or revocation.

425.62(1) The department may deny an application or suspend or revoke a certificate or license if the applicant, certificate holder or licensee fails to comply with the applicable provisions of this chapter of rules, Iowa Code sections 321.57 to 321.63 or Iowa Code chapter 322 or 322C.

425.62(2) The department may deny a dealer's application for a fair, show or exhibition permit for a period not to exceed six months if the dealer fails to comply with the applicable provisions of rule 761—425.26(322) or Iowa Code subsection 322.5(2) or 322C.3(9).

425.62(3) The department may deny a motor vehicle dealer's application for a demonstration permit for a period not to exceed six months if the dealer fails to comply with rule 761—425.72(321).

425.62(4) The department shall send notice by certified mail to a person whose certificate, license or permit is to be revoked, suspended, canceled or denied. The notice shall be mailed to the person's mailing address as shown on departmental records or, if the person is currently licensed, to the principal

place of business, and shall become effective 20 days from the date mailed. A person who is aggrieved by a decision of the department and who is entitled to a hearing may contest the decision in accordance with 761—Chapter 13. The request shall be submitted in writing to the director of the office of vehicle services at the address in subrule 425.1(2). The request shall be deemed timely submitted if it is delivered or postmarked on or before the effective date specified in the notice of revocation, suspension, cancellation or denial.

This rule is intended to implement Iowa Code chapter 17A and sections 321.57 to 321.63, 322.6, 322.9, 322.31, and 322C.6.

[ARC 9048B, IAB 9/8/10, effective 10/13/10]

761—425.63 to 425.69 Reserved.

761—425.70(321) Dealer plates.

425.70(1) Definition. The definitions of “dealer” and “vehicle” in Iowa Code section 321.1 apply to this rule.

425.70(2) Persons who may be issued dealer plates. Dealer plates as provided in Iowa Code sections 321.57 to 321.63 may be issued to:

- a. Licensed motor vehicle dealers.
- b. Licensed travel trailer dealers.
- c. A person engaged in the business of buying, selling or exchanging trailer-type vehicles subject to registration under Iowa Code chapter 321, other than travel trailers, and who has an established place of business for such purpose in this state.
- d. Insurers selling vehicles of a type subject to registration under Iowa Code chapter 321 solely for the purpose of disposing of vehicles acquired as a result of a damage settlement or recovered stolen vehicles acquired as a result of a loss settlement. The plates shall display the words “limited use.”
- e. Persons selling vehicles of a type subject to registration under Iowa Code chapter 321 solely for the purpose of disposing of vehicles acquired or repossessed by them in exercise of powers or rights granted by lien or title-retention instruments or contracts given as security for loans or purchase money obligations, and who are not required to be licensed dealers. The plates shall display the words “limited use.”
- f. Persons engaged in the business of selling special equipment body units which have been or will be installed on motor vehicle chassis not owned by them, solely for the purpose of delivering, testing or demonstrating the special equipment body and the motor vehicle. The plates shall display the words “limited use.”
- g. A licensed manufacturer of ambulances, rescue vehicles or fire vehicles, solely for the purpose of transporting, demonstrating, showing or exhibiting the vehicles. The plates shall display the words “limited use.”
- h. A licensed wholesaler who is also licensed as a motor vehicle dealer as specified in paragraph 425.70(3)“e.”

425.70(3) Use of dealer plates.

- a. Dealer plates shall not be displayed on vehicles that are rented or loaned. However, a dealer plate may be displayed on a motor vehicle, other than a truck or truck tractor, loaned to a customer of a licensed motor vehicle dealer while the customer’s motor vehicle is being serviced or repaired by the dealer.
- b. Motor vehicles used by dealers, manufacturers or distributors to transport other vehicles shall be registered, except when being transported from the place of manufacturing, assembling or distribution to a dealer’s place of business.
- c. Saddle-mounted vehicles being transported shall display dealer plates.
- d. Dealer plates may be displayed on a trailer carrying a load, provided the truck or truck tractor towing the trailer is properly registered under Iowa Code section 321.122, except as provided in rule 761—425.72(321).

e. Dealer plates may be used by a dealer licensed as a wholesaler for a new motor vehicle model when operating a new motor vehicle of that model if the motor vehicle is owned by the wholesaler and is operated solely for the purpose of demonstration, show or exhibition.

This rule is intended to implement Iowa Code sections 321.57 to 321.63.

761—425.71 Reserved.

761—425.72(321) Demonstration permits.

425.72(1) Demonstration permits may be issued by motor vehicle dealers to permit the use of dealer plates for the purpose of demonstrating the load capabilities of motor trucks and truck tractors. A demonstration permit must be issued on a form prescribed by the department.

425.72(2) The dealer shall complete the permit. The information to be filled out includes, but is not limited to, the following:

a. Date of issuance by the dealer, date of expiration, and the specific dates for which the permit is valid. The expiration date shall be five days or less from the date of issuance.

b. Dealer's name, address and license number.

c. Name(s) of the prospective buyer(s) and all prospective drivers.

d. Route of the demonstration trip. The points of origin and destination shall be the dealership. The permit is not valid for a route outside Iowa.

e. The make, year and vehicle identification number of the motor vehicle being demonstrated.

425.72(3) The permit shall at all times be carried in the motor vehicle to which it refers and shall be shown to any peace officer upon request.

425.72(4) Only one demonstration permit per motor vehicle shall be issued for a prospective buyer.

425.72(5) The demonstration permit is valid only for a movement that does not exceed the legal length, width, height and weight restrictions. The permit is not valid for an overdimensional or overweight movement.

This rule is intended to implement Iowa Code sections 321.57 to 321.63.

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