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NOTICE: The Administrative Code Editor is evaluating the value of publishing the Iowa Administrative Code Supplement. Newly adopted or amended rule content can also be found in the latest biweekly publication of the Iowa Administrative Code as required by Iowa Code chapters 2B and 17A.

If the Iowa Administrative Code Supplement is useful to you, please email your feedback to: jack.ewing@legis.iowa.gov.

The Iowa Administrative Code (IAC) Supplement is published biweekly pursuant to Iowa Code sections 2B.5A and 17A.6. The Supplement is a compilation of updated Iowa Administrative Code chapters that reflect rule changes which have been adopted by agencies and filed with the Administrative Rules Coordinator as provided in Iowa Code sections 7.17, 17A.4, and 17A.5 and published in the Iowa Administrative Bulletin bearing the same publication date as the one for this Supplement. To determine the specific changes to the rules, refer to the Iowa Administrative Bulletin. To maintain a loose-leaf set of the IAC, insert the chapters according to the instructions included in the Supplement.

In addition to the rule changes adopted by agencies, the 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 or suspension imposed by the ARRC pursuant to section 17A.8(9) or 17A.8(10); rescission of a rule by the Governor pursuant to section 17A.4(8); nullification of a rule by the General Assembly pursuant to Article III, section 40, of the Constitution of the State of Iowa; other action relating to rules enacted by the General Assembly; updated chapters for the Uniform Rules on Agency Procedure; or an editorial change to a rule by the Administrative Code Editor pursuant to Iowa Code section 2B.13(2).

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

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Replace Chapter 1

Iowa Public Employees' Retirement System[495]

Replace Chapter 4

Natural Resources Department[561]

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Replace Chapter 1 with Reserved Chapter 1
Replace Chapter 3 with Reserved Chapter 3
Remove Chapters 7 to 11
Insert Chapters 7 to 10 and Reserved Chapter 11
Remove Chapters 13 to 17
Insert Chapter 13, Reserved Chapter 14, and Chapters 15 to 17

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Replace Chapter 22
Replace Chapter 24

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Replace Chapter 8

Communications Network, Iowa[751]

Replace Analysis
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Replace Analysis
Replace Chapters 10 to 12
Replace Chapter 424
Replace Chapters 430 and 431
Remove Reserved Chapters 541 to 599 and Chapter 600
Insert Reserved Chapters 541 to 600

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[Prior to 7/23/25, see Civil Rights Commission[161]]

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CHAPTER 1
RULES OF PRACTICE

[Prior to 1/13/88, see Civil Rights 240—1.2, Ch 9, Ch 10]

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

161—1.1(216) Organization and administration.

1.1(1) *Organization.*

a. Commission. The Iowa civil rights commission is a seven-member body. Members are appointed by the governor pursuant to Iowa Code section 216.3.

b. Location. The Iowa civil rights commission, hereinafter referred to as "commission," is located on the First Floor, Grimes State Office Building, 400 E. 14th Street, Des Moines, Iowa 50319-1004; telephone (515)281-4121; toll-free in Iowa only 1-800-457-4416; facsimile transmission (fax) (515)242-5840. Office hours are 8 a.m. to 4:30 p.m. Monday through Friday, or the business hours set by the office of the governor or otherwise established by the legislature.

1.1(2) *Administration.* The executive director is responsible for the day-to-day administration of the commission's activities.

1.1(3) *Electronic attendance of commissioners.*

a. Notification. A commissioner wishing to attend the commission meeting by electronic means shall notify the executive director of this intent. The executive director will then take all reasonable measures to ensure that the necessary equipment is available at the site selected for the commission meeting. The commissioner attending by electronic means is responsible for ensuring that adequate equipment is available at the commissioner's location.

b. Public participation. Whenever any commissioners attend by electronic means, public access to the conversation of the commission will be allowed at the location of at least one of the commissioners. Unless good cause requires otherwise, the location where public access to the conversation is provided shall be a location reasonably accessible to the public. If the location is not reasonably accessible to the public, the nature of the good cause justifying inaccessibility shall be stated in the minutes.

c. Electronic attendance of multiple commissioners. If at the time a commissioner notifies the executive director of the intent to attend electronically that commissioner's electronic attendance would mean that four or more commissioners would be attending separately via electronic means, then that commissioner may not attend by electronic means unless the in-person attendance of any four of the commissioners attending the meeting at any of the available meeting sites is impossible or impracticable.

d. Conducting electronic meeting. Whenever four or more commissioners are separately attending a commission meeting by electronic means, the commission shall conduct the meeting in accordance with the following requirements:

(1) The commission shall keep detailed minutes of all discussion, all persons present and all action. The commission shall electronically record all proceedings in the meeting and retain such recordings for no less than one year from the date of the meeting.

(2) The minutes of the meeting shall include a statement explaining why a meeting in person was impossible or impracticable.

(3) The public notice of the meeting shall state the location of the meeting to be the location where public access to the conversation is provided.

[**ARC 8749B**, IAB 5/5/10, effective 6/9/10; Editorial change: IAC Supplement 7/23/25]

161—1.2(216) Commission procedure for rule making.

1.2(1) *Initiation of rule-making procedures.*

a. Any person or state agency may file a petition for rule making with the commission at its location as defined in 161—paragraph 1.1(1)"*b*." A petition is deemed filed when it is received by that office. The commission shall provide the petitioner with a file-stamped copy of the petition if the

petitioner provides the commission an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE IOWA CIVIL RIGHTS COMMISSION		
Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject matter).	}	PETITION FOR RULE MAKING

The petition must provide the following information:

1. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.

2. A citation to any law deemed relevant to the commission's authority to take the action urged or to the desirability of that action.

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

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

5. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the proposed action which is the subject of the petition.

b. The commission shall act upon the request within 60 days after its submission in accordance with Iowa Code section 17A.7 as amended by 1998 Iowa Acts, chapter 1202.

c. The commission may initiate rule-making procedures upon its own motion in accordance with Iowa Code section 17A.4.

1.2(2) *Advice on possible rules before notice of proposed rule adoption.* In addition to seeking information by other methods, the commission may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1)*"a,"* solicit comments from the public on a subject matter of possible rule making by the commission by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

1.2(3) *Notice of proposed rule making—contents.* At least 35 days before the adoption of a rule, the commission shall cause Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

a. A brief explanation of the purpose of the proposed rule;

b. The specific legal authority for the proposed rule;

c. Except to the extent impracticable, the text of the proposed rule;

d. Where, when, and how persons may present their views on the proposed rule; and

e. Where, when, and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the commission shall include in the notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of the proposed rule, and the range of possible choices being considered by the agency for the resolution of each of those issues.

1.2(4) *Public participation.*

a. Written comments. For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to the commission at its location as defined in 161—paragraph 1.1(1)*"b,"* or the person designated in the Notice of Intended Action.

b. Oral proceedings. The commission may, at any time, schedule an oral proceeding on a proposed rule. The commission shall schedule an oral proceeding on a proposed rule if, within 20 days after a published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the commission by the administrative rules review committee, a

governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

(1) A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.

(2) A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing the request.

(3) A request by an agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing the request.

c. Conduct of oral proceedings.

(1) Applicability. This paragraph applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1)*"b"* as amended by 1998 Iowa Acts, chapter 1202, or paragraph 1.2(5)*"f."*

(2) Scheduling and notice. An oral proceeding on a proposed rule may be held in one or more locations and shall not be held earlier than 20 days after notice of its location and time is published in the Iowa Administrative Bulletin. That notice shall also identify the proposed rule by ARC number and citation to the Iowa Administrative Bulletin.

(3) Presiding officer. The commission, a member of the commission, or another person designated by the commission who will be familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule. If the commission does not preside, the presiding officer shall prepare a memorandum for consideration by the commission summarizing the contents of the presentations made at the oral proceeding unless the commission determines that such a memorandum is unnecessary because the commission will personally listen to or read the entire transcript of the oral proceeding.

(4) Conduct of the proceeding. At an oral proceeding on a proposed rule persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule. Persons wishing to make oral presentations at such a proceeding are encouraged to notify the commission at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

1. At the beginning of the oral proceeding the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons for the commission decision to propose the rule. The presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

2. Persons making oral presentations are encouraged to avoid restating matters which have already been submitted in writing.

3. To facilitate the exchange of information the presiding officer may, where time permits, open the floor to questions or general discussion.

4. The presiding officer shall have the authority to take any reasonable action necessary for the orderly conduct of the meeting.

5. Physical and documentary submissions presented by participants in the oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the commission.

6. The oral proceeding may be continued by the presiding officer to a later time without notice other than by announcement at the hearing.

7. Participants in an oral proceeding shall not be required to take an oath or to submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and permit the questions of participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

8. The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to adjournment of the oral presentations.

d. Additional information. In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the commission may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

e. Accessibility. The commission shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the commission at its location as defined in 161—paragraph 1.1(1)"*b*" in advance to arrange access or other needed services.

1.2(5) *Regulatory analysis.*

a. Definition of small business. A "small business" is defined in 1998 Iowa Acts, chapter 1202, section 10.

b. Qualified requesters for regulatory analysis—economic impact. The commission shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4(2a) after a proper request from:

(1) The administrative rules coordinator;

(2) The administrative rules review committee.

c. Qualified requesters for regulatory analysis—business impact. The commission shall issue a regulatory analysis of a proposed rule that conforms to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2b) after a proper request from:

(1) The administrative rules review committee,

(2) The administrative rules coordinator,

(3) At least 25 or more persons who sign the request provided that each represents a different small business,

(4) An organization representing at least 25 small businesses. That organization shall list the name, address and phone number of not less than 25 small businesses it represents.

d. Time period for analysis. Upon receipt of a timely request for a regulatory analysis the commission shall adhere to the time lines described in 1998 Iowa Acts, chapter 1202, section 10(4).

e. Contents for request. A request for a regulatory analysis is made when it is mailed or delivered to the commission. The request shall be in writing and satisfy the requirements of 1998 Iowa Acts, chapter 1202, section 10(1).

f. Contents of concise summary. The contents of the concise summary shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(4,5).

g. Publication of a concise summary. The commission shall make available to the maximum extent feasible, copies of the published summary in conformance with 1998 Iowa Acts, chapter 1202, section 10(5).

h. Regulatory analysis contents—rules review committee or rules coordinator. When a regulatory analysis is issued in response to written request from the administrative rules review committee or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2*a*), unless a written request expressly waives one or more of the items listed in the section.

i. Regulatory analysis contents—substantial impact on small business. When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small

business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2b).

1.2(6) *Fiscal impact statement.*

a. A proposed rule that mandates additional combined expenditures exceeding $100,000 by all affected political subdivisions or agencies or entities which contract with the political subdivisions to provide service must be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement must satisfy the requirements of Iowa Code section 25B.6.

b. If the commission determines at the time it adopts a rule that a fiscal impact statement upon which the rule is based contains errors, the commission shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

1.2(7) *Time and manner of rule adoption.*

a. Time of adoption. The commission shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the commission shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

b. Consideration of public comment. Before the adoption of a rule, the commission shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

c. Reliance on commission expertise. Except as otherwise provided by law, the commission may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

1.2(8) *Variance between adopted rule and published notice of proposed rule adoption.*

a. The commission shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

(1) The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and

(2) The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and

(3) The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

b. In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question the commission shall consider the following factors:

(1) The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests;

(2) The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action; and

(3) The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

c. The commission shall commence a rule-making proceeding within 60 days of receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the commission finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within 3 days of its issuance.

d. Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the commission to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

1.2(9) *Concise statement of reasons.*

a. General. When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the commission shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the commission's office as defined in 161—paragraph 1.1(1)*"b."* The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

b. Contents. The concise statement of reasons shall contain:

(1) The reasons for adopting the rule;

(2) An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any such change;

(3) The principal reasons urged in the rule-making proceeding for and against the rule, and the commission's reasons for overruling the arguments made against the rule.

c. Time of issuance. After a proper request, the commission shall issue a concise statement of reasons by the time the rule is adopted or 35 days after receipt of the request, whichever is later.

1.2(10) *Contents, style, and form of rule.*

a. Contents. Each adopted rule by the commission shall contain the text of the rule and, in addition:

(1) The date the commission adopted the rule;

(2) A brief explanation of the principal reasons for the rule-making action if such reasons are required by Iowa Code section 17A.4(1)*"b"* as amended by 1998 Iowa Acts, chapter 1202, or the commission in its discretion decides to include such reasons;

(3) A reference to all rules repealed, amended, or suspended by the rule;

(4) A reference to the specific statutory or other authority authorizing adoption of the rule;

(5) Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;

(6) A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if such reasons are required by Iowa Code section 17A.4(1)*"b"* as amended by 1998 Iowa Acts, chapter 1202, or the commission in its discretion decides to include such reasons; and

(7) The effective date of the rule.

b. References to materials not published in full. When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the commission shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter, may be obtained from the commission. The commission will provide a copy of that full text at actual cost upon request and shall make copies of the full text available for review at the state law library and may make the standards available electronically.

At the request of the administrative code editor, the commission shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

c. *Style and form.* In preparing its rules, the commission shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

1.2(11) *Filing of rules.* The commission shall file each rule it adopts in the office of the administrative rules coordinator. The filing must be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule must have attached to it any fiscal impact statement and any concise statement of reasons that was issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the note or statement is issued. In filing a rule, the agency shall use the standard form prescribed by the administrative rules coordinator.

1.2(12) *Effectiveness of rules prior to publication.*

a. *Grounds.* The commission may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The commission shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

b. *Special notice.* When the commission makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)*"b"*(3), the commission shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule's indexing and publication. The term "all reasonable efforts" requires the commission to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the following: the effectiveness of the rule under the circumstances, the various alternatives available for this purpose, the comparative costs to the commission of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice, or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)*"b"*(3) shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of 1.2(12)*"b."*

1.2(13) *Review by commission of rules.*

a. Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the commission to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the commission shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or the rule should be amended or repealed. The commission may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

b. In conducting the formal review, the commission shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report must include a concise statement of the commission's findings regarding the rule's effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule received by the commission or granted by the commission. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the commission's report shall be sent to the administrative rules review committee.

[**ARC 8749B**, IAB 5/5/10, effective 6/9/10; Editorial change: IAC Supplement 7/23/25]

161—1.3(216) Procedures for oral or written presentations.

1.3(1) Except where oral or written presentations are deemed unnecessary by the commission in accordance with section 17A.4(2), the commission shall allow for the submission of oral or written presentations, or both, prior to its adoption of any rules.

1.3(2) Interested persons shall have 20 days from the date of publication of notice in the Iowa Administrative Bulletin to submit written requests for oral presentations or to submit with presentations.

1.3(3) Notice of date, time and place of oral presentations by requesting parties will be published by appropriate media at least 20 days in advance with specific notice to requesting parties given by certified mail.

1.3(4) Interested parties may be limited to submitting written presentations at the discretion of the commission except when oral presentations are required by Iowa Code section 17A.4(1)*"b."*

[Editorial change: IAC Supplement 7/23/25]

161—1.4(216) Procedure for obtaining declaratory orders.

1.4(1) *Petition for declaratory order.* Any person may file a petition with the commission for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the commission, at its location as defined in 161—paragraph 1.1(1)*"b."* A petition is deemed filed when it is received by that office. The commission shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the commission an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

IOWA CIVIL RIGHTS COMMISSION

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	}	PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided by 1.4(7).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

1.4(2) *Notice of petition.* Within 15 days after receipt of a petition for a declaratory order, the commission shall give notice of the petition to all persons not served by the petitioner pursuant to 1.4(6) to whom notice is required by any provision of law. The commission may also give notice to other persons.

1.4(3) *Intervention.*

a. Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 30 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

b. Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the commission.

c. A petition for intervention shall be filed at the commission office. Such a petition is deemed filed when it is received by that office. The commission will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

IOWA CIVIL RIGHTS COMMISSION

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	}	PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

(1) Facts supporting the intervenor's standing and qualifications for intervention.

(2) The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.

(3) Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.

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

(5) The names and addresses of any additional persons, or a description of any additional class of persons known by the intervenor to be affected by, or interested in, the questions presented.

(6) Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

1.4(4) *Briefs.* The petitioner or any intervenor may file a brief in support of the position urged. The commission may request a brief from the petitioner, any intervenor, or from any other person concerning the questions raised.

1.4(5) *Inquiries.* Inquiries concerning the status of a declaratory order proceeding may be made to the executive director at the commission's office.

1.4(6) *Service and filing of petitions and other papers.*

a. When service required. Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

b. Filing—when required. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the commission at its location as defined in 161—paragraph 1.1(1)*"b."* All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the Iowa civil rights commission.

c. Method of service, time of filing, and proof of mailing. Method of service shall be by regular mail. Time of filing and proof of mailing shall be as provided by 161—subrule 3.5(8).

1.4(7) *Consideration.* Upon request by petitioner, the commission must schedule a brief and informal meeting between the original petitioner, all intervenors, and the commission, a member of the commission, or a member of the staff of the commission, to discuss the questions raised. The commission may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the commission by any person.

1.4(8) *Action on petition.*

a. Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the executive director or designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

b. The date of issuance of an order or of a refusal to issue an order is as defined in Iowa Code section 216.17(1).

c. Within 20 days of the issuance of a declaratory order, the petitioner or intervenors may appeal that order to the commissioners. The commissioners will consider the appeal at a subsequent commissioners' meeting and will either affirm, overturn, or remand the order.

1.4(9) *Refusal to issue order.*

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

(1) The petition does not substantially comply with the required form.

(2) The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the commission to issue an order.

(3) The commission does not have jurisdiction over the questions presented in the petition.

(4) The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.

(5) The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

(6) The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.

(7) There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

(8) The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.

(9) The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

(10) The petitioner requests the commission to determine whether a statute is unconstitutional on its face.

b. A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

c. Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

1.4(10) *Contents of declaratory order—effective date.* In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

1.4(11) *Copies of orders.* A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

1.4(12) *Effect of declaratory order.* A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the commission, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the commission. The issuance of a declaratory order constitutes final agency action on the petition.
[Editorial change: IAC Supplement 7/23/25]

161—1.5(216) Forms. Forms commonly used by the commission are generally available through the commission's Web site or by telephoning the commission staff.

1.5(1) *"Charge of Discrimination,"* EEOC 5c, for a complaint alleging a discriminatory or unfair practice or act in all jurisdictional areas except housing.

1.5(2) *"Housing Discrimination Complaint,"* HUD 903, for a complaint alleging a discriminatory or unfair practice or act in the jurisdictional area of housing.

1.5(3) *"Authorization Release Form,"* to secure authorization for relevant client information.

1.5(4) *"Administrative Release Form,"* to request a "right to sue" letter.

1.5(5) *"Request for Withdrawal of Charge of Discrimination,"* is used by the complainant to withdraw the charge of discrimination previously filed.

1.5(6) *"Amended complaint,"* to amend the charge of discrimination previously filed.

1.5(7) *"Forms notebook."* Other forms commonly used by the commission or its staff are compiled within a "forms notebook." The notebook is available for inspection by the public at the commission offices. Copies of the forms notebook can be obtained for an appropriate copying charge.

1.5(8) *"Purpose of forms."* The existence of standard forms is for the convenience of the commission, the public, and the parties. The existence of a standard form does not imply that the purpose of the standard form cannot be accomplished through a document in a different form.
[**ARC 8749B**, IAB 5/5/10, effective 6/9/10; Editorial change: IAC Supplement 7/23/25]

161—1.6(216) Referral and deferral agencies.

1.6(1) *Statement of purpose.* It is the purpose of the commission, in adopting these rules to promote the efficient enforcement of the Act. To this end, the commission will use referral and deferral agreements to encourage agencies with similar powers and jurisdiction to:

a. Develop procedures with remedies necessary to ensure the protection of rights secured by the Iowa Civil Rights Act.

b. Increase the efficiency of their operations.

c. Cooperate more fully with the commission in the sharing of data and resources, and

d. Coordinate investigations and conciliations with the commission in order to eliminate needless duplication.

1.6(2) *Definitions.*

a. *"Agency"* refers to any agency of municipal government established by ordinance for the purpose of eliminating discrimination on any basis protected by the Act or any state or federal governmental unit with jurisdiction over allegations of discrimination that is capable of obtaining remedies similar to those obtainable by the commission.

b. *"Referral"* means the process by which the commission cross-files a charge of discrimination with a referral agency, which extinguishes the legal ability of the commission to process the charge; provided, however, that the referral agency accepts the referred charge and that the commission has the reciprocal right to accept or reject charges cross-filed by the referral agency.

c. *"Referral agency"* means any agency of local government that has been awarded that status by contract with the commission.

d. *"Deferral"* refers to the process whereby the commission notifies an agency of local, state, or federal government that a complaint has been filed with the commission and that the commission will postpone its investigative activities for a period of 60 days while the deferral agency investigates and

attempts to resolve the matter. Extensions of this time period may be granted by the commission or the executive director when just cause is shown by the agency for the time extension requested.

e. "Deferral agency" means any agency so designated by contract pursuant to these rules.

1.6(3) *Procedure for obtaining referral status.*

a. Guidelines for designation. The executive director will evaluate the applications of agencies and may designate agencies as referral agencies where they conform to the following guidelines:

(1) The agency should have professional staff to enable it to comprehensively investigate complaints and to ensure the processing of the charges expeditiously.

(2) The ordinance or enabling legislation under which the agency is established must provide at a minimum the same rights and remedies to discrimination as available under the Act, and

(3) The enabling legislation of the agency shall provide, at a minimum, that the agency may hold public hearings, issue cease and desist orders, and award damages to injured parties which shall include, but are not limited to, actual damages.

b. Application. Any agency desiring to be designated as a referral agency by the commission may send a letter of application to the executive director of the commission. Attached to the application must be a copy of the agency's enabling ordinance, a list of its investigatory personnel, the average number of hours worked by each per week, and a report for the previous 12-month period detailing the following:

(1) The number of cases filed with the agency,

(2) The number of probable cause and no probable cause findings,

(3) The number of cases successfully conciliated,

(4) The number of cases taken to public hearing,

(5) The average length of time spent investigating each case,

(6) The cumulative remedies obtained for the previous 12-month period and average remedy obtained per case,

(7) An assessment of the quality of the agency's investigation,

(8) The agency's standards to preserve quality investigations, and

(9) The status of the agency's caseload.

c. Rejection of application. Where the executive director determines that an agency does not qualify as a referral agency, the director shall so inform the agency in writing along with the reasons for the agency's rejection.

If the reasons for the agency's rejection are corrected, the agency will then be designated as a referral agency. The executive director's decision may be appealed to the commission at its subsequent regular meeting.

d. Designation and contract. Where the executive director determines that an agency is qualified as a referral agency, the director will prepare a contract between the commission and the agency containing the terms on which cases will be referred. Upon execution of the contract, the executive director will designate the agency as a referral agency.

e. Terms of the referral contract. The referral contract shall be negotiated with the referral agency, but shall include the following:

(1) Terms prohibiting a complainant who has filed with the commission from cross-filing with a referral agency and vice versa,

(2) Terms permitting the commission to refer complaints filed with it to a referral agency for processing and vice versa,

(3) Terms prohibiting the commission from processing a charge referred to and accepted by the referral agency and vice versa,

(4) Terms permitting the commission or a referral agency to reject a charge referred to it for processing,

(5) Terms ending the contract after two years, subject to renegotiation, and

(6) Any other terms mutually agreed upon.

1.6(4) *Procedure for obtaining deferral status.*

a. Application. Any agency desiring to be designated as a deferral agency by the commission may send a letter of application to the executive director of the commission. Attached to the application must be a copy of the agency's enabling legislation or grant of jurisdiction, a list of its personnel and statement indicating their permanent or part-time status, their functions, and a summary of the agency's prior efforts at preventing and eliminating discrimination. The application must also explain how the agency is capable of obtaining remedies substantially similar to those available under the Act.

b. Guidelines for designation. The executive director will evaluate the applications of all agencies and may designate deferral agencies where the agencies conform to the following guidelines:

(1) The agency should have available resources to enable it to investigate complaints to ensure processing within a reasonable period of time,

(2) The agency's enabling legislation or grant of jurisdiction must permit it to obtain substantially the same remedies as are available under the Act,

(3) The agency must be able to make a diligent effort to investigate and resolve the complaints filed with it, and

(4) The agency is capable of obtaining remedies substantially similar to those available under the Act by informal means.

c. Rejection of application. Where the executive director determines that an agency does not qualify as a deferral agency, the director shall so inform the agency in writing along with the reasons for the agency's rejection.

If the reasons for the agency's rejection are corrected, the agency will then be designated as a deferral agency. The executive director's decision may be appealed to the commission at its subsequent regular meeting.

d. Designation and contract. Where the executive director determines that an agency is qualified as a deferral agency, the director will prepare a contract between the commission and the agency containing the terms on which cases will be deferred. After execution of the contract, the executive director will designate the agency as a deferral agency.

e. Terms of the deferral contract. The deferral contract shall include, subject to negotiations with the agency, the following:

(1) The commission will agree to notify the deferral agency of all complaints filed with the commission which are within the deferral agency's jurisdiction, except where a complainant requests in written form that the deferral agency not be notified.

(2) The deferral agency will agree to aid all complainants whose complaints come within the commission's jurisdiction in completing the commission's complaint forms as well as notarizing them and forwarding the fully executed forms to the commission where the necessity to file a formal complaint exists. If, however, a matter may be resolved informally more expeditiously the deferral agency will simply notify the commission by letter of the complaint and resolution obtained. "Informally resolved complaints" shall refer to complaints that can be resolved within ten days.

(3) The commission will agree to postpone its investigation for at least 60 days of any complaint filed with a deferral agency unless otherwise agreed to by both parties. These waiver agreements will be made on an individual case basis.

(4) The agency will agree not to disclose the filing of a complaint or confidential information pertaining to a complaint until the complaint has been officially set for public hearing.

(5) The commission and the deferral agency shall share copies of all findings, case summaries, and conciliation agreements.

(6) Where a complaint is on file with a deferral agency, the commission will allow the deferral agency access to the contents of the complainant's file provided that the deferral agency allows the commission like privileges and has not previously disclosed confidential information prior to public hearing.

(7) Photocopying of materials from commission files for use by a deferral agency is solely at the discretion of the commission staff, but will not be unreasonably denied. When the commission copies from the agency's file, the agency shall be reasonably compensated for copying costs.

(8) The commission will give substantial weight to the findings of a deferral agency where pertinent and relevant factual evidence exists to support those findings.

(9) The commission will not necessarily be bound by the agency's conclusions of law.

(10) Where a deferral agency reaches a finding of probable cause to support an allegation of discrimination the contract may permit the agency to pursue conciliation, or to refer the case back to the commission for conciliation. The contract may also permit an agency that has attempted conciliation to refer that case back to the commission for public hearing. In no case where a case has been referred back to the commission will it be referred back to the agency. Where a case is conciliated or a hearing is held by the agency or the commission, both will be bound by the final determination.

(11) The period for which the contract will be in effect shall not exceed two years, subject to renegotiation.

(12) The contract may contain other terms agreed to by the parties.

[Editorial change: IAC Supplement 7/23/25]

These rules are intended to implement Iowa Code chapter 216.

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[1] Effective date of 161—1.1(1)*"b,"* 1.5(7) and 1.5(8) delayed 70 days by the Administrative Rules Review Committee at its meeting held March 9, 1993; delayed until adjournment of the 1994 Session of the General Assembly by this Committee May 11, 1993.

CHAPTER 4
EMPLOYERS

[Prior to 6/9/04, see 581—Ch 21]

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

495—4.1(97B) Covered employers.

4.1(1) *Definition.* All public employers in the state of Iowa, its cities, counties, townships, agencies, political subdivisions, instrumentalities and public schools are required to participate in IPERS. For the purposes of these rules, the following definitions also apply:

a. *"Political subdivision"* means a geographic area or territorial division of the state which has responsibility for certain governmental functions. Political subdivisions are characterized by public election of officers and taxing powers. The following examples are representative: cities, municipalities, counties, townships, schools and school districts, drainage and levee districts, and utilities.

b. *"Instrumentality of the state or a political subdivision"* means an independent entity that is organized to carry on some specific function of government. Public instrumentalities are created by some form of governmental body, including federal and state statutes and regulations, and are characterized by being under the control of a governmental body. Such control may include final budgetary authorization, general policy development, appointment of a board by a governmental body, and allocation of funds.

c. *"Public agency"* means state agencies and agencies of political subdivisions. Representative examples include an executive board, commission, bureau, division, office, or department of the state or a political subdivision.

d. Effective July 1, 1994, the definition of employer includes an area agency on aging that does not offer an alternative plan to all of its employees that is qualified under the federal Internal Revenue Code.

Covered employers include, but are not limited to: the state of Iowa and its administrative agencies; counties, including their hospitals and county homes; cities, including their hospitals, park boards and commissions; recreation commissions; townships; public libraries; cemetery associations; municipal utilities including waterworks, gasworks, electric light and power; school districts including their lunch and activity programs; state colleges and universities; and state hospitals and institutions.

An entity not already reporting to IPERS which meets the conditions for becoming an IPERS-covered employer shall immediately contact IPERS to provide notice which includes the name and address of the entity and other information required by IPERS. If, after review of this information, IPERS determines that the entity should be enrolled as a covered employer, IPERS will notify the entity and provide an IPERS account number for the entity to use when submitting information. IPERS shall not be required to provide benefits otherwise available under Iowa Code chapter 97B for periods of service prior to the effective date for which IPERS actually approves the entity for coverage, unless the employer agrees to pay the full actuarial cost of providing such benefits.

An employer may request a revised beginning date for its status as a covered employer. The employer must submit acceptable proof to IPERS that its status as a covered employer began earlier than the date previously provided. In such case, the employer shall provide IPERS coverage retroactively to all employees providing services to that employer on or after the revised beginning date and shall pay all actuarial costs.

4.1(2) *Name change.* Any employer which has a change of name, address, title of the employer, its reporting official or any other identifying information shall immediately give notice in writing to IPERS. The notice shall provide IPERS with the following information:

a. Former name;

b. Former address;

c. IPERS account number;

d. New name, address, and telephone number of the employer;

e. Reason for the change if other than a change of reporting official; and

f. Effective date of the change.

4.1(3) *Termination.* Any employer which terminates or is dissolved for any reason shall provide IPERS with the following:

a. Complete name and address of the dissolved entity;

b. Assigned IPERS account number;

c. Last date on which wages were paid;

d. Date on which the entity dissolved;

e. Reason for the dissolution;

f. Whether or not the entity expects to pay wages in the future;

g. Whether the entity is being absorbed by another covered employer;

h. Name and address of absorbing employer if applicable; and

i. Name and address of employer that will retain the records of the dissolved entity.

4.1(4) *Reports of dissolved or absorbed employers.* An employer that has been dissolved or entirely absorbed by another employer is required to file a monthly report with IPERS through the effective date on which it was dissolved or absorbed. Any wages paid after this date are reported under the account number assigned to the new or successor employer, if any.

4.1(5) *IPERS account number.* Each employer is assigned an IPERS account number. This number should be used on all correspondence and reporting forms directed to IPERS.

4.1(6) *Patient advocates.* For patient advocates employed under Iowa Code section 229.19, the county or counties for which services are performed shall be treated as the covered employer(s) of such individuals, and each such employer is responsible for forwarding reports and for withholding and forwarding the applicable IPERS contributions on wages paid by each employer.

[**ARC 3684C**, IAB 3/14/18, effective 4/18/18]

495—4.2(97B) Records to be kept by the employer.

4.2(1) *General.* Each employer shall maintain records to show the information hereinafter indicated. Records shall be kept in the form and manner prescribed by IPERS. Records shall be open to inspection and may be copied by IPERS and its authorized representatives at any reasonable time.

4.2(2) *Required information.* Records shall show with respect to each employee:

a. Employee's name, address, gender, and social security account number, and other demographic information that may be required;

b. Each date the employee was paid wages or other wage equivalent (e.g., room, board);

c. Total amount of wages paid on each date including noncash wage equivalents;

d. Total amount of wages including wage equivalents on which IPERS contributions are payable;

e. Amount withheld from wages or wage equivalents for the employee's share of IPERS contributions; and

f. Effective January 1, 1995, records will show, with respect to each employee, member contributions picked up by the employer.

4.2(3) *Reports.*

a. Each employer shall make reports as IPERS may require and shall comply with the instructions provided by IPERS for the reports.

b. Effective July 1, 2021, employers shall report the termination date and date of final paycheck for all terminating employees to IPERS with the final wage report for such employee. This report shall contain the employee's last-known mailing address and such other information as IPERS might require.

c. The Iowa department of administrative services and the Iowa department of corrections shall notify IPERS prior to adding additional job classifications to the protection occupation class. The

notification shall include the effective date, names and social security numbers of the employees involved.

4.2(4) *Fees.* IPERS may assess to the employer a fee for administrative costs as described in subrule 4.3(6).

[**ARC 8601B**, IAB 3/10/10, effective 4/14/10; **ARC 2981C**, IAB 3/15/17, effective 4/19/17; **ARC 5489C**, IAB 3/10/21, effective 4/14/21]

495—4.3(97B) Wage reporting and payment of contributions by employers.

4.3(1) *Payment of contributions.* For wages paid on or after July 1, 2008, all covered employers are required to pay contributions on a monthly basis. Upon enrollment as an IPERS-covered employer, the employer shall receive the appropriate forms and instructions from IPERS to submit contributions. IPERS will provide monthly statements to each employer.

IPERS accepts the payment of contributions through electronic funds transfer. Payments utilizing the electronic funds transfer system shall be made according to the procedure described in subrule 4.3(3).

IPERS accepts the payment of contributions using checks and remittance advice forms. Employers filing monthly employer remittance advice forms on paper for two or more employers shall attach the checks to each remittance form. Checks shall be made payable to the Iowa Public Employees' Retirement System and mailed with the employer remittance advice form to IPERS, P.O. Box 9117, Des Moines, Iowa 50306-9117. Effective August 1, 2008, such payments and reports shall be subject to a fee as described in subrule 4.3(6).

4.3(2) *Wage reports.* For wages paid on or after July 1, 2008, all IPERS-covered employers are required to file wage reports on a monthly basis. IPERS will provide the forms and instructions for wage reporting to employers. Each wage report must include the required information for all employees who earned reportable wages or wage equivalents under IPERS. The reports must be received by IPERS on or before the fifteenth day of the month following the month in which the wages were paid. If the fifteenth day falls on a weekend or state-observed holiday, the wage report is due on the next regularly scheduled business day.

Effective August 1, 2008, IPERS shall accept wage reports electronically via IPERS' employer self-service Internet application or as a paper report. However, for those employers submitting reports other than via IPERS' employer self-service Internet application, IPERS shall charge a fee as described in subrule 4.3(6).

4.3(3) *Deadlines for payment of contributions.*

a. Contributions must be paid monthly and must be received by IPERS on or before the fifteenth day of the month following the month in which wages were paid. If the fifteenth day falls on a weekend or state-observed holiday, the contribution is due on the next regularly scheduled business day.

b. For employers paying contributions by electronic funds transfer, wage reports and contributions may be submitted at the same time.

4.3(4) *Request for time extension.* A request for an extension of time to file a wage report or pay a contribution may be granted by IPERS for good cause if a request is made before the due date, but no extension shall exceed 15 days beyond the due date. If an employer that has been granted an extension fails to submit the wage report or pay the contribution on or before the end of the extension period, the applicable interest and fees shall be charged and paid from the original due date as if no extension had been granted. If the fifteenth day falls on a weekend or state-observed holiday, the contribution or wage report is due on the next regularly scheduled business day.

To establish good cause for an extension of time to file a wage report or pay contributions, the employer must show that the delinquency was not due to mere negligence, carelessness or inattention. The employer must affirmatively show that it did not file the wage report or timely pay a contribution because of some occurrence beyond the control of the employer.

4.3(5) *No reportable wages.* When an employer has no reportable wages during the applicable reporting period, the wage reporting document shall be filed according to subrule 4.3(2). Even if there are no reportable wages, the employer's account is considered delinquent for the reporting period and is subject to a fee until the report is filed. However, if the employer has notified IPERS on or before the due date that there are no wages to report, IPERS will adjust the due date, and no fee will be charged.

4.3(6) *Fees for noncompliance.* IPERS is authorized to impose reasonable fees on employers that do not file wage reports through the IPERS' employer self-service Internet application as described in subrule 4.3(2), that fail to timely file accurate wage reports, or that fail to pay contributions when due pursuant to subrule 4.3(3).

For submissions filed on or after August 1, 2008, IPERS shall charge employers a processing fee of $20 plus 25 cents per employee for late submissions and manual processing of wage reports by IPERS. Employers that are late or that do not use IPERS' employer self-service Internet application may be charged both fees. In addition, if a fee for noncompliance is not paid by the fifteenth day of the month after the fee is assessed, the fee will accrue interest daily at the interest rate provided in Iowa Code sections 97B.9 and 97B.70. No fee will be charged on late contributions received as a result of a wage adjustment, but interest on the amount due will be charged until paid in full.

If the due date for a fee falls on a weekend or state-observed holiday, the due date shall be the next regularly scheduled business day.

4.3(7) *Erroneously reported wages for employees not covered under IPERS.* Employers that erroneously report wages for employees who are not eligible for coverage under IPERS may file an IPERS wage reporting adjustment form. IPERS shall return a warrant or issue a credit for both the employer and employee contributions made in error. The employer is responsible for returning the employees' share and for filing corrected federal and state wage reporting forms. Adjustments in such cases will be reported on the employer's monthly statement. Under no circumstance shall the employer adjust these wages by underreporting wages on a future periodic wage reporting document. Wages shall never be reported as a negative amount. An employer that completes the employer portion of an employee's request for a refund on an IPERS refund application form will not be permitted to file a periodic wage reporting adjustment form for that employee for the same time period. No fee will be assessed to employers that correct information as provided under this subrule.

4.3(8) *Contributions paid on wages in excess of the annual covered wage maximum.* For wages paid on or after July 1, 2008, whenever IPERS determines that an employee's wages will exceed the annual maximum established under Section 401(a)(17)(A) and the cost-of-living adjustments to that maximum permitted under Section 401(a)(17)(B) of the Internal Revenue Code during a given month, IPERS shall notify the applicable employer and shall return the related excess contributions. IPERS will detail on the monthly report those employees for whom wages were reported in excess of the covered wage ceiling. The employer is responsible for returning the employee's share of excess contributions and making the applicable tax corrections.

4.3(9) *Termination within less than six months of the date of employment.* If an employee hired for permanent employment terminates within six months of the date of employment, the employer may file an IPERS form for reporting adjustments to receive a warrant or a credit, as elected by the employer, for both the employer's and employee's portions of the contributions. It is the responsibility of the employer to return the employee's share. "Termination within less than six months of the date of employment" means employment is terminated prior to the day before the employee's six-month anniversary date. For example, an employee hired on February 10 whose last day is August 8 would be treated as having resigned within less than six months. An employee hired on February 10 whose last day is August 9 (the day before the six-month anniversary date, August 10) would be treated as having worked six months and would be eligible for a refund.

4.3(10) *Reinstatement following an employment dispute.* Employees who are reinstated following an employment dispute may restore membership service credit as described in 495—9.5(97B).

[**ARC 9397B**, IAB 2/23/11, effective 3/30/11; **ARC 2981C**, IAB 3/15/17, effective 4/19/17; **ARC 3684C**, IAB 3/14/18, effective 4/18/18]

495—4.4(97B) Accrual of interest and application of employer payments. Interest or charges as provided under Iowa Code section 97B.9 shall accrue on all employer payments not received by IPERS by the due date, except that interest or charges may be waived by IPERS if the employer requests an extension of time under subrule 4.3(4) prior to the due date. Effective August 1, 2008, employers that remit late contributions shall be charged a minimum of $20 or interest at the rate provided in Iowa Code section 97B.70, whichever is greater. No fee will be charged on late contributions received as a result of a wage adjustment, but interest on the amount due will be charged until paid in full. Payments received from employers having unpaid account balances shall first be applied to the oldest outstanding balance.

495—4.5(97B) Credit memos voided. Rescinded IAB 3/26/08, effective 4/30/08.

495—4.6(97B) Contribution rates. The following contribution rate schedule, payable on the covered wage of the member, is determined by the position or classification and the occupation class code of the member.

4.6(1) Contribution rates for regular class members.

a. The following contribution rates were established by the Iowa legislature for all regular class members for the indicated periods:

	Effective July 1, 2007	Effective July 1, 2008	Effective July 1, 2009	Effective July 1, 2010	Effective July 1, 2011
Combined rate	9.95%	10.45%	10.95%	11.45%	13.45%
Employer	6.05%	6.35%	6.65%	6.95%	8.07%
Employee	3.90%	4.10%	4.30%	4.50%	5.38%

b. Effective July 1, 2012, and every year thereafter, the contribution rates for regular members shall be publicly declared by IPERS staff no later than the preceding December as determined by the annual valuation of the preceding fiscal year. The public declaration of contribution rates will be followed by rulemaking that will include a notice and comment period and that will become effective July 1 of the next fiscal year. Contribution rates for regular members are as follows.

	Effective July 1, 2021	Effective July 1, 2022	Effective July 1, 2023	Effective July 1, 2024	Effective July 1, 2025
Combined rate	15.73%	15.73%	15.73%	15.73%	15.73%
Employer	9.44%	9.44%	9.44%	9.44%	9.44%
Employee	6.29%	6.29%	6.29%	6.29%	6.29%

4.6(2) Contribution rates for sheriffs and deputy sheriffs are as follows.

	Effective July 1, 2021	Effective July 1, 2022	Effective July 1, 2023	Effective July 1, 2024	Effective July 1, 2025
Combined rate	18.02%	17.52%	17.02%	17.02%	24.18%
Employer	9.01%	8.76%	8.51%	8.51%	11.965%
Employee	9.01%	8.76%	8.51%	8.51%	12.215%

4.6(3) Contribution rates for protection occupations are as follows.

	Effective July 1, 2021	Effective July 1, 2022	Effective July 1, 2023	Effective July 1, 2024	Effective July 1, 2025
Combined rate	15.52%	15.52%	15.52%	15.52%	15.52%
Employer	9.31%	9.31%	9.31%	9.31%	9.185%
Employee	6.21%	6.21%	6.21%	6.21%	6.335%

4.6(4) Members employed in a "protection occupation" shall include:

a. Conservation peace officers. Effective July 1, 2002, all conservation peace officers, state and county, as described in Iowa Code sections 350.5 and 456A.13.

b. Effective July 1, 1994, a marshal in a city not covered under Iowa Code chapter 400 or a firefighter or police officer of a city not participating under Iowa Code chapter 410 or 411. (See employee classifications in rule 495—5.1(97B).) Effective January 1, 1995, part-time police officers shall be included.

c. Correctional officers as provided for in Iowa Code section 97B.49B. Employees who, prior to December 22, 1989, were in a "correctional officer" position but whose position is found to no longer meet this definition on or after that date shall retain coverage, but only for as long as the employee is in that position or another "correctional officer" position that meets this definition. Movement to a position that does not meet this definition shall cancel "protection occupation" coverage.

d. Airport firefighters employed by the military division of the department of public defense (airport firefighters). Effective July 1, 2004, airport firefighters become part of and shall make the same contributions as the other members covered under Iowa Code section 97B.49B. From July 1, 1994, through June 30, 2004, airport firefighters were grouped with and made the same contributions as sheriffs and deputy sheriffs. From July 1, 1988, through June 30, 1994, airport firefighters were grouped with and made the same contributions as the other members covered under Iowa Code section 97B.49B. From July 1, 1986, through June 30, 1988, airport firefighters were a separate protection occupation group and made contributions at a rate calculated for members of that group. Prior to July 1, 1986, airport firefighters were grouped with regular members and made the same contributions as regular members.

Notwithstanding the foregoing, all airport firefighter service prior to July 1, 2004, shall be coded by IPERS as sheriff/deputy sheriff/airport firefighter service, and all airport firefighter service after June 30, 2004, shall be coded by IPERS as protection occupation service. This coding, however, shall not supersede provisions of this title that require members to make contributions at higher rates in order to receive certain benefits, such as in the hybrid formula pursuant to 495—12.4(97B).

e. Airport safety officers employed under Iowa Code chapter 400 by an airport commission in a city with a population of 100,000 or more, and employees covered by the Iowa Code chapter 8A merit system whose primary duties are providing airport security and who carry or are licensed to carry firearms while performing those duties.

f. Effective July 1, 1990, an employee of the state department of transportation who is designated as a "peace officer" by resolution under Iowa Code section 321.477.

g. Effective July 1, 1992, a fire prevention inspector peace officer employed by the department of public safety. Effective July 1, 1994, a fire prevention inspector peace officer employed before that date who does not elect coverage under Iowa Code chapter 97A in lieu of IPERS.

h. Effective July 1, 1994, through June 30, 1998, a parole officer III with a judicial district department of correctional services.

i. Effective July 1, 1994, through June 30, 1998, a probation officer III with a judicial district department of correctional services.

j. Effective July 1, 2008, county jailers and detention officers working as jailers.

k. Effective July 1, 2008, National Guard installation security officers.

l. Effective July 1, 2008, emergency medical care providers.

m. Effective July 1, 2008, special investigators who are employed by county attorneys.

n. Effective July 1, 2014, an employee of the insurance division of the department of commerce who as a condition of employment is required to be certified by the Iowa law enforcement academy and who is required to perform the duties of a peace officer as provided in Iowa Code section 507E.8.

o. Effective July 1, 2014, an employee of a judicial district department of correctional services whose condition of employment requires the employee to be certified by the Iowa law enforcement academy and who is required to perform the duties of a parole officer as provided in Iowa Code section 906.2.

p. Effective July 1, 2016, a peace officer employed by an institution under the control of the state board of regents whose position requires law enforcement certification pursuant to Iowa Code section 262.13.

q. Effective July 1, 2016, a person employed by the department of human services as a psychiatric security specialist at a civil commitment unit for sexually violent offenders facility.

4.6(5) Service reclassification.

a. Prior to July 1, 2006, except as otherwise indicated in the implementing legislation or these rules, for a member whose prior regular service position is reclassified by the legislature as a special service position, all prior service by the member in such regular service position shall be coded by IPERS staff as special service if certified by the employer as constituting special service under current law. No additional contributions shall be required by regular service reclassified as special service under this paragraph.

b. Effective July 1, 2006, for a member whose prior regular service position is reclassified by the legislature as a special service position, all prior service by the member in such regular service position shall continue to be coded by IPERS staff as regular service unless the legislature specifically provides in its legislation for payment of the related actuarial costs of such reclassified service as required under Iowa Code section 97B.65.

4.6(6) Effective July 1, 2006, in the determination of a sheriff's or deputy sheriff's eligibility for benefits and the amount of such benefits under Iowa Code section 97B.49C, all protection occupation service credits for that member shall count toward the total years of eligible service as a sheriff or deputy sheriff. However, this subrule shall not be construed to alter the statutory requirement that a sheriff or deputy sheriff must be employed as a sheriff or deputy sheriff at termination of covered employment in order to qualify for benefits under Iowa Code section 97B.49C.

4.6(7) Pretax.

a. Effective January 1, 1995, employers must pay member contributions on a pretax basis for federal income tax purposes only. Such contributions are considered employer contributions for federal income tax purposes and employee contributions for all other purposes. Employers must reduce the member's salary reportable for federal income tax purposes by the amount of the member's contribution.

b. Salaries reportable for purposes other than federal income tax will not be reduced, including for IPERS, FICA, and, through December 31, 1998, state income tax purposes.

c. Effective January 1, 1999, employers must pay member contributions on a pretax basis for both federal and state income tax purposes.

[**ARC 7591B**, IAB 2/25/09, effective 7/1/09; **ARC 7759B**, IAB 5/6/09, effective 4/17/09; **ARC 7916B**, IAB 7/1/09, effective 8/5/09; **ARC 8601B**, IAB 3/10/10, effective 4/14/10; **ARC 9397B**, IAB 2/23/11, effective 3/30/11; **ARC 0017C**, IAB 2/22/12, effective 3/28/12; **ARC 0662C**, IAB 4/3/13, effective 5/8/13; **ARC 1348C**, IAB 2/19/14, effective 3/26/14; **ARC 1887C**, IAB 2/18/15, effective 3/25/15; **ARC 2402C**, IAB 2/17/16, effective 3/23/16; **ARC 2981C**, IAB 3/15/17, effective 4/19/17; **ARC 3684C**, IAB 3/14/18, effective 4/18/18; **ARC 4337C**, IAB 3/13/19, effective 4/17/19; **ARC 5027C**, IAB 4/8/20, effective 5/13/20; **ARC 5489C**, IAB 3/10/21, effective 4/14/21; **ARC 6215C**, IAB 2/23/22, effective 3/30/22; **ARC 6949C**, IAB 3/8/23, effective 4/12/23; **ARC 7811C**, IAB 4/17/24, effective 5/22/24; **ARC 9287C**, IAB 5/14/25, effective 6/18/25; **ARC 9417C**, IAB 7/23/25, effective 6/30/25]

495—4.7(97B) Employee information to be provided by covered employers. Covered employers are required to enroll new employees prior to reporting wages for the new employees using IPERS' employer self-service Internet application. Enrollment information shall include, but is not limited to, the following: member's name, social security number, date of birth, date of hire, occupation code, gender, mailing address, and employer identification number. When an employee terminates employment with a covered employer, the employer shall provide the termination date and the date of the employee's final paycheck.

[**ARC 2981C**, IAB 3/15/17, effective 4/19/17]

495—4.8(97B) Additional employer contributions from employer-mandated reduction in hours or by the exercise of bumping rights to avoid a layoff. Rescinded **ARC 2981C**, IAB 3/15/17, effective 4/19/17.

These rules are intended to implement Iowa Code sections 97B.4, 97B.9, 97B.14, 97B.14A, 97B.38, 97B.49A to 97B.49I, 97B.65 and 97B.70 and 2009 Iowa Acts, chapter 170, section 51, as amended by 2010 Iowa Acts, House File 2518, sections 36 and 41.

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NATURAL RESOURCES DEPARTMENT[561]

Created by 1986 Iowa Acts, chapter 1245, section 1802
Rules of divisions under this Department "umbrella" include Energy and Geological Resources[565], Environmental Protection Commission[567], Natural Resource Commission[571], and Preserves, State Advisory Board[575]

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CHAPTER 1
DESCRIPTION OF ORGANIZATION
Rescinded **ARC 9432C**, IAB 7/23/25, effective 8/27/25

CHAPTER 3
SUBMISSION OF INFORMATION AND COMPLAINTS—INVESTIGATIONS

Rescinded **ARC 9432C**, IAB 7/23/25, effective 8/27/25

CHAPTER 7
RULES OF PRACTICE IN CONTESTED CASES

Chapter rescission date pursuant to Iowa Code section 17A.7: 8/27/30

561—7.1(17A,455A) Scope and applicability. This chapter applies to contested case proceedings conducted by the department of natural resources, as defined in rule 561—7.2(17A,455A). Nothing in this chapter shall be construed to grant a right to a contested case proceeding when the Iowa Code does not specifically provide for a contested case, except that vendor appeal contested case proceedings may be conducted according to the provisions of 561—Chapter 8.
[**ARC 9433C**, IAB 7/23/25, effective 8/27/25]

561—7.2(17A,455A) Definitions. When used in this chapter:

"Agency" means the commission or the director, as appropriate, having statutory jurisdiction over a particular contested case.

"Commission" means the natural resource commission or the environmental protection commission, as designated in Iowa Code chapter 455A as having appellate jurisdiction over a particular matter.

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

"Department" means the department of natural resources.

"Director" means the director of the department or an authorized representative.

"Party" means a person named and admitted as a party.

"Presiding officer" means an administrative law judge employed by the department of inspections, appeals, and licensing or the agency, as provided in rule 561—7.7(17A,455A).

"Proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the agency did not preside.
[**ARC 9433C**, IAB 7/23/25, effective 8/27/25]

561—7.3(17A,455A) Time requirements.

7.3(1) *Time.* Time shall be computed as provided in Iowa Code section 4.1(34).

7.3(2) *Change.* Except for good cause stated in the record, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments before extending or shortening the time to take any action. When by these rules, or by notice given under them, an act is required or allowed to be done within a specified period of time, the presiding officer may, at any time, exercise discretion and may with or without motion or notice, for good cause, order the period extended if a request is made before the expiration of the period originally prescribed or as extended by a previous order.

7.3(3) *Mail.* Any documents filed with the department by mail pursuant to these rules shall be deemed filed on the date of postmark.
[**ARC 9433C**, IAB 7/23/25, effective 8/27/25]

561—7.4(17A,455A) Appeal of agency action (requests to initiate contested case proceedings).

7.4(1) *Time.*

a. Any order issued by the director of the department shall comply with the requirements established in Iowa Code section 455B.110 and may be appealed. The written notice of appeal of the order must be received by the director within 60 days of proper issuance of the order.

b. Any person appealing any other action by the department that is subject to appeal shall file a written notice of appeal within 60 days of the action, unless a shorter time period is specified by a particular statute or rule governing the subject matter of the action.

c. Unless otherwise stated in the order or notice provided, any written notice of appeal shall be filed with the director of the department, and a copy shall be sent to the legal services bureau chief.

7.4(2) *Content.* Each appeal shall contain:

a. The name and address of the appellant,

b. A description of the specific portion or portions of the agency action that are being appealed, and

c. A short and plain statement of the reasons the specific agency action is being appealed.

[**ARC 9433C**, IAB 7/23/25, effective 8/27/25]

561—7.5(17A,455A) Commencement of contested case—notice of hearing.

7.5(1) *Transmittal of appeal.* Except as provided in subrule 7.5(2), the department shall transmit the appeal and request for a contested case proceeding to the department of inspections, appeals, and licensing, or shall otherwise transmit the appeal to the presiding officer, when it determines that the appeal was timely filed and the requester is entitled to a contested case proceeding. When the appeal is from an administrative order, the order shall be transmitted with the appeal.

7.5(2) *Petition from the department.* After the department seeks to suspend or revoke a permit or license, institute licensee disciplinary proceedings, or otherwise commence a contested case, it shall file a petition as described in subrule 7.12(1).

7.5(3) *Notice of hearing issued.* A contested case commences when a notice of hearing is delivered to a party. A notice of hearing will be prepared and issued by the presiding officer when:

a. The department receives a notice of appeal from a person other than the department, or

b. A petition from the department is filed, as provided in subrule 7.5(2).

7.5(4) *Delivery of notice of hearing.* Delivery of the notice of hearing may occur by personal service or publication as provided in the Iowa Rules of Civil Procedure; by certified mail, return receipt requested; or as otherwise required by statute.

7.5(5) *Contents of notice of hearing.* The notice of hearing shall contain the following information:

a. Identification of the parties, including the name, address and telephone number of the person who will act as advocate for the agency or the state and identification of all the parties' counsel where known;

b. A statement of the time, place and nature of the hearing;

c. A statement of the legal authority and jurisdiction under which the hearing is to be held;

d. A reference to the particular section of the statutes and rules involved;

e. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, then initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;

f. Reference to the procedural rules governing informal settlement;

g. Identification of the presiding officer, if known, or if not known, then a description of who will serve as presiding officer (e.g., agency head, members of multimembered agency head, or administrative law judge from the department of inspections, appeals, and licensing);

h. The time within which a petition or answer must be filed; and

i. In those cases where the department files the petition pursuant to the provisions of subrule 7.5(2), the notice shall include a copy of the petition and a statement that, in the event an answer is not timely filed in accordance with these rules, judgment may be entered for the relief requested in the petition.

7.5(6) *Time for response to notice of hearing.* A person served with a notice of hearing shall file a petition or answer as required by subrule 7.12(1) or 7.12(2) within 20 days of receipt of the notice of hearing. Failure to file shall, upon motion, result in the presiding officer's entering a default against the person failing to file.

[**ARC 9433C**, IAB 7/23/25, effective 8/27/25]

561—7.6(17A,455A) Informal settlement negotiations.

7.6(1) *Informal settlement encouraged.* Unless precluded by statute, informal settlement of controversies is encouraged when those controversies may culminate in contested case proceedings

according to the provisions of Iowa Code chapter 17A and these rules. However, this rule shall not be construed to require any party other than the department to utilize informal procedures or to settle the controversy pursuant to informal procedures.

7.6(2) *Opportunity to pursue informal settlement.* A party to a contested case may request an opportunity to pursue informal settlement. The request shall be in writing and shall be delivered to the director with a copy to the legal services bureau chief. Upon receipt of the request, further proceedings shall be delayed and no contested case hearing date shall be set, except in the case of emergency orders as provided in rule 561—7.18(17A,455A). Informal settlement negotiations may include verbal or written communications between or among parties. At the request of any party, the appeal shall be transmitted to the department of inspections, appeals, and licensing. Settlement negotiations may continue following transmittal.

[**ARC 9433C**, IAB 7/23/25, effective 8/27/25]

561—7.7(17A,455A) Presiding officer. Except as otherwise provided in this rule, an administrative law judge employed by the department of inspections, appeals, and licensing shall preside at contested case hearings.

7.7(1) On motion of a party or on its own motion, the agency may order that the hearing be conducted before the agency or one or more members thereof. Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections, appeals, and licensing must file a written request within 10 days after service of a notice of hearing that identifies or describes the presiding officer as the agency head or members of the agency. The agency may deny the request only upon a finding that one or more of the following reasons apply:

a. Neither the agency nor any officer of the agency under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding (i.e., there is no conflict of interest because the agency would not act as both party and adjudicator in the contested case proceeding).

b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

c. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

d. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

e. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.

f. The request was not timely filed.

g. The request is not consistent with a specified statute.

7.7(2) The agency shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed.

[**ARC 9433C**, IAB 7/23/25, effective 8/27/25]

561—7.8(17A,455A) Disqualification of presiding officer.

7.8(1) *Grounds for disqualification.*

a. A presiding officer shall not participate in the making of a proposed or final decision if the individual has investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, or another pending factually related controversy that may culminate in a case involving the same parties.

b. A presiding officer shall not be subject to the authority, direction or discretion of any person who has investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case or a pending factually related case or controversy involving the same parties.

c. A member of an agency having jurisdiction of a case shall not participate in the making of a final decision or order if the member is employed by, receives directly or indirectly personal income

from, or has other substantial connection with a person subject to permit or enforcement action pending before the agency if that person would be substantially affected by the outcome of the case.

d. A presiding officer shall not be biased for or against any party.

7.8(2) *Affidavit asserting disqualification.*

a. A party may file an affidavit asserting disqualification of a presiding officer under this subrule at any time, except that an affidavit against a member of the commission on appeal or review of the proposed decision shall be filed prior to any hearing on appeal or review of the proposed decision. A determination as to whether that individual should participate shall be made by the agency before further participation by that individual.

b. Any party to a contested case proceeding may file an affidavit alleging a violation of subrule 7.8(1), and the agency shall determine the matter as part of the record in the contested case. When an agency makes such a determination with respect to any agency member, that determination shall be subject to de novo judicial review in any appeal of the contested case decision.

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561—7.9(17A,455A) Separation of functions and ex parte communications.

7.9(1) *Separation of functions.* A staff attorney for the department shall perform the investigative and prosecuting functions for the department. Additional employees of the department may be designated by the director to perform these functions as necessary during the course of the case. No person performing these functions shall participate or advise in any decision arising out of that case except as witness or counsel in public proceedings.

7.9(2) *Communications initiated by administrative law judge or agency member.*

a. Except as provided in paragraphs 7.9(2)*"b"* and *"c,"* or unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, the presiding officer and members of the agency having jurisdiction of the case shall not communicate, directly or indirectly, in connection with any issue of fact or law in that case with any person or party or representative of any party, or any other person with a direct or indirect interest in such case. Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate to the extent permitted or allowed by Iowa Code chapter 21, "Official Meetings Open to Public (Open Meetings)."

b. The presiding officer having jurisdiction of a case may communicate in connection with issues of fact or law in the case, upon notice and opportunity for all parties to participate. Where members of the agency are acting as the presiding officer(s), they may communicate in connection with issues of fact or law in the case, upon notice and opportunity for all parties to participate and to the extent permitted by Iowa Code chapter 21, "Official Meetings Open to Public (Open Meetings)." Notice of the time and place of the discussion and the issues of fact or law to be discussed shall be delivered by first-class mail to the parties. The discussion shall not extend to issues of fact or law not specified in the notice unless all parties participate in the discussion. The time of the discussion shall not be sooner than ten days after receipt of the notice.

c. The presiding officer or members of the agency having jurisdiction of the case may communicate with members of the department and may have the aid and advice of persons other than those with a personal interest in, or those engaged in personally investigating, prosecuting or advocating in, either the case under consideration or a pending factually related case involving the same parties, as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record. All employees of the department other than those performing the investigative and prosecuting functions in the case shall be available to advise the agency and presiding officer on any of those employees' functions relating to the case and any appeal, provided communications with those employees meet the above specifications.

7.9(3) *Communications initiated by parties.*

a. Unless required for the disposition of ex parte matters specifically authorized by statute, parties, including the department, or their representatives in a case, and persons with a direct or indirect interest in such a case, shall not communicate directly or indirectly in connection with any issue of fact or law in that case with the presiding officer or members of the agency having jurisdiction of the case, except upon notice and opportunity for all parties to participate, as provided in paragraph 7.9(2)*"b."*

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

c. The presiding officer or members of the agency shall refuse to discuss issues of fact or law with parties unless notice and opportunity for hearing has been given to all parties. A copy of any written ex parte communication or summary of oral ex parte communication received from a party, which directly or indirectly relates to any issue of fact or law in the case, shall be transmitted by the presiding officer to the other parties, and the presiding officer shall include the written communication or summary in the record.

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

e. The presiding officer may require the recipient of a prohibited communication to submit the communication if written, or a summary of the communication if oral, for inclusion in the record of the proceedings.

f. The presiding officer may render a proposed or final decision imposing appropriate sanctions, including default, for violations of rule 561—7.9(17A,455A); make a decision against the offending party; or censure, suspend or revoke the privilege to practice before the agency.

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561—7.10(17A,455A) Consolidation and severance.

7.10(1) *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where:

a. The matters at issue involve common parties or common questions of fact or law;

b. Consolidation would expedite and simplify consideration of the issues involved; and

c. Consolidation would not adversely affect the rights of any of the parties to those proceedings.

7.10(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceeding or a portion thereof severed.

[**ARC 9433C**, IAB 7/23/25, effective 8/27/25]

561—7.11(17A,455A) Intervention.

7.11(1) *Motion to intervene.* A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervener, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 20 days of receipt of the motion to intervene unless the time period is extended or shortened by the presiding officer.

7.11(2) *When filed.* Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless the result would be

inequitable or unjust, an intervener shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely interveners for continuances that would delay the proceeding will ordinarily be denied.

7.11(3) *Grounds for intervention.* The movant shall demonstrate that:

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

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

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

7.11(4) *Effect of intervention.* If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceeding. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervener or otherwise condition the intervener's participation in the proceeding.

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561—7.12(17A,455A) Pleadings. Pleadings are the parties' written statements of their respective claims or defenses. Pleadings do not include motions. The only allowable pleadings shall be the petition and the answer.

7.12(1) *Petition.*

a. Who must file. In all cases where an action of the department is appealed, the party aggrieved by the action shall file the petition. In those cases where the department seeks to suspend or revoke a license or permit, the department shall file the petition.

b. Time for filing. Any petition required to be filed by a party other than the department shall be filed within 20 days of receipt of the notice of hearing, unless the presiding officer allows additional time.

c. Content. The petition shall include all of the following items, in separately numbered paragraphs:

(1) The basis for the agency's jurisdiction over the matter;

(2) A detailed discussion of the relief demanded and the supporting facts, including any supporting documentation relied upon for relief;

(3) The particular provisions of the statutes and rules involved;

(4) The name(s) of the party or parties on whose behalf the petition is filed; and

(5) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

7.12(2) *Answer.*

a. Who must file. In all cases where an action of the department is appealed, the department shall file the answer. In those cases where the department seeks to suspend or revoke a license or permit, the holder of the license or permit shall file the answer.

b. Time for filing. The answer shall be filed within 20 days of receipt of the petition.

c. Content of answer. The answer shall state on whose behalf it is filed and shall specifically admit or deny each allegation or paragraph of the petition. It shall state any facts deemed to show a defense; it may raise points of law appearing on the face of the petition; and it may contain as many defenses, legal or equitable, as the pleader may claim, which defenses may be inconsistent. The answer also shall state the name, address and telephone number of the person filing the answer and the person's attorney, if any.

d. Matters admitted and defenses waived. Any allegation in the petition not denied in the answer shall be deemed admitted. Any defense not raised in the answer that could have been raised at that time on the basis of facts then known shall be deemed waived, except for subject matter jurisdiction.

e. *Failure to answer.* If the party required by this subrule to file an answer fails to file an answer within 20 days of receipt of the notice of hearing or petition, a default shall, upon motion, be entered by the presiding officer.

7.12(3) *Amendment.* Any notice of hearing, petition, or other charging document (document asserting a party's position) may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

7.12(4) *Form.* All pleadings shall adhere to the format required by or use the template provided by the department of inspections, appeals, and licensing, if any, and must be signed by the person filing the pleading.

7.12(5) *Filing and service of pleadings.* The original of all pleadings shall be filed with the presiding officer, and a copy of all pleadings shall be contemporaneously served upon the other parties. Filing and service of pleadings shall be by e-file, first-class mail, or personal service. No return of service shall be required.

7.12(6) *Docketing.* Upon receipt of a pleading, the presiding officer shall docket the pleading in a docket kept for that purpose and shall assign a number to the case that shall be placed on all subsequent pleadings filed in the case.

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561—7.13(17A,455A) Defaults.

7.13(1) *Defaults defined.* A party shall be in default when the party:

a. Fails to file a pleading within the time prescribed for filing of the pleading;

b. Withdraws a pleading without permission to replead;

c. Fails to comply with any order of the presiding officer; or

d. Fails to appear for a contested case proceeding after proper service of notice. If a party fails to appear and participate in a contested case proceeding after proper service of notice, then the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision on the merits in the absence of the party. If a decision on the merits is rendered, the sole remedy to set aside the judgment is a motion to vacate made consistent with the provisions of subrule 7.17(7).

7.13(2) *How entered.* If a party is in default, the presiding officer on motion of the adverse party shall enter the default against the party.

7.13(3) *Contents of decision.* A default decision shall contain the presiding officer's reasons for the decision. A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues. Unless the defaulting party has appeared before the presiding officer, the relief shall not exceed the demand for relief. A default decision may provide either that the default decision is to be stayed pending a timely motion to set aside or that the default decision is to take effect immediately.

7.13(4) *Setting aside default.*

a. For good cause shown, the presiding officer may set aside a default or order thereon due to mistake, inadvertence, surprise, excusable neglect or unavoidable casualty. The exclusive remedy for an order based on default shall be a timely motion to set aside the default.

b. A motion to set aside a default must be filed promptly after the discovery of the grounds, but in no case shall the motion be filed more than ten days after receipt of the order. Default decisions shall become final agency action unless a motion to set aside the default is timely filed.

(1) Contents of motion. A motion to set aside a default shall state all facts relied upon by the moving party and shall establish that good cause existed for that party's default status. If the party is in default due to failure to appear for a contested case proceeding, then each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

(2) Further appeal stayed. The time for further appeal of a decision for which a motion to set aside the default has been filed is stayed pending a decision on the motion to set aside the default.

(3) When granted. The burden of proof to show good cause to set aside the default due to mistake, inadvertence, surprise, excusable neglect or unavoidable casualty is on the moving party. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's timely filed response to the motion.

7.13(5) *Appeal of denial of motion to set aside default.*

a. If a timely motion to set aside a default is denied, it may be followed by an appeal to the agency having jurisdiction of the matter. The issues on appeal are limited to the grounds for denial of the motion to set aside default. Review is limited to whether the denial of the motion was arbitrary or capricious and whether there is a showing of good cause to set aside default due to mistake, inadvertence, surprise, excusable neglect or unavoidable casualty.

b. Upon a finding by the agency of good cause, the default shall be set aside. The hearing shall be completed, with proper notice, before appeal on the subject matter of the case shall be permitted.

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561—7.14(17A,455A) Prehearing procedures.

7.14(1) *No factual dispute contested cases.* If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such dispute or fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, then as soon as practicable the parties shall jointly submit to the presiding officer a schedule detailing the method and timetable for submission of the record, briefs, and oral argument. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to paragraph 7.14(2)*"e."*

7.14(2) *Motions.*

a. Form of motion. No technical form for motions is required. However, prehearing motions must be in writing, must state the grounds for relief, and must state the relief sought.

b. Time for response to motions. Any party may file a written response to a motion within 10 days after service of the motion, unless the time period is extended or shortened by rules of the agency or the presiding officer. Failure to respond within the required time period may be deemed a waiver of objection to the granting of the motion.

c. Oral argument on motions. The presiding officer may schedule oral argument on any motion.

d. Time for filing. Motions pertaining to the hearing, except motions for summary judgment, must be filed and served prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by the presiding officer.

e. Motions for summary judgment. Motions for summary judgment shall comply with the requirements of Iowa Rules of Civil Procedure 1.981 through 1.983 and shall be subject to disposition according to the requirements of those rules to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases. Motions for summary judgment must be filed and served either at least 30 days prior to the scheduled hearing date, or during another time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to subrule 7.17(6) and appeal pursuant to subrule 7.17(5).

7.14(3) *Discovery.*

a. In general. The discovery procedures available to parties in civil actions are available to parties to a contested case. Unless lengthened or shortened by these rules or by order of the presiding

officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

b. Motions relating to discovery. Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 7.3(2). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

c. Evidence obtained in discovery. Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

d. Prior statements or reports of witnesses. When a party relies on a witness who has made prior statements or reports with respect to the subject matter of the witness's testimony, the party shall, upon request, make the statements or reports available to a party for use on cross-examination unless the statement is confidential under 561—Chapter 2. If the statement or report is confidential under 561—Chapter 2, it may be made available, but it may be made subject to a protective order.

e. Disclosure of evidence and witnesses. At a prehearing conference or within some reasonable time set by the presiding officer prior to the hearing, each party shall make available, upon request, to the other parties the names of expert and other witnesses the party expects to call, together with a brief narrative summary of their expected testimony and a list of all documents and exhibits that the party expects to introduce into evidence. Amendments and additions to these materials may be made no later than ten days prior to the date of the hearing. However, following a prehearing conference held in accordance with subrule 7.14(5), witnesses, documents or exhibits may be added only if the moving party can show that they were not readily identifiable with reasonable diligence prior to the prehearing conference and that the addition is necessary to prevent manifest injustice.

7.14(4) *Subpoenas.*

a. Issuance. A subpoena shall be issued to a party upon request to the presiding officer. Such a request may be oral or in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Service and expenses. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

c. Motion to quash or modify. The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

7.14(5) *Prehearing conference.*

a. Matters considered. After filing of the pleadings, the presiding officer may, and shall upon the request of one of the parties, direct the parties to appear at a specified time and place before the presiding officer for a prehearing conference to consider, so far as is applicable to the particular hearing:

(1) The possibility or desirability of waiving any provisions of this chapter by written stipulation representing an informed mutual consent;

(2) The necessity or desirability of amending pleadings;

(3) Agreeing to the admission of facts, documents or records not controverted, to avoid unnecessary introduction of evidence;

(4) Limiting the number of witnesses;

(5) Settling on facts of which the presiding officer is to be asked to take official notice;

(6) Stating and simplifying the factual and legal issues to be decided in the contested case;

(7) The procedure at the hearing;

(8) Rescheduling the time and place of the hearing set forth in the notice of hearing to a date that will allow the parties and witnesses to prepare for and participate in the hearing;

(9) Other matters that may aid, expedite or simplify the disposition of the proceeding.

b. Stipulations. Since stipulations are encouraged, it is expected and anticipated that the parties proceeding to a hearing will stipulate to evidence to the fullest extent to which complete or qualified agreement can be reached, including all material facts that are not or should not fairly be in dispute.

c. Order or statement of agreement. Any action taken at the prehearing conference shall be recorded in an appropriate order, unless the parties enter into a written stipulation as to the matters or agree to the statement thereof made on the record by the presiding officer.

d. Objections. When an order is issued at the termination of the prehearing conference, a reasonable time shall be allowed to the parties to present objections on the ground that the order does not fully or correctly embody the agreement at the conference. Thereafter, the terms of the order or modification shall determine the subsequent course of the proceedings relative to matters it includes, unless modified to prevent manifest injustice.

7.14(6) *Continuance.* Unless otherwise provided, applications for continuance shall be made to the presiding officer. Applications for continuance may be made orally or in writing, unless otherwise specified by the presiding officer. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible.

7.14(7) *Prehearing telephone proceedings.* The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate.

7.14(8) *Emergency orders.* Prehearing procedures for emergency orders are set forth in rule 561—7.18(17A,455A).

[**ARC 9433C**, IAB 7/23/25, effective 8/27/25]

561—7.15(17A,455A) Hearing procedures.

7.15(1) *Conduct of proceedings.* A hearing shall be conducted by a presiding officer who shall:

a. Open the record and receive appearances;

b. Administer oaths;

c. Enter the notice of hearing into the record;

d. Receive testimony and exhibits presented by the parties;

e. In the presiding officer's discretion, interrogate witnesses;

f. Rule on objections and motions;

g. Close the hearing;

h. Issue an order containing findings of fact and conclusions of law.

Additionally, the presiding officer may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

7.15(2) *Order of proceedings.* The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

b. The parties shall be given an opportunity to present opening statements;

c. Parties shall present their cases in the sequence determined by the presiding officer;

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

7.15(3) *Failure to appear.* If a party fails to appear after proper service of notice of hearing, the presiding officer may adjourn, may enter a default against the absent party, or may proceed with the hearing and make a proposed decision in the absence of the party. Adjournment may be granted by the presiding officer on the presiding officer's own motion in the interest of justice.

7.15(4) *Representation at hearings.* Parties have the right to participate in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may, at its own expense, be represented by an attorney.

7.15(5) *Appearance pro se.* If a party other than the department appears on the party's own behalf without counsel, the presiding officer shall explain to the party the rules of practice and procedure and generally conduct the hearing in a less formal manner than that used when a party is represented by counsel.

7.15(6) *Attendance and participation of the public.* Every hearing before an agency of the department or an administrative law judge shall be open to the public.

7.15(7) *Introduction of evidence.* Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

7.15(8) *Fees.* Each party bears all costs and expenses, including fees, for its own witnesses.

7.15(9) *Objections.* All objections shall be timely made and stated on the record.

7.15(10) *Decorum.* The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly. Contemptuous conduct is grounds for removal from the hearing.

7.15(11) *Recording of hearing.*

a. Method of recording. Oral proceedings in connection with a hearing in a case shall be recorded either by mechanized means or by certified shorthand reporters. Parties requesting that the hearing be recorded by certified shorthand reporters shall bear the costs thereof.

b. Transcription. Oral proceedings in connection with a hearing in a case or any portion of the oral proceedings shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party.

c. Tapes. Copies of mechanized records of oral proceedings may be obtained from the presiding officer at the requester's expense.

7.15(12) *Telephone hearings.* Hearings may be conducted via telephone upon order of the presiding officer and with the consent of all parties.

[**ARC 9433C**, IAB 7/23/25, effective 8/27/25]

561—7.16(17A,455A) Evidence.

7.16(1) *Ruling on evidence.* The presiding officer shall rule on admissibility of evidence.

7.16(2) *Admissibility in general.* Evidence that is relevant and material shall be admitted unless it is unduly repetitious. Relevant and material evidence may be admitted even though inadmissible in a jury trial.

7.16(3) *Issues restricted.* Evidence in the proceeding shall be confined to the issues that have been expressed in the appealed action, the appeal, the petition and the answer.

7.16(4) *Stipulation.* Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

7.16(5) *Privilege.* The rules of privilege recognized by law shall be given effect.

7.16(6) *Examination of exhibits.* The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

7.16(7) *Documentary evidence.* Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original, if available.

7.16(8) *Examination and cross-examination.* Witnesses at the hearing shall be examined orally, under oath. Witnesses at the hearing, or persons whose testimony has been submitted in written form,

shall be subject to cross-examination by any parties as necessary for a full and true disclosure of facts. The presiding officer may limit the examination or cross-examination or both when necessary for orderly presentation of evidence.

7.16(9) *Sequestration of witnesses.* Witnesses may be sequestered during the hearing.

7.16(10) *Objections to evidence.* Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

7.16(11) *Offer of proof.* Whenever evidence is deemed inadmissible, the party offering the evidence may make an offer of proof that shall be noted in the record. The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the evidence excluded. If the evidence excluded consists of a document or exhibits, it shall be inserted in the record. In the event that the agency decides that the presiding officer's ruling in excluding the evidence was erroneous and prejudicial, the hearing may be reopened to permit the taking of the evidence or, where appropriate, the agency may evaluate the evidence and proceed to a final decision.

7.16(12) *Official notice.* Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions or otherwise, of the facts proposed to be noticed, and their source, including any staff memoranda or data. The parties may contest these facts before a decision is announced.

7.16(13) *Evaluation of evidence.* The agency's experience, technical competence, and specialized knowledge may be utilized in evaluating the evidence.

[**ARC 9433C**, IAB 7/23/25, effective 8/27/25]

561—7.17(17A,455A) Posthearing procedures and orders.

7.17(1) *Filing by parties of briefs and proposed findings.* Within 30 days after the last evidence is taken, each party may file with the presiding officer proposed findings of fact, conclusions of law, a proposed order or decision complying with subrule 7.17(3), and a supporting brief. Each party may, within the same period, file with the presiding officer a brief concerning any relevant matters at the hearing. Copies of these documents shall be served upon each of the other parties. Within 20 days thereafter, each party may file a brief that takes specific exception to matters contained in an opposing brief or that contains alternative findings of fact, conclusions of law, and proposed order. The briefing schedule, including waiver of briefs, shall be determined at the close of the hearing.

7.17(2) *Final decision or order.*

a. When the agency presides at the reception of evidence, the decision of the agency is a final decision.

b. When the agency does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision or order of the presiding officer becomes the final decision or order of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within the time provided in paragraph 7.17(5)*"a."*

7.17(3) *Decisions and orders.*

a. By whom prepared. The presiding officer who presided at the reception of evidence shall prepare a proposed or final decision or order in each case. Findings of fact shall be prepared by the officer presiding at the reception of the evidence in a case unless the presiding officer becomes unavailable. If the officer is unavailable, the findings of fact may be prepared by another person qualified to be a presiding officer who has read the record, unless demeanor of witnesses is a substantial factor. If demeanor is a substantial factor and the presiding officer is unavailable, the portions of the hearing involving demeanor shall be heard again or the case shall be dismissed.

b. Content of decision or order. The proposed or final decision or order shall:

(1) Be in writing or stated in the record.

(2) Include findings of fact. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of underlying facts supporting the findings. If a party submitted proposed findings of fact in accordance with subrule 7.17(1), the decision or order shall include a ruling upon each proposed finding. The decision shall include an explanation as to why the relevant evidence in the record supports each material finding of fact.

(3) Include conclusions of law, supported by cited authority or reasoned opinion.

c. Delivery. A copy of the proposed decision or order shall be delivered to the parties either by e-file, personal service, or by certified mail, return receipt requested.

7.17(4) *The record.*

a. Content of record. The record shall include:

(1) All pleadings, motions and intermediate rulings;

(2) All evidence received or considered and all other submissions;

(3) A statement of all matters officially noticed;

(4) All questions and offers of proof and objections and rulings thereon;

(5) All proposed findings and exceptions;

(6) The decision, opinion or report by the presiding officer.

b. By whom prepared. The presiding officer shall prepare the record for each case.

7.17(5) *Appeal and review.* Any adversely affected party may appeal a proposed decision. Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the agency (the director or the appropriate commission, as required by law). The agency having jurisdiction shall review the proposed decision.

a. Time allowed.

(1) Appeal by party. An appeal by a party shall be made to the agency having jurisdiction of the proceeding and shall be taken within 30 days after receipt of the proposed decision or order.

(2) Agency decision to review. The agency may initiate review of a proposed decision on its own motion at the next meeting of the relevant commission after the appeal period in subparagraph 7.17(5)*"a"*(1) has concluded. The agency shall preside in the case of review of a proposed decision of the administrative law judge or appeal board on motion of the agency.

b. Notice. Appeal is taken and perfected by filing with the director a timely notice of appeal signed by the appellant or the appellant's attorney. It shall specify the parties taking the appeal and the final decision or order or part thereof appealed. The notice shall set forth, with particularity, the conclusions of law or findings of fact appealed. It shall be the appellant's responsibility to immediately serve the notice of appeal upon all parties of record other than the appellant.

c. Request for transcript. A request for a transcript or a copy of the electronic recording of a hearing on a matter appealed shall be made at the time of the filing of a notice of appeal.

d. Scheduling. The director shall issue a schedule for consideration of the appeal.

e. Briefs and arguments. Unless otherwise ordered, within 20 days of receipt of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs. The agency may resolve the appeal on the briefs or provide an opportunity for oral argument. The agency may shorten or extend the briefing period as appropriate.

f. Agency review. On appeal from or review of the proposed decision, the agency has all the power that it would have in initially making the final decision except as it may limit the issues. If the agency limits the issues, notice of this limitation shall be provided in writing to the parties. The agency may reverse or modify any finding of fact if a preponderance of the evidence will support a determination to reverse or modify such a finding, or the agency may reverse or modify any conclusion of law that the agency finds to be in error. When reviewing a proposed decision upon intra-agency appeal, the agency having jurisdiction shall have the powers of and shall comply with the provisions of this chapter that apply to presiding officers, unless otherwise provided by law.

7.17(6) *Applications for rehearing.*

a. By whom filed. Any party to a contested case may file an application for rehearing.

b. Content of application. The application shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought.

c. Time of filing. The application for rehearing shall be filed with the director within 20 days after the receipt of the final decision.

d. Notice to other parties. A copy of the application for rehearing shall be immediately mailed by the applicant to all parties of record not joining therein.

e. Disposition. Any application for rehearing shall be deemed denied unless the agency grants the application within 20 days after its filing.

7.17(7) *Motion to vacate.*

a. By whom filed. A motion to vacate may be filed by any party to a contested case.

b. Form of motion. A motion to vacate shall be in writing, shall state on whose behalf it is filed, and shall state the specific grounds for relief.

c. Time of filing. A motion to vacate must be filed within 30 days after receipt of the final decision.

d. Notice to other parties. A copy of the motion to vacate shall be immediately mailed by the moving party to all parties of record not joining therein.

e. Granting of motion to vacate. A motion to vacate may be granted if the presiding officer finds that any of the following grounds exist:

(1) The moving party experienced unavoidable casualty or misfortune preventing the moving party from participating during the contested case process; or

(2) The moving party has material evidence, newly discovered, which could not with reasonable diligence have been discovered and produced at the contested case hearing, and was not discovered within the time for making an application for rehearing under subrule 7.17(6).

7.17(8) *Stays of agency action.*

a. When available.

(1) Any person appealing an action of the department, other than an emergency action taken pursuant to the provisions of rule 561—7.18(17A,455A), may petition the presiding officer for a stay of the department's action or a part thereof pending its review. The petition for stay shall state the reasons justifying a stay. Whenever possible, an appellant should seek a stay upon the filing of an appeal. An appellant who fails to promptly file for a stay does so at that party's risk.

(2) Any party adversely affected by a final decision or order, other than an emergency order that is governed by rule 561—7.18(17A,455A), may petition the agency for a stay of the final decision or order pending judicial review. The petition for stay shall be filed with the director within ten days of receipt of the final decision or order, and shall state the reasons justifying a stay.

b. When granted. The presiding officer or agency, as appropriate, shall consider the factors listed in Iowa Code section 17A.19(5)*"c"* when considering whether to grant a stay.

c. Vacation. A stay may be vacated by the issuing authority upon application of the department or any other party.

[**ARC 9433C**, IAB 7/23/25, effective 8/27/25]

561—7.18(17A,455A) Emergency proceedings.

7.18(1) *Necessity of emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety or welfare, and consistent with the Iowa Constitution and other provisions of law, the agency may issue a written emergency administrative order in compliance with Iowa Code section 17A.18A to suspend a license in whole or in part, order cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the agency. Before issuing an emergency administrative order, the agency shall consider factors including but not limited to the following:

a. Whether there has been a sufficient factual investigation to ensure that the agency is proceeding on the basis of reliable information;

b. Whether the specific circumstances that pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

c. Whether the person required to comply with the emergency administrative order may continue to engage in alternative activities without posing immediate danger to public health, safety or welfare;

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect public health, safety and welfare; and

e. Whether the specific action contemplated by the agency is necessary to avoid the immediate danger.

7.18(2) *Contents of order.* An emergency administrative order shall contain the following:

a. Findings of fact,

b. Conclusions of law, and

c. Policy reasons for the decision if it is an exercise of the agency's discretion.

7.18(3) *Delivery of emergency order.* To the degree practicable, the department shall select the procedure for delivery of an emergency administrative order that best ensures prompt, reliable delivery. An emergency order shall be delivered immediately to the person or persons who are required to comply with the order by utilizing one or more of the following procedures:

a. Personal delivery;

b. Certified mail, return receipt requested, to the last address on file with the agency;

c. Certified mail to the last address on file with the agency;

d. First-class mail to the last address on file with the agency; or

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

7.18(4) *Oral notice.* Unless the emergency order is delivered by personal delivery on the same day that the order is issued, the agency shall make reasonable immediate efforts to contact by telephone the person or persons who are required to comply with the order.

7.18(5) *Stay of order.* A person named in an emergency order may request a stay of the order by contacting the director by telephone or by delivery of a written request for stay to the department.

a. Upon receipt of a request for stay of an emergency order, the director shall schedule a hearing to take place within five days of receipt of the request or a longer time as agreed upon by the appellant. The person requesting the stay shall be notified of the time and place of the hearing.

b. The scope of the hearing on a request for stay shall be limited to, and the decision whether to grant a stay shall be based upon, the following factors:

(1) Whether the requester will suffer irreparable injury if a stay is not granted,

(2) Whether the requester is likely to prevail on the merits when the appeal of the order is heard,

(3) Where lies the public interest, and

(4) Whether the rule or statute upon which the order is founded is clearly invalid.

c. The hearing procedures in a decision to grant or deny a stay shall conform with rule 561—7.15(17A,455A).

7.18(6) *Decision on merits.* Where agreed to by the parties, the appeal of an emergency order may be decided based upon the evidence presented at the hearing for stay. Otherwise, a hearing on the merits shall proceed in accordance with this chapter.

[**ARC 9433C**, IAB 7/23/25, effective 8/27/25]

561—7.19(17A,455A) License suspension or revocation and other licensee disciplinary proceedings.

7.19(1) *Notice.* Except as provided in rule 561—7.18(17A,455A) or in subrule 7.19(3), prior to the suspension or revocation of a license, the department shall give notice of its intent and shall provide an opportunity to be heard at an evidentiary hearing conducted according to the provisions of this chapter. However, according to the provisions of Iowa Code section 455B.219, an evidentiary

hearing, and not just the opportunity therefor, must occur prior to revocation or suspension of a license for water treatment.

7.19(2) *Content of notice.* The notice shall inform the licensee of the department's intent to suspend or revoke the license and shall include:

a. A description of the facts or conduct warranting the suspension or revocation;

b. A statement of jurisdiction and the provision of law that warrants the intended action; and

c. A statement that the licensee may show at a hearing that the licensee meets all lawful requirements to retain the license.

7.19(3) *Delivery of notice.* Delivery of notice in license revocation or suspension proceedings shall be by personal service or by restricted certified mail.

7.19(4) *Time to request hearing.* A person entitled to request a hearing according to the provisions of this rule may invoke the right within 30 days of receipt of the notice.

7.19(5) *Setting hearing.* Upon receipt of a request for a hearing or upon receipt of a notice of intent to revoke or suspend a license according to the provisions of Iowa Code section 455B.291, the presiding officer shall prepare a notice of hearing. The contested case hearing procedures in this chapter shall apply.

7.19(6) *Filing of petition and answer.* Within 10 days of receipt of the notice of hearing, the department shall file a petition that complies with the provisions of paragraph 7.12(1)*"c."* An answer complying with the provisions of paragraphs 7.12(2)*"c"* and *"d"* may be filed within 10 days of receipt of the petition.

7.19(7) *Emergency suspension.* A license may be suspended without the department providing to the licensee a prior opportunity to be heard if the agency having jurisdiction:

a. Finds that the public health, safety or welfare imperatively requires emergency action,

b. Incorporates a finding to that effect in its order,

c. Complies with the provisions of rule 561—7.18(17A,455A), and

d. Promptly thereafter provides the licensee an opportunity to be heard.

7.19(8) *Effective date of suspension or revocation.* Except as provided in Iowa Code section 455B.219 and subrule 7.19(7), suspension or revocation pursuant to this rule shall be effective upon:

a. Failure of the licensee to request a hearing within 30 days of receipt of notice of intent to revoke or suspend; or

b. Upon the issuance of an order suspending or revoking the license after hearing.

[**ARC 9433C**, IAB 7/23/25, effective 8/27/25]

561—7.20(17A,455A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. The waiver shall be by written stipulation representing an informed, mutual consent. However, the agency, in its discretion, may refuse to give effect to such waiver when it deems the waiver to be inconsistent with the public interest.

[**ARC 9433C**, IAB 7/23/25, effective 8/27/25]

These rules are intended to implement Iowa Code section 17A.3 and chapter 455A.

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CHAPTER 8
CONTRACTS FOR SERVICES AND PUBLIC IMPROVEMENTS

Chapter rescission date pursuant to Iowa Code section 17A.7: 8/27/30

561—8.1(8A) Contract policy. All service and public improvements contracts with the department shall be awarded on a competitive basis to the maximum practical extent. All contracts shall be in written form.

[**ARC 9434C**, IAB 7/23/25, effective 8/27/25]

561—8.2(8A,26,455B,573) Contracts for public improvements.

8.2(1) *Definition.* As used in these rules, "public improvement" means public improvement as defined in Iowa Code section 26.2.

8.2(2) *Bidding process.* The department shall use the bidding processes identified in Iowa Code chapter 26.

8.2(3) *Approval and award of contracts.* All contracts for public improvements in excess of $100,000 shall be approved by the director and the appropriate commission.

8.2(4) *Change orders and extra work orders.* All change orders and extra work orders shall be approved by the director before the work is performed, except in emergency situations. In addition, any order or accumulation of orders that increases the amount of the original contract by more than $50,000 or 10 percent of the original contract, whichever is greater, shall also be approved by the appropriate commission.

8.2(5) *Interest on retained funds.*

a. Scope. This rule implements Iowa Code section 573.12(3) regarding payment to a contractor of interest earned on retained funds. This rule does not address payment of interest under Iowa Code section 573.14.

b. General requirements.

(1) Interest shall be paid pursuant to Iowa Code section 573.12.

(2) Interest shall be paid on retained funds of a contract only if the accrued interest on those funds is at least $25. This dollar threshold reflects the cost to the department of processing an interest payment on retained funds in contracts for the construction of public improvements.

(3) Interest shall not be paid on retained funds of a contract declared in default.

c. Procedures.

(1) Interest shall begin to accrue on retained funds on the date the first progress payment is issued. An interest rate shall be established on this date in accordance with Iowa Code section 12C.6. This interest rate shall apply for the duration of the contract.

(2) In general, interest shall continue to accrue on retained funds until the date final payment is approved by the chief engineer. Final payment is payment of retained funds less assessed liquidated damages, if applicable.

(3) Notwithstanding paragraph 8.2(5)*"b,"* interest shall cease to accrue on retained funds:

1. Upon the expiration of 60 days following field acceptance of a project if the contractor has failed to submit to the department the documentation necessary for final payment, as specified in the contract provision.

2. Upon the court obtaining jurisdiction of the retained funds pursuant to Iowa Code section 573.16. Retained funds turned over to the court will include the interest accrued on those funds to the date the action was filed, if the interest has not been paid to the contractor.

[**ARC 9434C**, IAB 7/23/25, effective 8/27/25]

561—8.3(8A,455A) Contracts for services.

8.3(1) *Services defined.* The term "services" shall be as defined in 11—118.3(8A), adopted as required by Iowa Code section 8A.311.

8.3(2) *Purchasing standards for service contracts.* The department shall comply with the provisions of 11—Chapters 117 through 121 (as of July 16, 2025).

8.3(3) *Approval of service contracts.* All contracts for services in excess of $50,000 shall be approved by the director and the appropriate commission.

8.3(4) *Service contract amendments and change orders.* All service contract amendments and change orders that increase the amount of the original contract by more than $50,000 or 10 percent of the original contract, whichever is greater, shall also be approved by the appropriate commission.

[**ARC 9434C**, IAB 7/23/25, effective 8/27/25]

561—8.4(456A) Contracts for sale of timber. When the total cost of a public sale of timber exceeds the sum of $5,000 as estimated by the department, the department shall advertise by publishing a notice by email or through mail, and by posting on the state of Iowa bid opportunities website. The notices shall be not less than 15 days prior to the date set for receiving bids. The notice to bidders (invitation for bids) shall conform as nearly as possible to the formal competitive process used by the department. All timber buyers and timber sales agreements must comply in all respects with Iowa Code section 456A.36.

[**ARC 9434C**, IAB 7/23/25, effective 8/27/25]

These rules are intended to implement Iowa Code sections 455A.4, 456A.20(2), and 573.12(3).

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CHAPTER 9
GROUNDWATER HAZARD DOCUMENTATION

Chapter rescission date pursuant to Iowa Code section 17A.7: 8/27/30

561—9.1(558) Authority, purpose and application.

9.1(1) *Authority.* Iowa Code section 558.69 directs the department to adopt rules regarding a statement to be submitted to county recorders when they record instruments transferring real property. The statement must disclose the existence and location of wells, disposal sites, underground storage tanks, and hazardous wastes on the property.

9.1(2) *Purpose.* These rules provide the necessary forms, instructions, and explanation of this requirement. The statute's purpose is to give real property transferees notice of the condition of any wells, disposal sites, underground storage tanks, hazardous waste disposal, and private burial sites existing on the real estate.

9.1(3) *Applicability.* These rules apply to all persons, corporations, and other legal entities who are transferors or transferees of real property within the state of Iowa and all county recorders who are called upon to record instruments transferring real property in Iowa.

9.1(4) *When groundwater hazard statement is required.* A groundwater hazard statement shall be presented to the county recorder along with the real estate transaction documents only when required by Iowa Code section 558.69 or when otherwise required by Iowa law.

[**ARC 9435C**, IAB 7/23/25, effective 8/27/25]

561—9.2(558) Form.

9.2(1) The department adopts by reference Form 542-0960, "Groundwater Hazard Statement" (February 1, 2023), which may be obtained from the department or local county recorders.

a. When a groundwater hazard statement is required pursuant to 9.1(4), the transferor or the transferor's agent or attorney shall complete and present Form 542-0960. The transferor's agent or attorney may sign the form on behalf of the transferor, but in doing so the agent or attorney represents that the transferor made a good-faith effort to accurately provide the information requested by the form.

b. For real estate transactions where a groundwater hazard statement is required pursuant to 9.1(4) and where the real estate transaction is dated after February 1, 2023, county recorders shall only accept the currently adopted form. Any person may reproduce Form 542-0960 through photocopying or electronic means so long as the general format and wording are not altered.

9.2(2) The form shall be submitted to the county recorder, in the manner prescribed by the recorder, at the time required by 9.1(4).

9.2(3) County recorders shall return or present the statement with the recorded instrument when the instrument is returned or presented to the transferee or the transferee's designee.

9.2(4) When a county recorder accepts a groundwater hazard statement for recording, the county recorder shall transmit the groundwater hazard statement to the department through one of the following methods:

a. Pursuant to a written agreement between the department and the custodian of the county land record information system, recorded groundwater hazard statement forms shall be presented to the department via a browser interface provided through the county land record information system for the duration of such an agreement. Any agreement shall include but not be limited to terms requiring each form to be posted on the system within 15 days of recording, and that each form remain on the system for at least five years.

b. In the absence of such an agreement, or if the county land record information system is inoperable, a county recorder shall submit a digital copy of each recorded groundwater hazard statement to the department via email within 15 days of its recording. All emails shall be directed to

the department's records division. The department shall retain custody of such forms for at least five years.

9.2(5) Nothing in these rules shall be construed as requiring any party to submit to the department the first page of any document that transfers a property on which no conditions are present.

[**ARC 9435C**, IAB 7/23/25, effective 8/27/25]

These rules are intended to implement Iowa Code section 558.69.

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[Filed ARC 9435C (Notice ARC 8648C, IAB 1/8/25), IAB 7/23/25, effective 8/27/25]

CHAPTER 10
WAIVERS FROM ADMINISTRATIVE RULES

Chapter rescission date pursuant to Iowa Code section 17A.7: 8/27/30

561—10.1(17A) Criteria for waiver. Upon petition of any person and at the sole discretion of the department, the department may issue a waiver from the requirements of a rule if the director or the director's designee or the department in a contested case proceeding finds, based on clear and convincing evidence, all of the factors as set forth in Iowa Code section 17A.9A(2).
[**ARC 9436C**, IAB 7/23/25, effective 8/27/25]

561—10.2(17A) Burden of persuasion. The burden of persuasion rests with the person who petitions the department for the waiver of a rule consistent with Iowa Code section 17A.9A(3).
[**ARC 9436C**, IAB 7/23/25, effective 8/27/25]

561—10.3(17A) Special waiver rules not precluded. This chapter shall not preclude the department from granting waivers in other contexts or on the basis of other standards if a statute or other department rule authorizes the director to do so, and the director deems it appropriate to do so.
[**ARC 9436C**, IAB 7/23/25, effective 8/27/25]

561—10.4(17A) Administrative deadlines. When the rule from which a waiver is sought establishes administrative deadlines, the department shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all persons governed by the particular rule.
[**ARC 9436C**, IAB 7/23/25, effective 8/27/25]

561—10.5(17A) Filing of petition. A petition for a waiver shall be submitted in writing to the department as follows:

10.5(1) *Contested cases.* If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding. The department may elect not to rule on the waiver petition until the resolution of the contested case proceeding.

10.5(2) *Other.* If the petition does not relate to a pending contested case, the petition may be submitted to the director.
[**ARC 9436C**, IAB 7/23/25, effective 8/27/25]

561—10.6(17A) Contents of petition. A petition for waiver shall include the following information when applicable and known to the petitioner:

10.6(1) The name, address, and telephone number of the entity or person for whom a waiver is requested, and the case number of any related contested case.

10.6(2) A description and citation of the specific rule from which a waiver is requested.

10.6(3) The specific waiver requested, including the precise scope and operative period that the waiver will extend.

10.6(4) The relevant facts that the petitioner believes would justify a waiver. This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.

10.6(5) A history of any prior contacts between the department and the petitioner for the past five years, including a description of each affected permit held by the petitioner, and any notices of violation, administrative orders, contested case proceedings, and lawsuits involving the department and the petitioner.

10.6(6) Any information known to the petitioner regarding the department's treatment of similar cases.

10.6(7) The name, address, and telephone number of any public agency or political subdivision of the state or federal government that also regulates the activity in question, or that might be affected by the granting of a waiver.

10.6(8) The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.

10.6(9) The name, address, and telephone number of any person with knowledge of relevant facts relating to the proposed waiver.

10.6(10) Signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver.

[**ARC 9436C**, IAB 7/23/25, effective 8/27/25]

561—10.7(17A) Additional information. Prior to issuing a decision granting or denying a waiver, the department may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the director may, on the director's own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the director.

[**ARC 9436C**, IAB 7/23/25, effective 8/27/25]

561—10.8(17A) Notice. The petitioner, within 30 days of submission of the petition, shall serve by certified mail notice of the pending petition and a concise summary of its contents upon all persons to whom notice is required by any provision of law. The petitioner shall provide a written statement to the department attesting that the required notice has been provided. The department shall acknowledge a petition upon receipt and, in addition, the department may give notice to other persons.

[**ARC 9436C**, IAB 7/23/25, effective 8/27/25]

561—10.9(17A) Hearing procedures. The provisions of Iowa Code sections 17A.10 through 17A.18A regarding contested case hearings shall apply to any petition for a waiver of a rule filed within a contested case and shall otherwise apply to department proceedings for a waiver only when the department so provides by rule or order or is required to do so by statute.

[**ARC 9436C**, IAB 7/23/25, effective 8/27/25]

561—10.10(17A) Ruling. A decision granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the decision pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

[**ARC 9436C**, IAB 7/23/25, effective 8/27/25]

561—10.11(17A) Conditions. The department may condition the granting of the waiver on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

[**ARC 9436C**, IAB 7/23/25, effective 8/27/25]

561—10.12(17A) Time for ruling. The department shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of receipt of the petition, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the department shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

[**ARC 9436C**, IAB 7/23/25, effective 8/27/25]

561—10.13(17A) When deemed denied. Failure of the director or the department in a contested case proceeding to grant or deny a petition within the required time period shall be deemed a denial of that petition by the department.

[**ARC 9436C**, IAB 7/23/25, effective 8/27/25]

561—10.14(17A) Service of decision. Within seven days of its issuance, any decision issued under this chapter shall be transmitted to the petitioner or the person to whom the decision pertains and to any other person entitled to such notice by any provision of law.

[**ARC 9436C**, IAB 7/23/25, effective 8/27/25]

561—10.15(17A) Public availability. Subject to the provisions of Iowa Code section 17A.3(1)*"e,"* the department shall maintain a record of all decisions granting and denying waivers under this chapter. All final rulings in response to requests for waivers shall be indexed and available to members of the public.
[**ARC 9436C**, IAB 7/23/25, effective 8/27/25]

561—10.16(17A) Voiding or cancellation. A waiver is void if the material facts upon which the request is based are not true or if material facts have been withheld. The department may at any time cancel a waiver if the department finds that the facts as stated in the request are not true, material facts have been withheld, the alternative means of compliance provided in the waiver have failed to achieve the objectives of the statute, or the requester has failed to comply with the conditions of the waiver.
[**ARC 9436C**, IAB 7/23/25, effective 8/27/25]

561—10.17(17A) Violations. Violation of conditions of the waiver approval is the equivalent of violation of the particular rule for which the waiver is granted and is subject to the same remedies or penalties.
[**ARC 9436C**, IAB 7/23/25, effective 8/27/25]

561—10.18(17A) Defense. After the department issues a decision granting a waiver, the decision is a defense within its terms and the specific facts indicated therein for the person to whom the decision pertains in any proceeding in which the rule in question is sought to be invoked.
[**ARC 9436C**, IAB 7/23/25, effective 8/27/25]

These rules are intended to implement Iowa Code chapter 17A.

[Filed 8/31/01, Notice 2/21/01—published 9/19/01, effective 10/24/01]
[Filed ARC 5516C (Notice ARC 5380C, IAB 1/13/21), IAB 3/10/21, effective 4/14/21]
[Filed ARC 9436C (Notice ARC 8643C, IAB 1/8/25), IAB 7/23/25, effective 8/27/25]

CHAPTER 11
THE IOWA NATURE STORE
Rescinded **ARC 9437C**, IAB 7/23/25, effective 8/27/25

CHAPTER 13
STATE LANDS VOLUNTEER PROGRAM

Chapter rescission date pursuant to Iowa Code section 17A.7: 8/27/30

561—13.1(461A) Definitions.

"Department" means the same as defined in Iowa Code section 461A.1(2).

"Director" means the same as defined in Iowa Code section 461A.1(3).

"Volunteer" means an organization incorporated under Iowa Code chapter 504 as a nonprofit organization, or an individual providing services on behalf of the nonprofit organization, that provides volunteer services for the benefit of lands under the jurisdiction of the department and that registers as a volunteer under this chapter. A volunteer may include a friends group or organization as defined in 571—14.1(461A). A volunteer shall not include an organization or individual that operates a concession operation, as defined in 571—14.1(461A), unless that concession operation remits all receipts and returns all net proceeds after qualifying expenses from such operations to the department for the benefit of the state parks system, or otherwise procures goods or services for the benefit of the department. Qualifying volunteer services are, unless otherwise specified, limited to activities undertaken on lands under the jurisdiction of the department to benefit such lands. Volunteer services do not include any administrative functions of a nonprofit organization registered under this program.

[**ARC 9438C**, IAB 7/23/25, effective 8/27/25]

561—13.2(461A) Registration. Organizations seeking to provide services under this program for the benefit of lands under the jurisdiction of the department must register with the department. The department shall make forms available for such application. The department may request additional information as part of its review. Registration must be renewed every other year or as soon as substantial changes are planned to the approved services contained in the authorization letter referenced in this chapter, whichever occurs first.

[**ARC 9438C**, IAB 7/23/25, effective 8/27/25]

561—13.3(461A) Review. The department will review requests for registration to determine whether the registrant will be designated a volunteer under this program. The department shall evaluate the volunteer's ability to perform the services, the department's identified need for such services, and the department's ability to manage the volunteer's proposed activities, if applicable.

[**ARC 9438C**, IAB 7/23/25, effective 8/27/25]

561—13.4(461A) Department decision. The department shall notify the registrant of its decision within a reasonable time period. If the department admits the registrant into the program, the department shall issue an authorization letter that shall be acknowledged by the registrant and shall state the terms of the registrant's participation in the program. The department may authorize the registrant's proposed activities in part and deny them in part. The department may provide reasons for any program denials.

[**ARC 9438C**, IAB 7/23/25, effective 8/27/25]

561—13.5(461A) Program benefit. Volunteers providing services consistent with this program shall be afforded liability protection consistent with Iowa Code section 669.24, provided the volunteers are complying with the terms of the authorization letter issued by the department. Failure to comply with department directives or policies, including those that may be described in the authorization letter and any amendments, may negate this liability protection. Nothing in these rules shall require registered volunteers to secure insurance for activities approved in the department's authorization letter.

[**ARC 9438C**, IAB 7/23/25, effective 8/27/25]

These rules are intended to implement Iowa Code section 461A.81.

[Filed ARC 2092C (Notice ARC 1989C, IAB 5/13/15), IAB 8/5/15, effective 9/9/15]
[Filed ARC 9438C (Notice ARC 8615C, IAB 1/8/25), IAB 7/23/25, effective 8/27/25]

CHAPTER 14
CONCESSIONS
Rescinded **ARC 9439C**, IAB 7/23/25, effective 8/27/25

CHAPTER 15
REVOCATION, SUSPENSION, AND NONRENEWAL OF LICENSE FOR FAILURE TO PAY STATE LIABILITIES

Chapter rescission date pursuant to Iowa Code section 17A.7: 8/27/30

561—15.1(272D) Purpose and use. This chapter is intended to help collect liabilities of the state or a state agency from persons who have licenses with the department. This chapter shall apply to all licenses issued, renewed or otherwise authorized by the department.
[**ARC 9440C**, IAB 7/23/25, effective 8/27/25]

561—15.2(272D) Definitions. For purposes of this chapter, the following definitions shall apply, in addition to those contained in Iowa Code section 272D.1:

"Collecting agency" means the centralized collection unit of the department of revenue.

"Department" means the department of natural resources.

"License" means a license, certification, registration, permit, approval, renewal or other similar authorization issued to a person by the department that evidences the admission to, or granting of authority to engage in, a profession, occupation, business, industry, or recreation, including those authorizations set out in Iowa Code chapters 321G, 321I, 455B, 455C, 455D, 456A, 459, 459A, 461A, 462A, 481A, 481B, 481C, 482, 483A, 484B and 484C.

"Notice of intent" means a notice sent to a licensee indicating the department's intent to suspend, revoke, or deny renewal or issuance of a license.

"Withdrawal of a certificate of noncompliance" means a document provided by the collecting agency certifying that the certificate of noncompliance is withdrawn and that the department may proceed with issuance, reinstatement, or renewal of a person's license.
[**ARC 9440C**, IAB 7/23/25, effective 8/27/25]

561—15.3(272D) Requirements of the department.

15.3(1) *Records.*

a. The department shall collect and maintain records of its licensees consistent with Iowa Code section 272D.8.

b. The records shall be made available to the collecting agency so that the collecting agency may match to the records the names of persons with any liabilities placed with the collecting agency for collections. The records must be submitted in an electronic format and updated on a quarterly basis.

15.3(2) *Certificate of noncompliance.* Upon receipt of a certificate of noncompliance from the collecting agency, the department shall initiate rules and procedures for the suspension, revocation, or denial of issuance or renewal of a license to a person.

15.3(3) *Notice of intent.* The department shall provide to a person a notice of intent to suspend, revoke or deny issuance or renewal of the person's license in accordance with Iowa Code chapter 272D. The suspension, revocation, or denial shall be effective no sooner than 30 days following the issuance of the notice of intent to the person. The notice shall state all of the following:

a. That the department has received a certificate of noncompliance from the collecting agency and intends to suspend, revoke or deny issuance or renewal of a person's license;

b. That the person must contact the collecting agency to schedule a conference or to otherwise obtain a withdrawal of a certificate of noncompliance;

c. That the department will revoke, suspend or deny issuance or renewal of the person's license unless a withdrawal of a certificate of noncompliance is received from the collecting agency within 30 days from the date of the notice of intent;

d. That in the event the department's rules and procedures conflict with the additional rules and procedures under this chapter, the rules and procedures of this chapter shall apply;

e. That mistakes of fact in the amount of the liability owed and the person's identity may not be contested to the department; and

f. That the person may request a district court hearing as outlined in Iowa Code section 272D.9.

15.3(4) *Withdrawal.* Upon receipt of a withdrawal of a certificate of noncompliance from the collecting agency, the department shall immediately reinstate, renew, or issue a license if the person is otherwise in compliance with the department's requirements.

[**ARC 9440C**, IAB 7/23/25, effective 8/27/25]

561—15.4(272D) No administrative appeal of the department's action; district court hearing. Pursuant to Iowa Code section 272D.8, a person does not have a right to a hearing before the department to contest the department's action under this chapter but may request a court hearing pursuant to Iowa Code section 272D.9.

[**ARC 9440C**, IAB 7/23/25, effective 8/27/25]

These rules are intended to implement Iowa Code chapter 272D.

[Filed ARC 8774B (Notice ARC 8598B, IAB 3/10/10), IAB 6/2/10, effective 7/7/10]

[Filed ARC 9440C (Notice ARC 8641C, IAB 1/8/25), IAB 7/23/25, effective 8/27/25]

CHAPTER 16
STATE PARK AND RECREATION AREA FEES

Chapter rescission date pursuant to Iowa Code section 17A.7: 8/27/30

561—16.1(455A) Definitions.

"Commission" means the same as defined in Iowa Code section 461A.1(1).

"Department" means the same as defined in Iowa Code section 461A.1(2).

"Director" means the same as defined in Iowa Code section 461A.1(3).

[**ARC 9441C**, IAB 7/23/25, effective 8/27/25]

561—16.2(455A) Camping, rental facilities, vessel storage, and other special privileges—fees.

16.2(1) *Fee methodology.* The director or the director's designee shall fix and publish on the department's website base fees for camping, the use of rental facilities, vessel storage and other special privileges at state parks and recreation areas under the jurisdiction of the department and the commission. The director or the director's designee may consider the following factors when establishing and when adjusting base fees:

a. The specific park's or recreation area's amenities.

b. The size and features of a particular campsite or rental facility.

c. Use of campsites, rental facilities, or other special privileges.

d. Day of the week, season of the year, holidays, or other noteworthy occasions or special events.

e. Cost of operations.

f. Other considerations that the director or the director's designee deems appropriate.

16.2(2) *Fees honored.* The fee to be charged shall be the fee currently in effect at the time the reservation is made and paid for. Any change to a reservation shall be subject to the fees applicable to the campsite or rental facility, along with any applicable reservation change fee, at the time the reservation is modified.

[**ARC 9441C**, IAB 7/23/25, effective 8/27/25]

561—16.3(455A) Areas under management—varying fees. Fees charged for like services in state-owned areas under management by political subdivisions may vary from those established pursuant to this chapter.

[**ARC 9441C**, IAB 7/23/25, effective 8/27/25]

These rules are intended to implement Iowa Code section 455A.14.

[Filed ARC 4395C (Notice ARC 4226C, IAB 1/16/19), IAB 4/10/19, effective 5/15/19]

[Filed ARC 9441C (Notice ARC 8649C, IAB 1/8/25), IAB 7/23/25, effective 8/27/25]

CHAPTER 17
OIL, GAS, AND METALLIC MINERALS

[Prior to 5/8/19, Energy and Geological Resources Division[565] Ch 51]

Chapter rescission date pursuant to Iowa Code section 17A.7: 8/27/30

561—17.1(458A) Purpose. The purpose of this chapter is to implement a drilling permit for oil, gas, and metallic mineral wells. This chapter does not apply to wells for waste disposal, storage, or other types of injection wells.

[**ARC 9442C**, IAB 7/23/25, effective 8/27/25]

561—17.2(458A) Definitions. For the purpose of this chapter, the following terms shall have the meaning indicated in this chapter.

"Artesian water" means underground water that is confined by impervious material under pressure sufficient to raise it above the upper level of the saturated material in which it lies if this is penetrated by wells or natural fissures.

"Barrel of oil" means 42 United States gallons of oil measured at 60 degrees Fahrenheit and atmospheric pressure at sea level, after deductions for the full amount of basic sediment, water, and other impurities present, ascertained by centrifugal or other recognized and customary test.

"Blowout" means a sudden or violent escape of oil or natural gas, as from a drilling well when high formational pressure is encountered.

"Blowout preventer" means a heavy casinghead control fitted with special gates or rams that can be closed around the drill pipe, or that completely closes the top of the casing.

"Casinghead gas" means any gas or vapor, or both gas and vapor, indigenous to an oil stratum and produced from such stratum with oil.

"Certificate of compliance and authorization to transport oil or gas from lease" means a form prescribed by the department, which, when executed by an operator or producer, certifies that the operation of the wells involved, and the production of oil or gas therefrom, has been in compliance with the orders and rules of the department. This certificate also authorizes a purchaser of oil or gas to transport the same from the lease. Thereby, the department is informed of the purchaser, and the purchaser is informed that the oil or gas purchased has been produced legally. The certificate of clearance by the department is included on the bottom of the producer's compliance form.

"Common source of supply" is synonymous with pool.

"Cubic foot of gas" means the volume of gas contained in one cubic foot of space at a standard pressure base and a standard temperature base. The standard pressure base shall be 14.65 pounds per square inch absolute, and the standard temperature base shall be 60 degrees Fahrenheit.

"Developed area" means a spacing unit on which a well has been completed that is capable of producing oil or gas, or the acreage that is otherwise attributed to a well by the department for allowable purposes.

"Development" means any work that actively looks toward bringing in production.

"Gas-oil ratio" means the ratio of the gas produced in cubic feet to the number of barrels of oil concurrently produced during any stated period.

"Lease" means a tract or tracts of land that, by virtue of an oil, gas, or metallic minerals lease, fee or mineral ownership, a drilling, pooling, or other agreement, a rule, or order of governmental authority, or otherwise, constitutes a single tract or leasehold estate for the purpose of the development or operation thereof for oil or gas or both, or for the exploration for or production of metallic minerals.

"Oil and gas" means oil or gas or both.

"Oil well" means any well capable of producing oil in paying quantities.

"Operator" means any person who, duly authorized, is in charge of the development of a lease, or the operation of a producing well.

"Purchaser" means any person who directly or indirectly purchases, transports, takes, or otherwise removes production to the person's account from a well, wells, or pool.

"Storer" means every person as herein defined who stores, terminals, retains in custody under warehouse or storage agreements or contracts, oil that comes to rest in the person's tank or other receptacle under control of said storer, but excluding the ordinary lease stocks of producers.

"Transporter" means and includes any common carrier by pipeline, barge, boat, or other water conveyance or truck or other conveyance except railroads, and any other person transporting oil by pipeline, barge, boat or other water conveyance, or truck and other conveyance.

"Well," in addition to the definition in Iowa Code chapter 458A, means any boring into the ground for the purpose of oil, gas, or metallic mineral production or to obtain geological information relating to oil, gas, or metallic mineral production or storage.

"Well log" means the written record progressively describing the strata, water, oil, gas or metallic minerals encountered in drilling a well with such additional information as to give volumes, pressures, rate of fill-up, water depths, caving strata, casing record, etc., as is usually recorded in normal procedure of drilling. The well log includes any electrical or other geophysical logging, detail of all cores, and all drill-stem tests, including depth tested, cushion used, time pool open, flowing and shut-in pressures and recoveries.

[**ARC 9442C**, IAB 7/23/25, effective 8/27/25]

561—17.3(458A) Permit to drill, deepen or plug a well. An owner or other entity seeking to drill a well shall obtain from the department a permit to drill, deepen, or plug a well prior to commencement of operations to drill, deepen, or plug any well.

17.3(1) *Application to drill, deepen, or plug a well.* An owner or other entity seeking to drill, deepen, or plug a well may apply for a permit under this rule by submitting to the department an application on a form prescribed by the department. One application may be filed for a group or series of exploratory wells within a designated area. The application for each well or group of exploratory wells shall be accompanied by the following:

a. A fee of $50 for a production well, or a fee of $200 for an individual or group of exploratory wells.

b. An organization report as described in 561—17.5(458A).

c. A bond as described in Iowa Code section 458A.4(1)*"d"* if one is not already on file with the department. The bond shall have a clearly noted period of coverage, or be renewed annually with notation of such.

d. A map prepared by a licensed surveyor or engineer. The map shall be to scale and shall show the distance from:

(1) The two nearest lease lines,

(2) The two nearest section lines, and

(3) The nearest completed or drilling wells on the same lease.

e. A model or quantitative data of the area of influence of each well with sufficient information for the department to comply with its duties related to the production of oil, gas, and minerals, including but not limited to establishing spacing that meets the requirements of Iowa Code section 458A.7. The department may delay this requirement through a permit condition until such time as required for production.

f. Copies of each agreement with landowners pertinent to the well's location and area of influence, including maps showing the boundaries of each agreement. The department may delay this requirement relative to area of influence through a permit condition until such time as required for production.

g. In the case of a group of stratigraphic test wells, a plat of the general area to be covered by township and range listing the approximate number and depth of the holes, and outlining the parcels where drilling is contemplated. The plat shall indicate the nature of the applicant's property interest in each parcel where drilling is contemplated.

17.3(2) *Approval or denial of permit; appeals.*

a. The department shall, within 90 days of receipt of a complete application unless otherwise required to protect the environment or human health, grant a permit when such an application shows the drilling, deepening, or plugging of a well is consistent with this chapter and related laws. Unless extended in writing by the department, the permit shall expire one year from the date of issue if the work for which the permit was issued is not being actively pursued.

b. A permit application will be denied for being incomplete or for otherwise being inconsistent with this chapter and related laws.

c. Any aggrieved party may appeal the department's decision to approve or deny a permit application in accordance with 561—Chapter 7. The notice of appeal must be filed within 30 days following the issuance of the permit unless the appellant shows good cause for failure to receive actual notice and file within the allowed time.

17.3(3) *Injection wells.* Per 40 CFR Section 144.26, oil- and gas-related injection wells are used to inject fluids associated with oil and gas production. The United States Environmental Protection Agency's Underground Injection Control Program Director for Region 7 is the permitting authority for underground injection of substances in the state of Iowa and shall be notified of any proposed injection wells.

[**ARC 9442C**, IAB 7/23/25, effective 8/27/25]

561—17.4(458A) Transfer of drilling permits. A permit holder shall not transfer the permit to any other location or to any other person until the following requirements have been complied with and the transfer has been approved by the department.

17.4(1) *Transfer to another location.* If, prior to the drilling of a well, the permit holder desires to change the location, the permit holder shall submit a letter so stating and another application properly filled out showing the new location. No additional fee is necessary, but drilling shall not be started until the transfer has been approved and the new permit posted at the new location.

17.4(2) *Transfer to another person.* If, while a well is being drilled, or after it has been completed, the permit holder disposes of their interest in the well, the person shall submit a written statement to the department setting forth the facts and requesting that the permit be transferred to the person who has acquired the well.

17.4(3) *Statement of responsibility and bond.* Before the transfer of a drilling permit shall be approved, the person who has acquired the well must submit a written statement setting forth that the person has acquired such well and assumes the full responsibility for its operation and abandonment in conformity with the laws of Iowa and the rules and orders of the department. The bond required to guarantee compliance shall be furnished by the person acquiring such well.

[**ARC 9442C**, IAB 7/23/25, effective 8/27/25]

561—17.5(458A) Organization reports.

17.5(1) Every person independently engaged in, or acting as a principal or agent for another entity that is engaged in, the production, storage, transportation (except railroad), refining, reclaiming, treating, marketing, or processing of oil or gas, or the exploration for or production of metallic minerals, shall file the following with the department:

a. The name under which the business is being operated.

b. The name and contact information of the person, business or businesses engaged in any of the above.

c. The plan of organization.

d. In case of a corporation:

(1) The law under which it is chartered;

(2) The names and contact information for any persons acting as trustees;

(3) The name(s) of the manager, agent or executive; and

(4) The names and contact information of officers.

e. If business is conducted under an assumed name, the names and contact information of all owners in addition to the other information required.

17.5(2) Immediately after any change of facts stated in the report filed, a supplementary report shall be filed with the department with updated information.

[**ARC 9442C**, IAB 7/23/25, effective 8/27/25]

561—17.6(458A) Drilling. The following subrules shall apply to all wells drilled:

17.6(1) *Sealing off strata.* During the drilling of any well for production of or exploration for oil, gas, or metallic minerals, all oil, gas, and water strata above and below the producing horizon shall be sealed or separated where necessary in order to prevent their contents from passing into other strata.

a. All fresh waters and waters of present or probable value for domestic, public, commercial or livestock purposes shall be confined to their respective strata and shall be adequately protected by methods approved by the department. Special precautions shall be taken in drilling and abandoning wells to guard against any loss of artesian water from the strata in which it occurs, and the contamination of artesian water by objectionable water, oil, or gas.

b. All water shall be isolated from the various oil- and gas-bearing strata that are penetrated. Isolation shall be performed by cementing casing with or without the use of mud-laden fluid. Alternative methods shall be approved on a case-by-case basis by the department.

17.6(2) *Casing and tubing requirements.* All wells drilled for oil, gas or production of metallic minerals shall be completed with strings of casing that shall be properly cemented at sufficient depths to protect all water-, oil-, or gas-bearing strata.

a. Sufficient cement shall be used on surface to fill the annular space back of the casing to the bottom of the cellar or to the surface of the ground.

b. All strings of casing shall be cemented under pressure for at least 12 hours before drilling plug or initiating tests. The department may approve having the casing under pressure for less than 12 hours if the applicant provides evidence that the shorter time frame is adequate. The term "under pressure" as used in this subrule will be complied with if one float valve is used or if pressure is otherwise held.

c. Cementing shall be by the pump and plug method, or another method approved by the department.

d. All flowing wells shall be tubed. The tubing shall be set as near the bottom as practicable, but tubing perforations shall not be above the top of pay unless authorized by the department.

17.6(3) *Defective casing or cementing.* In any well that appears to have defective, faultily cemented, or corroded casing that will permit or may create underground waste, the operator shall use the appropriate method and means to eliminate underground waste. If waste cannot be eliminated, the well shall be properly plugged and abandoned.

17.6(4) *Blowout prevention.* In all drilling operations, proper and necessary precautions shall be taken for keeping the well under control, including the use of a blowout preventer and high-pressure fittings attached to properly cemented casing strings, where indicated by geologic conditions.

17.6(5) *Pulling outside string of casing.* In pulling outside strings of casing from any oil or gas well, the space outside the casing left in the hole shall be kept and left full of mud-laden fluid or cement of adequate specific gravity to seal off all fresh and salt water strata and any strata bearing oil or gas not producing. No casing shall be removed without the prior approval of the department.

17.6(6) *Safety rules.*

a. All oil wells shall be cleaned into a pit or tank, not less than 40 feet from the derrick floor and 150 feet from any fire hazard.

b. All flowing oil wells must be produced through an approved oil and gas separator or emulsion treater of ample capacity and in good working order.

c. No boiler or portable electric lighting generator shall be placed or remain nearer than 150 feet from any producing well or oil tank.

d. Any debris that might constitute a fire hazard shall be removed to a distance of at least 150 feet from the vicinity of wells and tanks. All waste shall be disposed of in such manner as to avoid creating a fire hazard and to comply with the rules of the environmental protection commission.

e. The drilling fluid level shall be maintained continuously at a height sufficient to control subsurface pressures.

f. During the course of drilling, blowout preventers shall be tested at least once each 24-hour period, and results of the test shall be noted in the driller's record.

17.6(7) *Preservation of cores and samples.*

a. Sample cuttings shall be taken at 5-foot intervals and at each change of formation or member, if less than 5 feet thick, in all wells drilled for oil, gas, or metallic mineral exploration or production, in the state of Iowa, unless a geophysical log is to be taken for the entire depth of the well.

b. Where a geophysical log is to be taken for the entire depth of the well, sample cuttings shall be taken at 10-foot intervals and at each formation or member change if less than 10 feet thick. The department may grant a waiver from the 10-foot sample interval under special conditions. Each sample shall be carefully identified as to well name and depth of sample, and all samples shall be shipped at the operator's expense to the Iowa geological survey.

c. The operator of any well drilled as provided in the previous paragraph shall, during the drilling of, or immediately following the completion of, any given well, advise the department of all intervals that are to be cored, or have been cored. The cores shall be preserved and forwarded to the Iowa geological survey at the operator's expense.

d. This rule shall not be construed as prohibiting the operator from taking samples of the core for identification and tests pertaining to oil and gas or metallic minerals. In the event that it is necessary for the operator to utilize all or any portion of the core to the extent that representative samples, sufficiently large to analyze, are not available for the state, the operator shall furnish the Iowa geological survey with the results of identification or testing procedures.

17.6(8) *Well completion or recompletion report and well log.* Within ten days after completion of a well drilled for oil or gas or production of metallic minerals, or casinghead gas, the operator or the operator's agent shall file with the department a complete log or record of the well, duly signed, on forms prescribed by the department. This record shall be filed even though samples of the drill cuttings have been taken and preserved for subsequent delivery to the Iowa geological survey. The logs on the wells shall be forwarded to the department and shall be confidential for a period of six months when so requested by the operator in writing.

A proper log for any well shall include all normally recorded information on the following:

a. Depth to and thickness of water-bearing beds, including, where measured, the static water level and volume of such water.

b. Lithology of formations penetrated, including color, hardness, and character of the rock, and particularly showing the position and thickness of coal beds and deposits of mineral materials of economic value.

c. Any caverns, large voids, losses of circulation, and sudden appreciable changes in water level.

d. A record of all oil, gas, and highly mineralized water encountered, including fill-up, volumes, and pressures.

e. A record of all casing and liner used, including the size, weight, amount, and depth set, the amount of cement used on each casing string, and the amount of casing stripped from the hole on completion or abandonment of the well.

f. Data on drill stem tests.

g. Generalized description of any core taken during drilling.

h. Data on perforating, acidizing, fracturing, shooting, and testing.

i. Data on bridge plugs set, make and type of plug, depth set, whether left in place or removed, and details of plug back operation below the bridge.

j. Electrical or other geophysical logging.

17.6(9) *Stratigraphic test wells.*

a. All stratigraphic test wells shall be plugged in accordance with the provisions of 561—17.14(458A).

b. Lithologic samples must be collected during the drilling of all stratigraphic test wells in accordance with the provisions of 17.6(7).

c. All records, samples, and logs, including mechanical logs, required under this rule must be filed with the Iowa geological survey six months after completion of the program set forth in the original application. If the company so requests in writing, these records, samples, and logs shall be kept confidential for an additional year after filing.

[**ARC 9442C**, IAB 7/23/25, effective 8/27/25]

561—17.7(458A) Identification of wells. Every well shall be identified by a sign, posted on the derrick or not more than 20 feet from the wellhead. Such signs shall be durable and legible. The wells on each lease or property shall be numbered in nonrepetitive, logical, and distinctive sequence. Each sign shall show the number of the well, the name of the lease (which shall be different or distinctive for each lease), the name of the lessee, owner or operator, the permit number, and the location by quarter, section, township, and range.

[**ARC 9442C**, IAB 7/23/25, effective 8/27/25]

561—17.8(458A) Surface equipment.

17.8(1) *Meter fittings.* Meter fittings and associated metering equipment shall measure gas and oil flows separately and shall obtain gas-oil ratios either on the gas vent line of every separator or other proper connections made for metering, using current industry standard of practices. Wellhead equipment shall be installed and maintained so that static bottom hole pressures may be obtained at any time by the department after notification of the operator. Valves shall be installed so that pressures can be readily obtained on both casing and tubing.

17.8(2) *Chokes or beans.* All flowing wells shall be equipped with adequate chokes or beans to properly control the flow of the well.

17.8(3) *Separators.* All flowing wells must be produced through separators to maintain efficient gas-oil and oil-water ratios.

17.8(4) *Dikes.* When it is deemed necessary by the department to protect life, health, or property, the department may require any lease or oil storage tanks to be surrounded by an earthen dike with a capacity of one and one-half times the capacity of the tank or tanks it surrounds. The dike shall be continually maintained and the reservoir kept free from vegetation, water, or oil.

[**ARC 9442C**, IAB 7/23/25, effective 8/27/25]

561—17.9(458A) Deviation. No well may be intentionally deviated from the plans in the approved permit without written approval. Directional surveys may be required by the department whenever the location of the bottom of the well is in doubt. When necessary to protect correlative rights, the department shall require that the well be modified.

[**ARC 9442C**, IAB 7/23/25, effective 8/27/25]

561—17.10(458A) Notification of fire, breaks, leaks, or blowouts. All persons controlling or operating any oil and gas wells or pipelines, or receiving tanks, storage tanks, or receiving and storage receptacles into which crude oil is produced, received, or stored, or through which oil or gas is piped or transported, shall notify the department of fire, breaks, leaks or blowouts in accordance with Iowa Code section 455B.386. A written report, giving full details concerning all fires that occur at such oil or gas wells or tanks or receptacles on their property, all tanks or receptacles struck by lightning and any other fire that destroys oil or gas, and any breaks or leaks in or from tanks or receptacles and pipelines from which oil or gas is escaping or has escaped shall be submitted to the department within 30 days. In all reports of fires, breaks, leaks, or escapes, or other accidents of this nature, the location of the well, tank, receptacle, or line break shall be given by section, township, range, and property so that the exact location thereof can be readily located on the ground. The report shall likewise specify what steps have been taken or are in progress to remedy the situation reported, and shall detail the

quantity of oil or gas lost, destroyed, or permitted to escape. In case any tank or receptacle is permitted to run over, the escape thus occurring shall be reported as in the case of a leak.
[**ARC 9442C**, IAB 7/23/25, effective 8/27/25]

561—17.11(458A) Producing from different pools through the same casing string or multiple completion of wells. No well shall be permitted to produce either oil or gas from different pools through the same string of casing. The multiple-zone completion of any well may be authorized only by special order of the department upon notice and hearing.
[**ARC 9442C**, IAB 7/23/25, effective 8/27/25]

561—17.12(458A) Commingling of production prohibited. The production from one pool shall not be commingled with that from another pool in the same field before delivery to a purchaser, unless otherwise ordered by the department.
[**ARC 9442C**, IAB 7/23/25, effective 8/27/25]

561—17.13(458A) Reports by producers, transporters or storers.

17.13(1) *Producers.* The producer or operator of each and every lease shall, on or before the fifteenth day of each month succeeding the month in which the production occurs, submit to the department a statement showing the amount of production made by each such lease during the preceding month.

17.13(2) *Transporters or storers.* Each transporter or storer of any oil or gas from any well, lease, pool, or developed unit shall, on or before the fifteenth day of each month succeeding the month in which the purchasing or taking occurs, file with the department, a statement of oil or gas purchased or taken from any such well, lease, pool, or developed unit during the preceding month.
[**ARC 9442C**, IAB 7/23/25, effective 8/27/25]

561—17.14(458A) Abandonment and plugging of wells. Any well drilled in connection with oil or gas operations or metallic mineral exploration or production shall be properly plugged when the well is no longer used for the purpose for which it was drilled. In instances where no completion or recompletion reports are filed, the well(s) in question must be properly abandoned and plugged within 30 days after the permit authorizing the drilling expires.

17.14(1) *Notice of intent to abandon and plug.* Notice of the proposed method of abandoning and plugging any well drilled in connection with oil or gas operations or metallic mineral exploration or production must be filed with the department. Approval must be obtained from the department prior to commencing operations. Time must be allowed for a department representative to be present at the plugging operations if so desired by the department. Where the time required to file notice and obtain approval in writing would constitute an undue hardship, verbal permission to proceed may be granted, but in any case, the notice must be filed.

17.14(2) *Method of plugging.* Before any well is abandoned, it shall be plugged in a manner that will permanently confine all oil, gas, and water in the separate strata in which they occur. This operation shall be accomplished by the use of mud-laden fluid, cement, and plugs, used singly or in combination as approved by the department. In the event that no log or an unsatisfactory log of the well is supplied, the well shall be completely plugged with cement from bottom to top. Casing shall be cut off below plow depth. Seismic, core, or other exploratory holes drilled to or below strata containing fresh water shall be plugged and abandoned in accordance with the applicable provisions in this subrule.

17.14(3) *Extension of time to plug well.* Upon written application to defer the abandonment and plugging of any unplugged well, the department may grant an extension for a reasonable period of time when good cause is shown and provided that all of the casing is left in the well and is in sound condition. The bond covering such well shall remain in full force and effect until the well is plugged and the other requirements of final abandonment have been completed.
[**ARC 9442C**, IAB 7/23/25, effective 8/27/25]

These rules are intended to implement Iowa Code chapter 458A.

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[Filed ARC 9442C (Notice ARC 8651C, IAB 1/8/25), IAB 7/23/25, effective 8/27/25]

CHAPTER 22
CONTROLLING AIR POLLUTION

[Prior to 7/1/83, DEQ Ch 3]
[Prior to 12/3/86, Water, Air and Waste Management[900]]

Chapter rescission date pursuant to Iowa Code section 17A.7: 6/19/29

567—22.1(455B) Definitions and permit requirements for new or existing stationary sources. For the purpose of these rules and the rules in 567—Chapters 20 through 35, the following terms shall, unless otherwise noted, have the meaning indicated in this chapter. Additional definitions potentially applicable to this chapter are set forth in 567—Chapters 21 and 23. The definitions set out in Iowa Code sections 455B.101, 455B.131, and 455B.411 are incorporated verbatim in these rules.

"12-month rolling period" means a period of 12 consecutive months determined on a rolling basis with a new 12-month period beginning on the first day of each calendar month.

"Act" means the Clean Air Act (42 U.S.C. Sections 7401, et seq.), as amended through November 15, 1990.

"Air quality standard" means an allowable level of air contaminant or atmospheric air concentration established by the commission.

"Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

"Anaerobic lagoon," for purposes of air quality rules in 567—Chapters 20 through 35, means an impoundment, the primary function of which is to store and stabilize organic wastes. The impoundment is designed to receive wastes on a regular basis and the design waste loading rates are such that the predominant biological activity in the impoundment will be anaerobic. An anaerobic lagoon does not include:

1. A runoff control basin that collects and stores only precipitation-induced runoff from an open feedlot feeding operation; or
2. A waste slurry storage basin that receives waste discharges from confinement feeding operations and that is designed for complete removal of accumulated wastes from the basin at least semiannually; or
3. Any anaerobic treatment system that includes collection and treatment facilities for all off-gases.

"Biodiesel fuel" means a renewable, biodegradable, mono alkyl ester combustible liquid fuel derived from agricultural plant oils or animal fat, such as but not limited to soybean oil. For purposes of this definition, "biodiesel fuel" must also meet the specifications of American Society for Testing and Material Specifications (ASTM) D 6751-02, "Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels," and be registered with the U.S. Environmental Protection Agency as a fuel and a fuel additive under Section 211(b) of the Act.

"Chimney" or *"stack"* means any flue, conduit or duct permitting the discharge or passage of air contaminants into the open air or constructed or arranged for this purpose.

"Combustion for indirect heating" means the combustion of fuel to produce usable heat that is to be transferred through a heat-conducting materials barrier or by a heat storage medium to a material to be heated so that the material being heated is not contacted by, and adds no substance to, the products of combustion.

"Control equipment" means any equipment that has the function to prevent the formation of or the emission to the atmosphere of air contaminants from any fuel burning, incinerator or process equipment.

"Country grain elevator" means the same as defined in 22.10(1).

"Diesel fuel" means a low sulfur fuel oil that complies with the specifications for grade 1-D or 2-D, as defined by the ASTM D 975-02, "Standard Specification for Diesel Fuel Oils," grade 1-GT or 2-GT, as defined by ASTM D 2880-00, "Standard Specification for Gas Turbine Fuel Oils," or grade 1 or 2, as defined by ASTM D 396-02, "Standard Specification for Fuel Oils."

1. For purposes of the air quality rules contained in Title II, and unless otherwise specified, diesel fuel may contain a blend of up to 2.0 percent biodiesel fuel, by volume, as "biodiesel fuel" is defined in this rule.

2. The department shall consider air pollutant emissions calculations for the biodiesel fuel blends specified in paragraph "1" to be equivalent to the air pollutant emissions calculations for unblended diesel fuel.

3. Construction permits or operating permits issued under 567—Chapter 22 that restrict equipment fuel use to diesel fuel shall be considered by the department to include the biodiesel fuel blends specified in paragraph "1," unless otherwise specified or in a permit issued under this chapter.

"Electric furnace" means a furnace in which the melting and refining of metals are accomplished by means of electrical energy.

"Electronic format," "electronic submittal," or *"electronic submittal format,"* for purposes of 567—Chapters 20 through 35, means a software, Internet-based, or other electronic means specified by the department for submitting air quality information or fees to the department related to but not limited to applications, certifications, determination requests, emissions inventories, forms, notifications, payments, permit applications and registrations. References to these information submittal methods in 567—Chapters 20 through 35 may, as specified by the department, include electronic submittal as stated in the applicable rules.

"Emergency generator" means any generator of which the sole function is to provide emergency backup power during an interruption of electrical power from the electric utility. An emergency is an unforeseeable condition that is beyond the control of the owner or operator. An emergency generator does not include:

1. Peaking units at electric utilities.

2. Generators at industrial facilities that typically operate at low rates but are not confined to emergency purposes.

3. Any standby generators that are used during time periods when power is available from the electric utility.

"Emission limitation" or *"emission standard"* means a requirement established by a state, local government, or the administrator that limits the quantity, rate or concentration of emissions of air pollutants on a continuous basis, including any requirements that limit the level of opacity, prescribe equipment, set fuel specifications or prescribe operation or maintenance procedures for a source to ensure continuous emission reduction.

"EPA conditional method" means any method of sampling and analyzing for air pollutants that has been validated by the administrator but that has not been published as an EPA reference method.

"EPA reference method" means the following methods used for performance tests and continuous monitoring systems:

1. Performance test (stack test). A stack test shall be conducted according to EPA reference methods specified in 40 CFR 51, Appendix M (as amended or corrected through March 29, 2023); 40 CFR 60, Appendix A (as amended or corrected through March 29, 2023); 40 CFR 61, Appendix B (as amended or corrected through October 7, 2020); and 40 CFR 63, Appendix A (as amended or corrected through March 29, 2023).

2. Continuous monitoring systems. Minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are as specified in 40 CFR 60, Appendix B (as amended or corrected through June 28, 2023); 40 CFR 60, Appendix F (as amended or corrected through March 29, 2023); 40 CFR 75, Appendix A (as amended or corrected through August 30, 2016); 40 CFR 75, Appendix B (as amended or corrected through August 30, 2016); and 40 CFR 75, Appendix F (as amended or corrected through August 30, 2016).

"Equipment" means the same as defined in 567—21.1(455B).

"Excess air" means that amount of air supplied in addition to the theoretical quantity necessary for complete combustion of all fuel or combustible waste material present.

"Existing equipment" means the same as defined in 567—21.1(455B).

"Foundry cupola" means a stack-type furnace used for melting of metals consisting of but not limited to the furnace proper, tuyeres, fans or blowers, tapping spout, charging equipment, gas cleaning devices and other auxiliaries.

"Fugitive dust" means any airborne solid particulate matter emitted from any source other than a flue or stack.

"Grain processing" means the equipment, or the combination of different types of equipment, used in the processing of grain to produce a product primarily for wholesale or retail sale for human or animal consumption, including the processing of grain for production of biofuels, except for "feed mill equipment" as defined in 567—22.10(455B).

"Grain storage elevator" means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded and that is located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant that has a permanent grain storage capacity (grain storage capacity that is inside a building, bin, or silo) of more than 35,200 m^3 (ca. 1 million U.S. bushels).

"Greenhouse gas" means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

"Heating value" means the heat released by combustion of one pound of waste or fuel measured in Btu on an as-received basis. For solid fuels, the heating value shall be determined by use of ASTM Standard D 2015-66.

"Incinerator" means a combustion apparatus designed for high temperature operation in which solid, semisolid, liquid or gaseous combustible refuse is ignited and burned efficiently and from which the solid residues contain little or no combustible material.

"Initiation of construction, installation or alteration" means significant permanent modification of a site to install equipment, control equipment or permanent structures. Not included are activities incident to preliminary engineering, environmental studies, or acquisition of a site for a facility.

"New equipment" means the same as defined in 567—21.1(455B).

"Number 1 fuel oil" and *"number 2 fuel oil,"* also known as "distillate oil," mean fuel oil that complies with the specifications for fuel oil number 1 or fuel oil number 2, as defined by the ASTM D 396-02, "Standard Specification for Fuel Oils."

1. For purposes of the air quality rules contained in Title II, and unless otherwise specified, number 1 fuel oil or number 2 fuel oil may contain a blend of up to 2.0 percent biodiesel fuel, by volume, as "biodiesel fuel" is defined in this rule.

2. The department shall consider air pollutant emissions calculations for the biodiesel fuel blends specified in paragraph "1" to be equivalent to the air pollutant emissions calculations for unblended number 1 fuel oil or unblended number 2 fuel oil.

3. Construction permits or operating permits issued under this chapter that restrict equipment fuel use to number 1 fuel oil or number 2 fuel oil shall be considered by the department to include the biodiesel fuel blends specified in paragraph "1," unless otherwise specified or in a permit issued under this chapter.

"One-hour period" means any 60-minute period commencing on the hour.

"Particulate matter" (except for the purposes of new source performance standards as defined in 40 CFR 60) means any material, except uncombined water, that exists in a finely divided form as a liquid or solid at standard conditions and includes gaseous emissions that condense to liquid or solid form as measured by EPA-approved reference methods.

"Plan documents" means the reports, proposals, preliminary plans, survey and basis of design data, general and detail construction plans, profiles, specifications and all other information pertaining to equipment.

"PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by an EPA-approved reference method.

"$PM_{2.5}$" means particulate matter as defined in this rule with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by an EPA-approved reference method.

"Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air 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 is enforceable by the administrator. This term does not alter or affect the use of this term for any other purposes under the Act, or the term "capacity factor" as used in Title IV of the Act or the regulations relating to acid rain.

For the purpose of determining potential to emit for country grain elevators, the provisions set forth in 22.10(2) shall apply.

For purposes of calculating potential to emit for emergency generators, "maximum capacity" means one of the following:

1. 500 hours of operation annually, if the generator has actually been operated less than 500 hours per year for the past five years.
2. 8,760 hours of operation annually, if the generator has actually been operated more than 500 hours in one of the past five years.
3. The number of hours specified in a state or federally enforceable limit.

If the source is subject to new source construction permit review, then potential to emit is defined as stated above or as established in a federally enforceable permit.

"Privileged communication" means information other than air pollutant emissions data, the release of which would tend to affect adversely the competitive position of the owner or operator of the equipment.

"Process" means any action, operation or treatment, and all methods and forms of manufacturing or processing, that may emit smoke, particulate matter, gaseous matter or other air contaminant.

"Process weight" means the total weight of all materials introduced into any source operation. Solid fuels charged will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not.

"Process weight rate" means continuous or long-run steady-state source operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof; or for a cyclical or batch source operation, the total process weight for a period that covers a complete operation or an integral number of cycles, divided by the number of hours of actual process operation during such a period. Where the nature of any process or operation, or the design of any equipment is such as to permit more than one interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.

"Six-minute period" means any one of the ten equal parts of a one-hour period.

"Smoke" means gas-borne particles resulting from incomplete combustion, consisting predominantly, but not exclusively, of carbon, and other combustible material, or ash, that form a visible plume in the air.

"Source operation" means the last operation preceding the emission of an air contaminant and that results in the separation of the air contaminant from the process materials or in the conversion of the process materials into air contaminants but is not an air pollution control operation.

"Standard conditions" means a temperature of 68°F and a pressure of 29.92 inches of mercury absolute.

"Standard cubic foot" or *"SCF"* means the volume of one cubic foot of gas at standard conditions.

"Standard metropolitan statistical area" or *"SMSA"* means an area that has at least one city with a population of at least 50,000 and such surrounding areas as geographically defined by the U.S. Office of Management and Budget (Department of Commerce).

"Stationary source" means any building, structure, facility or installation that emits or may emit any air pollutant.

"Total suspended particulate" means particulate matter as defined in this rule.

"Untreated" as it refers to wood or wood products includes only wood or wood products that have not been treated with compounds such as, but not limited to, paint, pigment-stain, adhesive, varnish, lacquer, or resin or that have not been pressure treated with compounds such as, but not limited to, chromate copper acetate, pentachlorophenol or creosote. "Untreated" as it refers to seeds, pellets or other vegetative matter includes only seeds, pellets or other vegetative matter that has not been treated with pesticides or fungicides.

"Urban area" means any Iowa city of 100,000 or more population in the current census and all Iowa cities contiguous to such city.

"Variance" means a temporary waiver from rules or standards governing the quality, nature, duration or extent of emissions granted by the commission for a specified period of time.

"Volatile organic compounds" or *"VOC"* means any compound included in the definition of "volatile organic compounds" found at 40 CFR Section 51.100(s) as amended through February 8, 2023.

22.1(1) *Permit required.* No person shall construct, install, reconstruct or alter any equipment, control equipment or anaerobic lagoon unless a permit is first obtained pursuant to this chapter, 567—31.3(455B), or 567—33.3(455B), or the equipment qualifies for an exemption under 22.1(2). An air quality construction permit shall be obtained prior to the initiation of construction, installation or alteration of any portion of the stationary source or anaerobic lagoon, unless the parameters in 22.1(1)*"c"* are met.

a. Existing equipment is not subject to this subrule, unless it has been modified, reconstructed, or altered on or after September 23, 1970.

b. No person shall construct or reconstruct a major source of hazardous air pollutants, as defined in 40 CFR Section 63.2 and 40 CFR Section 63.41 as adopted by reference in 567—subrule 23.1(4), unless a construction permit has been obtained from the department, which requires maximum achievable control technology for new sources to be applied. The permit shall be obtained prior to the initiation of construction or reconstruction of the major source.

c. Construction prior to issuance of an air quality construction permit issued by the department may begin if the eligibility requirements stated in 22.1(1)*"c"*(1) are met. The applicant must assume any liability for construction conducted on a source before the permit is issued. In no case will the applicant be allowed to hook up the equipment to the exhaust stack or operate the equipment in any way that may emit any pollutant prior to receiving a construction permit.

(1) Eligibility.

1. The applicant has submitted a construction permit application to the department, as specified in 22.1(3);

2. The applicant has notified the department of the applicant's intentions in writing five working days prior to initiating construction; and

3. The equipment or process is not subject to:

- Prevention of significant deterioration (PSD), as set forth in 567—Chapter 33;
- New source performance standards (NSPS), as set forth in 567—subrule 23.1(2);
- National emission standards for hazardous air pollutants (NESHAP), as set forth in 567—subrules 23.1(3) and 23.1(4);
- Emission guidelines, as set forth in 567—subrule 23.1(5);
- Nonattainment new source review, as set forth in 567—Chapter 31; or
- The equipment or process is a major source of hazardous air pollutants, as defined in 40 CFR Sections 63.2 and 63.41, and as adopted by reference in 567—subrule 23.1(4).

The equipment and processes are subject to PSD until the owner or operator of a proposed project legally obtains permitted limits that limit the project below the PSD thresholds (i.e., PSD synthetic minor status).

(2) The applicant must cease construction if the department's evaluation demonstrates that the construction, reconstruction or modification of the stationary source will interfere with the attainment

or maintenance of the national ambient air quality standards or will result in a violation of a control strategy required by 40 CFR Part 51, Subpart G, as amended through February 19, 2015.

(3) The applicant will be required to make any modification to the stationary source that may be imposed in the issued construction permit.

(4) The applicant must notify the department in writing of the actual start date of construction or reconstruction. All notifications shall be submitted to the department in writing no later than 30 days after construction or reconstruction started. All notifications shall include all of the information listed in 22.3(3)*"b."*

d. The owner or operator of a country grain elevator, country grain terminal elevator, grain terminal elevator or feed mill equipment, as "country grain elevator," "country grain terminal elevator," "grain terminal elevator," and "feed mill equipment," as these terms are defined in 22.10(1), may elect to comply with the requirements specified in 567—22.10(455B) as an alternative to the construction permitting requirements set forth in 22.1(1).

22.1(2) *Exemptions.* An owner or operator may opt to use one of the permitting exemptions in this subrule in lieu of obtaining an air quality construction permit if the equipment, control equipment, or process meets the conditions in the specific exemption and is not:

- Permitted under the provisions of the permit by rule for spray booths, as set forth in 567—22.8(455B);
- Subject to nonattainment new source review, as set forth in 567—Chapter 31; or
- Subject to PSD, as set forth in 567—Chapter 33;

A permitting exemption may be used only if a permit is not necessary to establish federally enforceable limits that restrict potential to emit.

An owner or operator shall keep records at the facility and will make the records available to the department upon request if any of the exemptions under the following paragraphs are claimed:

- 22.1(2)*"a"* (for equipment > 1 million Btu per hour input),
- 22.1(2)*"b,"*
- 22.1(2)*"e,"*
- 22.1(2)*"r,"* or
- 22.1(2)*"s."*

Records kept on site shall contain the following information:

- The specific exemption claimed; and
- A description of the associated equipment.

The permitting exemptions in this subrule do not relieve the owner or operator of any source from any obligation to comply with any other applicable requirements.

a. Fuel-burning equipment for indirect heating and reheating furnaces or cooling units using natural gas or liquefied petroleum gas with a capacity of less than 10 million Btu per hour input per combustion unit.

b. Fuel-burning equipment for indirect heating or indirect cooling with a capacity of less than 1 million Btu per hour input per combustion unit when burning untreated wood, untreated seeds or pellets, other untreated vegetative materials, or fuel oil, provided that the equipment and the fuel meet the conditions specified in this paragraph. Used oils meeting the specification from 40 CFR Section 279.11 as amended through July 14, 2006, are acceptable fuels for this exemption. When combusting used oils, the equipment must have a maximum rated capacity of 50,000 Btu or less per hour of heat input or a maximum throughput of 3,600 gallons or less of used oils per year. When combusting untreated wood, untreated seeds or pellets, or other untreated vegetative materials, the equipment must have a maximum rated capacity of 265,600 Btu or less per hour or a maximum throughput of 378,000 pounds or less per year of each fuel or any combination of fuels. Records shall be maintained on site by the owner or operator for at least two calendar years to demonstrate that fuel usage is less than the exemption thresholds. Owners or operators initiating construction, installation, reconstruction, or alteration of equipment (as defined in 567—22.1(455B)) on or before October 23, 2013, burning coal, used oils, untreated wood, untreated seeds or pellets, or other untreated vegetative materials that

qualified for this exemption may continue to claim this exemption after October 23, 2013, without being restricted to the maximum heat input or throughput specified in this paragraph.

c. Mobile internal combustion and jet engines, marine vessels and locomotives.

d. Equipment used for cultivating land, harvesting crops, or raising livestock other than anaerobic lagoons. This exemption is not applicable if the equipment is used to remove substances from grain that were applied to the grain by another person. This exemption is also not applicable to equipment used by a person to manufacture commercial feed, as defined in Iowa Code section 198.3, that is normally not fed to livestock, owned by the person or another person, in a feedlot, as defined in Iowa Code section 172D.1(6), or a confinement building owned or operated by that person and located in this state.

e. Incinerators and pyrolysis cleaning furnaces with a rated refuse burning capacity of less than 25 pounds per hour for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred on or before October 23, 2013. Pyrolysis cleaning furnace exemption is limited to those units that use only natural gas or propane. Salt bath units are not included in this exemption. Incinerators or pyrolysis cleaning furnaces for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—21.1(455B)) occurred after October 23, 2013, shall not qualify for this exemption. After October 23, 2013, only paint clean-off ovens with a maximum rated capacity of less than 25 pounds per hour that do not combust lead-containing materials shall qualify for this exemption.

f. Fugitive dust controls, unless a control efficiency can be assigned to the equipment or control equipment.

g. Equipment or control equipment that reduces or eliminates all emission to the atmosphere. An owner or operator electing to use this exemption shall provide to the department the following information:

(1) Name and location of the facility;

(2) Detailed description of each change being made;

(3) Date of the beginning of actual construction and date that operation will begin after the changes are made;

(4) Detailed emissions estimates showing:

1. The actual and potential emissions, specifically noting increases or decreases, for the project for all regulated pollutants (as defined in 567—24.100(455B)); and

2. The accumulated emissions increases associated with each change when totaled with other net emissions increases at the facility contemporaneous with the proposed change (occurring within five years before construction of the particular change commences).

(5) Documentation of the basis for all emissions estimates;

(6) Height of the emission point or stack and height of the highest building within 50 feet;

(7) Statement that the provisions of 567—Chapters 31 and 33 do not apply; and

(8) Written statement containing certification by a responsible official as defined in 567—24.100(455B) of truth, accuracy, and completeness that:

1. Accumulated emissions with other contemporaneous net increases have not exceeded significant levels, as defined in 40 CFR 52.21(b)(23), and adopted in 567—33.3(455B);

2. The changes will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—22.11(455B);

3. Based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

The conditions listed below also apply to this exemption:

- If an owner or operator opts to use this exemption for equipment or a process not yet constructed or modified, the information shall be provided to the department at least 30 days in advance of the beginning of construction on the project.
- If an owner or operator opts to use this exemption for equipment or a process that has already been constructed or modified and that does not have a construction permit for that construction or

modification, the owner or operator shall not operate until the information listed above is provided to the department.

- If a construction permit has been previously issued for the equipment or control equipment, all other conditions of the construction permit remain in effect.
- If an owner or operator wishes to obtain credit for emission reductions, an air quality construction permit must be obtained for the reduction prior to the time the reduction is made.

h. Equipment (other than anaerobic lagoons) or control equipment that emits odors, unless such equipment or control equipment also emits particulate matter or any other regulated air contaminant (as defined in 567—24.100(455B)).

i. Reserved.

j. Residential heaters, cookstoves, or fireplaces that burn untreated wood, untreated seeds or pellets, or other untreated vegetative materials.

k. Asbestos demolition and renovation projects subject to 40 CFR Section 61.145 as adopted by reference in 567—subrule 23.1(3).

l. The equipment in laboratories used exclusively for nonproduction chemical and physical analyses. Nonproduction analyses means analyses incidental to the production of a good or service and includes analyses conducted for quality assurance or quality control activities or for the assessment of environmental impact.

m. Storage tanks with a capacity of less than 19,812 gallons and an annual throughput of less than 200,000 gallons.

n. Stack or vents to prevent escape of sewer gases through plumbing traps. Systems that include any industrial waste are not exempt.

o. A nonproduction surface coating process that uses only handheld aerosol spray cans.

p. Brazing, soldering or welding equipment or portable cutting torches used only for nonproduction activities.

q. Cooling and ventilating equipment: comfort air conditioning not designed or used to remove air contaminants generated by, or released from, specific units of equipment.

r. An internal combustion engine with a brake horsepower rating of less than 400 measured at the shaft, provided that the owner or operator meets all of the conditions in this paragraph. For the purposes of this exemption, the manufacturer's nameplate rated capacity at full load shall be defined as the brake horsepower output at the shaft. The owner or operator of an engine that was manufactured, ordered, modified or reconstructed after March 18, 2009, may use this exemption only if the owner or operator, prior to installing, modifying or reconstructing the engine, submits to the department a completed registration on forms provided by the department (unless the engine is exempted from registration, as specified in this paragraph or on the registration form) certifying that the engine is in compliance with the following federal regulations:

(1) NSPS for stationary compression ignition internal combustion engines (40 CFR Part 60, Subpart IIII); or

(2) NSPS for stationary spark ignition internal combustion engines (40 CFR Part 60, Subpart JJJJ); and

(3) NESHAP for reciprocating internal combustion engines (40 CFR Part 63, Subpart ZZZZ).

Use of this exemption does not relieve an owner or operator from any obligation to comply with NSPS or NESHAP requirements. An engine that meets the definition of a nonroad engine as specified in 40 CFR Section 1068.30, as amended through January 24, 2023, is exempt from the registration requirements of this paragraph.

s. Equipment that is not related to the production of goods or services and used exclusively for academic purposes, located at educational institutions (as defined in Iowa Code section 455B.161). The equipment covered under this exemption is limited to lab hoods, art class equipment, wood shop equipment in classrooms, wood fired pottery kilns, and fuel-burning units with a capacity of less than 1 million Btu per hour fuel capacity. This exemption does not apply to incinerators.

t. Any container, storage tank, or vessel that contains a fluid having a maximum true vapor pressure of less than 0.75 psia. "Maximum true vapor pressure" means the equilibrium partial pressure of the material considering:

(1) For material stored at ambient temperature, the maximum monthly average temperature as reported by the National Weather Service, or

(2) For material stored above or below the ambient temperature, the temperature equal to the highest calendar-month average of the material storage temperature.

u. Equipment for carving, cutting, routing, turning, drilling, machining, sawing, surface grinding, sanding, planing, buffing, sandblast cleaning, shot blasting, shot peening, or polishing ceramic artwork, leather, metals (other than beryllium), plastics, concrete, rubber, paper stock, and wood or wood products, where such equipment is either used for nonproduction activities or exhausted inside a building.

v. Manually operated equipment, as defined in 567—24.100(455B), used for buffing, polishing, carving, cutting, drilling, machining, routing, sanding, sawing, scarfing, surface grinding, or turning.

w. Small unit exemption.

(1) "Small unit" means any emission unit and associated control (if applicable) that emits less than the following:

1. 2 pounds per year of lead and lead compounds expressed as lead (40 pounds per year of lead or lead compounds for equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred on or before October 23, 2013);
2. 5 tons per year of sulfur dioxide;
3. 5 tons per year of nitrogen oxides;
4. 5 tons per year of volatile organic compounds;
5. 5 tons per year of carbon monoxide;
6. 5 tons per year of particulate matter (particulate matter as defined in 40 CFR 51.100(pp), as amended through November 7, 1986);
7. 2.5 tons per year of PM_{10};
8. 0.52 tons per year of $PM_{2.5}$ (does not apply to equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred on or before October 23, 2013); and
9. 5 tons per year of hazardous air pollutants (as defined in 567—24.100(455B)).

For the purposes of this exemption, "emission unit" means any part or activity of a stationary source that emits or has the potential to emit any pollutant subject to regulation under the Act. This exemption applies to existing and new or modified "small units."

An emission unit that emits hazardous air pollutants (as defined in 567—24.100(455B)) is not eligible for this exemption if the emission unit is required to be reviewed for compliance with 567—subrule 23.1(3), emission standards for hazardous air pollutants (40 CFR Part 61, NESHAP), or 567—subrule 23.1(4), emission standards for hazardous air pollutants for source categories (40 CFR Part 63, NESHAP).

An emission unit that emits air pollutants that are not regulated air pollutants as defined in 567—24.100(455B) shall not be eligible to use this exemption.

(2) Permit requested. If a construction permit is requested in writing by the owner or operator of a small unit, the director may issue a construction permit for the emission point associated with that emission unit.

(3) An owner or operator that utilizes the small unit exemption must maintain on site an "exemption justification document." The exemption justification document must document conformance and compliance with the emission rate limits contained in the definition of "small unit" for the particular emission unit or group of similar emission units obtaining the exemption. Controls that may be part of the exemption justification document include, but are not limited to, the following: emission control devices, such as cyclones, filters, or baghouses; restricted hours of operation or fuel; and raw material or solvent substitution. The exemption justification document for an emission unit or

group of similar emission units must be made available for review during normal business hours and for state or EPA on-site inspections and shall be provided to the director or the director's representative upon request. If an exemption justification document does not exist, the applicability of the small unit exemption is voided for that particular emission unit or group of similar emission units. The controls described in the exemption justification document establish a limit on the potential emissions. An exemption justification document shall include the following for each applicable emission unit or group of similar emission units:

1. A narrative description of how the emissions from the emission unit or group of similar emission units were determined and maintained at or below the annual small unit exemption levels.

2. If air pollution control equipment is used, a description of the air pollution control equipment used on the emission unit or group of similar emission units and a statement that the emission unit or group of similar emission units will not be operated without the pollution control equipment operating.

3. If air pollution control equipment is used, the applicant shall maintain a copy of any report of manufacturer's testing results of any emissions test, if available. The department may require a test if it believes that a test is necessary for the exemption claim.

4. A description of all production limits required for the emission unit or group of similar emission units to comply with the exemption levels.

5. Detailed calculations of emissions reflecting the use of any air pollution control devices or production or throughput limitations, or both, for applicable emission unit or group of similar emission units.

6. Records of actual operation that demonstrate that the annual emissions from the emission unit or group of similar emission units were maintained below the exemption levels.

7. Facilities designated as major sources with respect to 567—22.4(455B) and 567—24.101(455B), or subject to any applicable federal requirements, shall retain all records demonstrating compliance with the exemption justification document for five years. The record retention requirements supersede any retention conditions of an individual exemption.

8. A certification from the responsible official that the emission unit or group of similar emission units have complied with the exemption levels specified in 22.1(2)*"w"*(1).

(4) Requirement to apply for a construction permit. An owner or operator of a small unit will be required to obtain a construction permit or take the unit out of service if the emission unit exceeds the small unit emission levels.

1. If, during an inspection or other investigation of a facility, the department believes that the emission unit exceeds the emission levels that define a "small unit," then the department will submit calculations and detailed information in a letter to the owner or operator. The owner or operator shall have 60 days to respond with detailed calculations and information to substantiate a claim that the small unit does not exceed the emission levels that define a small unit.

2. If the owner or operator is unable to substantiate a claim to the satisfaction of the department, then the owner or operator that has been using the small unit exemption must cease operation of that small unit or apply for a construction permit for that unit within 90 days after receiving a letter of notice from the department. The emission unit and control equipment may continue operation during this period and the associated initial application review period.

3. If the notification of nonqualification as a small unit is made by the department following the process described above, the owner or operator will be deemed to have constructed an emission unit without the required permit and may be subject to applicable penalties.

(5) Required notice for construction or modification of a substantial small unit. The owner or operator shall notify the department in writing at least ten days prior to commencing construction of any new or modified "substantial small unit" as defined in 22.1(2)*"w"*(6). The owner or operator shall notify the department within 30 days after determining an existing small unit meets the criteria of the "substantial small unit" as defined in 22.1(2)*"w"*(6). Notification shall include the name of the business, the location where the unit will be installed, and information describing the unit and quantifying its emissions. The owner or operator shall notify the department within 90 days of the end

of the calendar year for which the aggregate emissions from substantial small units at the facility have reached any of the cumulative notice thresholds listed below.

(6) For the purposes of this paragraph, "substantial small unit" means a small unit that emits more than the following amounts, as documented in the exemption justification document:

1. 2 pounds per year of lead and lead compounds expressed as lead (30 pounds per year of lead or lead compounds for equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred on or before October 23, 2013);
2. 3.75 tons per year of sulfur dioxide;
3. 3.75 tons per year of nitrogen oxides;
4. 3.75 tons per year of volatile organic compounds;
5. 3.75 tons per year of carbon monoxide;
6. 3.75 tons per year of particulate matter (particulate matter as defined in 40 CFR 51.100(pp), as amended through November 7, 1986);
7. 1.875 tons per year of PM_{10};
8. 0.4 tons per year of $PM_{2.5}$ (does not apply to equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred on or before October 23, 2013); or
9. 3.75 tons per year of any hazardous air pollutant or 3.75 tons per year of any combination of hazardous air pollutants.

An emission unit is a "substantial small unit" only for those substances for which annual emissions exceed the above-indicated amounts.

(7) Required notice that a cumulative notice threshold has been reached. Once a "cumulative notice threshold," as defined in 22.1(2)*"w"*(8), has been reached for any of the listed pollutants, the owner or operator at the facility must apply for air construction permits for all substantial small units for which the cumulative notice threshold for the pollutant(s) in question has been reached. The owner or operator shall have 90 days from the date it determines that the cumulative notice threshold has been reached in which to apply for construction permit(s). The owner or operator shall submit a letter to the department, within five working days of making this determination, establishing the date the owner or operator determined that the cumulative notice threshold had been reached.

(8) "Cumulative notice threshold" means the total combined emissions from all substantial small units using the small unit exemption that emit at the facility the following amounts, as documented in the exemption justification document:

1. 0.6 tons per year of lead and lead compounds expressed as lead;
2. 40 tons per year of sulfur dioxide;
3. 40 tons per year of nitrogen oxides;
4. 40 tons per year of volatile organic compounds;
5. 100 tons per year of carbon monoxide;
6. 25 tons per year of particulate matter (particulate matter as defined in 40 CFR 51.100(pp), as amended through November 7, 1986);
7. 15 tons per year of PM_{10};
8. 10 tons per year of $PM_{2.5}$ (does not apply to equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred on or before October 23, 2013); or
9. 10 tons per year of any hazardous air pollutant or 25 tons per year of any combination of hazardous air pollutants.

x. The following equipment, processes, and activities:

(1) Cafeterias, kitchens, and other facilities used for preparing food or beverages primarily for consumption at the source.

(2) Consumer use of office equipment and products, not including printers or businesses primarily involved in photographic reproduction.

(3) Janitorial services and consumer use of janitorial products.

(4) Internal combustion engines used for lawn care, landscaping, and groundskeeping purposes.

(5) Laundry activities located at a stationary source that uses washers and dryers to clean, with water solutions of bleach or detergents, or to dry clothing, bedding, and other fabric items used on site. This exemption does not include laundry activities that use dry cleaning equipment or steam boilers.

(6) Bathroom vent emissions, including toilet vent emissions.

(7) Blacksmith forges.

(8) Plant maintenance and upkeep activities and repair or maintenance shop activities (e.g., groundskeeping, general repairs, cleaning, painting, welding, plumbing, retarring roofs, installing insulation, and paving parking lots), provided that these activities are not conducted as part of manufacturing process, are not related to the source's primary business activity, and do not otherwise trigger a permit modification. Cleaning and painting activities qualify if they are not subject to control requirements for volatile organic compounds or hazardous air pollutants as defined in 567—24.100(455B).

(9) Air compressors and vacuum pumps, including hand tools.

(10) Batteries and battery charging stations, except at battery manufacturing plants.

(11) Equipment used to store, mix, pump, handle or package soaps, detergents, surfactants, waxes, glycerin, vegetable oils, greases, animal fats, sweetener, corn syrup, and aqueous salt or caustic solutions, provided that appropriate lids and covers are utilized and that no organic solvent has been mixed with such materials.

(12) Equipment used exclusively to slaughter animals, but not including other equipment at slaughterhouses, such as rendering cookers, boilers, heating plants, incinerators, and electrical power generating equipment.

(13) Vents from continuous emissions monitors and other analyzers.

(14) Natural gas pressure regulator vents, excluding venting at oil and gas production facilities.

(15) Equipment used by surface coating operations that apply the coating by brush, roller, or dipping, except equipment that emits volatile organic compounds or hazardous air pollutants as defined in 567—24.100(455B).

(16) Hydraulic and hydrostatic testing equipment.

(17) Environmental chambers not using gases that are hazardous air pollutants as defined in 567—24.100(455B).

(18) Shock chambers, humidity chambers, and solar simulators.

(19) Fugitive dust emissions related to movement of passenger vehicles on unpaved road surfaces, provided that the emissions are not counted for applicability purposes and that any fugitive dust control plan or its equivalent is submitted as required by the department.

(20) Process water filtration systems and demineralizers, demineralized water tanks, and demineralizer vents.

(21) Boiler water treatment operations, not including cooling towers or lime silos.

(22) Oxygen scavenging (deaeration) of water.

(23) Fire suppression systems.

(24) Emergency road flares.

(25) Steam vents, safety relief valves, and steam leaks.

(26) Steam sterilizers.

(27) Application of hot melt adhesives from closed-pot systems using polyolefin compounds, polyamides, acrylics, ethylene vinyl acetate and urethane material when stored and applied at the manufacturer's recommended temperatures. Equipment used to apply hot melt adhesives shall have a safety device that automatically shuts down the equipment if the hot melt temperature exceeds the manufacturer's recommended application temperature.

y. Direct-fired equipment burning natural gas, propane, or liquefied propane with a capacity of less than 10 million Btu per hour input, and direct-fired equipment burning fuel oil with a capacity of less than 1 million Btu per hour input, with emissions that are attributable only to the products of

combustion. Emissions other than those attributable to the products of combustion shall be accounted for in an enforceable permit condition or shall otherwise be exempt under this subrule.

z. Closed refrigeration systems, including storage tanks used in refrigeration systems but excluding any combustion equipment associated with such systems.

aa. Pretreatment application processes that use aqueous-based chemistries designed to clean a substrate, provided that the chemical concentrate contains no more than 5 percent organic solvents by weight. This exemption includes pretreatment processes that use aqueous-based cleaners, cleaner-phosphatizers, and phosphate conversion coating chemistries.

bb. Indoor-vented powder coating operations with filters or powder recovery systems.

cc. Electric curing ovens or curing ovens that run on natural gas or propane with a maximum heat input of less than 10 million Btu per hour and that are used for powder coating operations, provided that the total cured powder usage is less than 75 tons of powder per year at the stationary source. Records shall be maintained on site by the owner or operator for a period of at least two calendar years to demonstrate that cured powder usage is less than the exemption threshold.

dd. Each production painting, adhesive or coating unit using an application method other than a spray system and associated cleaning operations that use 1,000 gallons or less of coating and solvents annually, unless the production painting, adhesive or coating unit and associated cleaning operations are subject to work practice, process limits, emissions limits, stack testing, recordkeeping or reporting requirements under 567—subrule 23.1(2), 23.1(3) or 23.1(4). Records shall be maintained on site by the owner or operator for a period of at least two calendar years to demonstrate that paint, adhesive, or solvent usage is at or below the exemption threshold.

ee. Any production surface coating activity that uses only nonrefillable handheld aerosol cans, where the total volatile organic compound emissions from all these activities at a stationary source do not exceed 5.0 tons per year.

ff. Production welding.

(1) Consumable electrode.

1. Welding operations for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred on or before October 23, 2013, using a consumable electrode, provided that the consumable electrode used falls within American Welding Society specification A5.18/A5.18M for Gas Metal Arc Welding (GMAW), A5.1 or A5.5 for Shielded Metal Arc Welding (SMAW), and A5.20 for Flux Core Arc Welding (FCAW), and provided that the quantity of all electrodes used at the stationary source of the acceptable specifications is below 200,000 pounds per year for GMAW and 28,000 pounds per year for SMAW or FCAW. Records that identify the type and annual amount of welding electrode used shall be maintained on site by the owner or operator for a period of at least two calendar years. For stationary sources where electrode usage exceeds these levels, the welding activity at the stationary source may be exempted if the amount of electrode used (Y) is less than:

Y = the greater of 1380x - 19,200 or 200,000 for GMAW, or

Y = the greater of 187x - 2,600 or 28,000 for SMAW or FCAW

Where “x” is the minimum distance to the property line in feet and “Y” is the annual electrode usage in pounds per year.

If the stationary source has welding processes that fit into both of the specified exemptions, the most stringent limits must be applied.

2. Welding operations for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred after October 23, 2013, using a consumable electrode, provided that the consumable electrode used falls within American Welding Society specification A5.18/A5.18M for Gas Metal Arc Welding (GMAW), A5.1 or A5.5 for Shielded Metal Arc Welding (SMAW), and A5.20 for Flux Core Arc Welding (FCAW), and provided that the quantity of all electrodes used at the stationary source of the acceptable specifications is below 12,500 pounds per year for GMAW and 1,600 pounds per year for SMAW or FCAW. Records that identify the type and annual amount of welding electrode used shall be maintained on site by the owner or operator for

a period of at least two calendar years. For stationary sources where electrode usage exceeds these levels, the welding activity at the stationary source may be exempted if the amount of electrode used (Y) is less than:

Y = the greater of 84x - 1,200 or 12,500 for GMAW, or

Y = the greater of 11x - 160 or 1,600 for SMAW or FCAW

Where "x" is the minimum distance to the property line in feet and "Y" is the annual electrode usage in pounds per year.

If the stationary source has welding processes that fit into both of the specified exemptions, the most stringent limits must be applied.

(2) Resistance welding, submerged arc welding, or arc welding that does not use a consumable electrode, provided that the base metals do not include stainless steel, alloys of lead, alloys of arsenic, or alloys of beryllium and provided that the base metals are uncoated, excluding manufacturing process lubricants.

gg. Electric hand soldering, wave soldering, and electric solder paste reflow ovens for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred on or before October 23, 2013. Electric hand soldering, wave soldering, and electric solder paste reflow ovens for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—2.1(455B)) occurred after October 23, 2013, shall be limited to 37,000 pounds or less per year of lead-containing solder. Records shall be maintained on site by the owner or operator for at least two calendar years to demonstrate that use of lead-containing solder is less than the exemption thresholds.

hh. Pressurized piping and storage systems for natural gas, propane, liquefied petroleum gas (LPG), and refrigerants, where emissions could only result from an upset condition.

ii. Emissions from the storage and mixing of paints and solvents associated with the painting operations, provided that the emissions from the storage and mixing are accounted for in an enforceable permit condition or are otherwise exempt.

jj. Product labeling using laser and ink-jet printers with target distances less than or equal to six inches and an annual material throughput of less than 1,000 gallons per year as calculated on a stationary sourcewide basis.

kk. Equipment related to research and development activities at a stationary source, provided that:

(1) Actual emissions from all research and development activities at the stationary source based on a 12-month rolling total are less than the following levels:

1. 2 pounds per year of lead and lead compounds expressed as lead (40 pounds per year for research and development activities that commenced on or before October 23, 2013);
2. 5 tons per year of sulfur dioxide;
3. 5 tons per year of nitrogen oxides;
4. 5 tons per year of volatile organic compounds;
5. 5 tons per year of carbon monoxide;
6. 5 tons per year of particulate matter (particulate matter as defined in 40 CFR 51.100(pp) as amended through November 7, 1986);
7. 2.5 tons per year of PM_{10};
8. 0.52 tons per year of $PM_{2.5}$ (does not apply to research and development activities that commenced on or before October 23, 2013); and
9. 5 tons per year of hazardous pollutants (as defined in 567—24.100(455B)); and

(2) The owner or operator maintains records of actual operations demonstrating that the annual emissions from all research and development activities conducted under this exemption are below the levels listed in 22.1(2)*"kk"*(1). These records shall:

1. Include a list of equipment that is included under the exemption;

2. Include records of actual operation and detailed calculations of actual annual emissions, reflecting the use of any control equipment and demonstrating that the emissions are below the levels specified in the exemption;

3. Include, if air pollution equipment is used in the calculation of emissions, a copy of any report of manufacturer's testing, if available. The department may require a test if it believes that a test is necessary for the exemption claim; and

4. Be maintained on site for a minimum of two years, be made available for review during normal business hours and for state and EPA on-site inspections, and be provided to the director or the director's designee upon request. Facilities designated as major sources pursuant to 567—22.4(455B) and 567—24.101(455B), or subject to any applicable federal requirements, shall retain all records demonstrating compliance with this exemption for five years.

(3) An owner or operator using this exemption obtains a construction permit or ceases operation of equipment if operation of the equipment would cause the emission levels listed in this exemption to be exceeded.

For the purposes of this exemption, "research and development activities" shall be defined as activities:

1. That are operated under the close supervision of technically trained personnel;

2. That are conducted for the primary purpose of theoretical research or research and development into new or improved processes and products;

3. That do not manufacture more than de minimus amounts of commercial products; and

4. That do not contribute to the manufacture of commercial products by collocated sources in more than a de minimus manner.

ll. A regional collection center (RCC), as defined in 567—Chapter 211, involved in the processing of permitted hazardous materials from households and conditionally exempt small quantity generators (CESQG), not to exceed 1,200,000 pounds of VOC-containing material in a 12-month rolling period. Latex paint drying may not exceed 120,000 pounds per year on a 12-month rolling total. Other nonprocessing emission units (e.g., standby generators and waste oil heaters) shall not be eligible to use this exemption.

mm. Cold solvent cleaning machines that are not in-line cleaning machines, where the maximum vapor pressure of the solvents used shall not exceed 0.7 kPa (5 mmHg or 0.1 psi) at 20°C (68°F). The machine must be equipped with a tightly fitted cover or lid that shall be closed at all times except during parts entry and removal. This exemption cannot be used for cold solvent cleaning machines that use solvent containing methylene chloride (CAS # 75-09-2), perchloroethylene (CAS # 127-18-4), trichloroethylene (CAS # 79-01-6), 1,1,1-trichloroethane (CAS # 71-55-6), carbon tetrachloride (CAS # 56-23-5) or chloroform (CAS # 67-66-3), or any combination of these halogenated HAP solvents in a total concentration greater than 5 percent by weight.

nn. Emissions from mobile over-the-road trucks, and mobile agricultural and construction internal combustion engines that are operated only for repair or maintenance purposes at equipment repair shops or equipment dealerships, and only when the repair shops or equipment dealerships are not major sources as defined in 567—24.100(455B).

oo. A nonroad diesel fueled engine, as "nonroad engine" is defined in 40 CFR Section 1068.30 as amended through January 24, 2023, with a brake horsepower rating of less than 1,100 at full load measured at the shaft, used to conduct periodic testing and maintenance on natural gas pipelines. For the purposes of this exemption, the manufacturer's nameplate rating shall be defined as the brake horsepower output at the shaft at full load.

(1) To qualify for the exemption, the engine must:

1. Be used for periodic testing and maintenance on natural gas pipelines outside the compressor station, which shall not exceed 330 hours in any 12-month consecutive period at a single location; or

2. Be used for periodic testing and maintenance on natural gas pipelines within the compressor station, which shall not exceed 330 hours in any 12-month consecutive period.

(2) The owner or operator shall maintain a monthly record of the number of hours the engine operated and a record of the rolling 12-month total of the number of hours the engine operated for each location outside the compressor station and within the compressor station. These records shall be maintained for two years. Records shall be made available to the department upon request.

(3) This exemption shall not apply to the replacement or substitution of engines for backup power generation at a pipeline compressor station.

22.1(3) *Construction permits.* The owner or operator of a new or modified stationary source shall apply for a construction permit. Construction permit applications, including the information referenced above and in 567—22.1(455B) through 567—22.10(455B), shall be submitted in the electronic format specified by the department, if electronic submittal is provided.

The owner or operator of any new or modified industrial anaerobic lagoon shall apply for a construction permit as specified in this subrule and as provided in 567—Chapter 22. The owner or operator of a new or modified anaerobic lagoon for an animal feeding operation shall apply for a construction permit as provided in 567—Chapter 65.

a. Regulatory applicability determinations. If requested in writing, the director will review the design concepts of equipment and associated control equipment prior to application for a construction permit. The purpose of the review would be to determine the acceptability of the location of the equipment. If the review is requested, the requester shall supply the following information and submit a fee as required in 567—Chapter 30:

(1) Preliminary plans and specifications of equipment and related control equipment.

(2) The exact site location and a plot plan of the immediate area, including the distance to and height of nearby buildings and the estimated location and elevation of the emission points.

(3) The estimated emission rates of any air contaminants that are to be considered.

(4) The estimated exhaust gas temperature, velocity at the point of discharge, and stack diameter at the point of discharge.

(5) An estimate of when construction would begin and when construction would be completed.

b. Construction permit applications. Each application for a construction permit shall be submitted to the department. Final plans and specifications for the proposed equipment or related control equipment shall be submitted with the application for a permit and shall be prepared by or under the direct supervision of a professional engineer licensed in the state of Iowa in conformance with Iowa Code section 542B.1, or consistent with the provisions of Iowa Code section 542B.26 for any full-time employee of any corporation while the employee is doing work for that corporation. The application for a permit to construct shall include the following information:

(1) A description of the equipment or control equipment covered by the application;

(2) A scaled plot plan, including the distance and height of nearby buildings, and the location and elevation of existing and proposed emission points;

(3) The composition of the effluent stream, both before and after any control equipment with estimates of emission rates, concentration, volume and temperature;

(4) The physical and chemical characteristics of the air contaminants;

(5) The proposed dates and description of any tests to be made by the owner or operator of the completed installation to verify compliance with applicable emission limits or standards of performance;

(6) Information pertaining to sampling port locations, scaffolding, power sources for operation of appropriate sampling instruments, and pertinent allied facilities for making tests to ascertain compliance;

(7) Any additional information deemed necessary by the department to determine compliance with or applicability of 567—22.4(455B), 567—22.5(455B), 567—31.3(455B) and 567—33.3(455B);

(8) Reserved.

(9) A signed statement that ensures the applicant's legal entitlement to install and operate equipment covered by the permit application on the property identified in the permit application. A signed statement shall not be required for rock crushers, portable concrete or asphalt equipment used

in conjunction with specific identified construction projects that are intended to be located at a site only for the duration of the specific, identified construction project; and

(10) Application fee.

1. The owner or operator shall submit a fee as required in 567—Chapter 30 to obtain a permit under 22.1(1), 567—22.4(455B), 567—22.5(455B), 567—22.8(455B), 567—22.10(455B), 567—Chapter 31 or 567—Chapter 33;

2. For application submittals from a minor source as defined in 567—Chapter 30, the department shall not initiate review and processing of a permit application submittal until all required application fees have been paid to the department; and

(11) Quantity of greenhouse gas emissions for all applications for projects that will or do have greenhouse gas emissions. For all applications for projects that will not or do not have greenhouse gas emissions, the applicant shall indicate in the application that no greenhouse gases will be emitted and the applicant will not be required to file an inventory of greenhouse gases with that application, unless requested by the department.

c. Application requirements for anaerobic lagoons. The application for a permit to construct an anaerobic lagoon shall include the following information:

(1) The source of the water being discharged to the lagoon;

(2) A plot plan, including distances to nearby residences or occupied buildings, local land use zoning maps of the vicinity, and a general description of the topography in the vicinity of the lagoon;

(3) In the case of an animal feeding operation, the information required in 567—Chapter 65;

(4) In the case of an industrial source, a chemical description of the waste being discharged to the lagoon;

(5) A report of sulfate analyses conducted on the water to be used for any purpose in a livestock operation proposing to use an anaerobic lagoon. The report shall be prepared by using standard methods as defined in 567—60.2(455B);

(6) A description of available water supplies to prove that adequate water is available for dilution;

(7) In the case of an animal feeding operation, a waste management plan describing the method of waste collection and disposal and the land to be used for disposal. Evidence that the waste disposal equipment is of sufficient size to dispose of the wastes within a 20-day period per year shall also be provided;

(8) Any additional information needed by the department to determine compliance with these rules.

[**ARC 7951C**, IAB 5/15/24, effective 6/19/24]

567—22.2(455B) Processing permit applications.

22.2(1) *Incomplete applications.* The department will notify the applicant whether the application is complete or incomplete. If the application is found by the department to be incomplete upon receipt, the applicant will be notified within 30 days of that fact and of the specific deficiencies. Sixty days following such notification, the application may be denied for lack of information. When this schedule would cause undue hardship to an applicant, or the applicant has a compelling need to proceed promptly with the proposed installation, modification or location, a request for priority consideration and the justification therefor shall be submitted to the department.

22.2(2) *Public notice and participation.* A notice of intent to issue a construction permit to a major stationary source shall be published by the department in a newspaper having general circulation in the area affected by the emissions of the proposed source. The notice and supporting documentation shall be made available for public inspection upon request from the department's central office. Publication of the notice shall be made at least 30 days prior to issuing a permit and shall include the department's evaluation of ambient air impacts. The public may submit written comments or request a public hearing. If the response indicates significant interest, a public hearing may be held after due notice.

22.2(3) *Final notice.* The department shall notify the applicant in writing of the issuance or denial of a construction permit as soon as practicable and at least within 120 days of receipt of the completed application. This shall not apply to applicants for electric generating facilities subject to Iowa Code chapter 476A.

[**ARC 7951C**, IAB 5/15/24, effective 6/19/24]

567—22.3(455B) Issuing permits.

22.3(1) *Stationary sources other than anaerobic lagoons.* In no case shall a construction permit that results in an increase in emissions be issued to any facility that is in violation of any condition found in a permit involving PSD, NSPS, NESHAP or a provision of the Iowa state implementation plan (SIP). If the facility is in compliance with a schedule for correcting the violation and that schedule is contained in an order or permit condition, the department may consider issuance of a construction permit. A construction permit shall be issued when the director concludes that the preceding requirement has been met and:

a. That the required plans and specifications represent equipment that reasonably can be expected to comply with all applicable emission standards, and

b. That the expected emissions from the proposed source or modification in conjunction with all other emissions will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—22.11(455B), and

c. That the applicant has not relied on emission limits based on stack height that exceeds good engineering practice or any other dispersion techniques as defined in 567—subrule 23.1(6), and

d. That the applicant has met all other applicable requirements.

22.3(2) *Anaerobic lagoons.* A construction permit for an industrial anaerobic lagoon shall be issued when the director concludes that the application for permit represents an approach to odor control that can reasonably be expected to comply with the criteria in 567—subrule 23.5(2). A construction permit for an animal feeding operation using an anaerobic lagoon shall be issued when the director concludes that the application has met the requirements of 567—Chapter 65.

22.3(3) *Conditions of approval.* A permit may be issued subject to conditions that shall be specified in writing. Such conditions may include but are not limited to emission limits, operating conditions, fuel specifications, compliance testing, continuous monitoring, and excess emission reporting.

a. Each permit shall specify the date on which it becomes void if work on the installation for which it was issued has not been initiated.

b. Each permit shall list the requirements for notifying the department of the dates of intended startup, start of construction and actual equipment startup. All notifications shall be in writing and include the following information:

(1) The date or dates required by 22.3(3)*"b"* for which the notice is being submitted.
(2) Facility name.
(3) Facility address.
(4) DNR-assigned facility number.
(5) DNR air construction permit number.
(6) The name or the number of the emission unit or units in the notification.
(7) The emission point number or numbers in the notification.
(8) The name and signature of a company official.
(9) The date the notification was signed.

c. Each permit shall specify that no review has been undertaken on the various engineering aspects of the equipment other than the potential of the equipment for reducing air contaminant emissions.

d. Reserved.

e. If changes in the final plans and specifications are proposed by the permittee after a construction permit has been issued, a supplemental permit shall be obtained.

f. A permit is not transferable from one location to another or from one piece of equipment to another unless the equipment is portable. When portable equipment for which a permit has been issued is to be transferred from one location to another, the department shall be notified in writing at least seven days prior to the transfer of the portable equipment to the new location. Written notification shall be submitted to the department through one of the following methods: electronic mail (email), mail delivery service (including U.S. Mail), hand delivery, facsimile (fax), or by electronic format specified by the department (at such time as an Internet-based submittal system or other, similar electronic submittal system becomes available). However, if the owner or operator is relocating the portable equipment to an area currently classified as nonattainment for ambient air quality standards or to an area under a maintenance plan for ambient air quality standards, the owner or operator shall notify the department at least 14 days prior to transferring the portable equipment to the new location. A list of nonattainment and maintenance areas may be obtained from the department, upon request, or on the department's Internet website. The owner or operator will be notified by the department at least ten days prior to the scheduled relocation if said relocation will prevent the attainment or maintenance of ambient air quality standards and thus require a more stringent emission standard and the installation of additional control equipment. In such a case, the owner or operator shall obtain a supplemental permit prior to the initiation of construction, installation, or alteration of such additional control equipment.

g. The issuance of a permit (approval to construct) shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the SIP and any other requirement under local, state or federal law.

22.3(4) *Denial of a permit.*

a. When an application for a construction permit is denied, the applicant shall be notified in writing of the reasons therefor. A denial shall be without prejudice to the right of the applicant to file a further application after revisions are made to meet the objections specified as reasons for the denial.

b. The department may deny an application based upon the applicant's failure to provide a signed statement of the applicant's legal entitlement to install and operate equipment covered by the permit application on the property identified in the permit application.

22.3(5) *Modification of a permit.* The director may, after public notice of such decision, modify a condition of approval of an existing permit for a major stationary source or an emission limit contained in an existing permit for a major stationary source if necessary to attain or maintain an ambient air quality standard, or to mitigate excessive deposition of mercury.

22.3(6) *Limits on hazardous air pollutants.* The department may limit a source's hazardous air pollutant potential to emit, as defined in 567—24.100(455B), in the source's construction permit for the purpose of establishing federally enforceable limits on the source's hazardous air pollutant potential to emit.

22.3(7) *Revocation of a permit.* The department may revoke a permit upon obtaining knowledge that a permit holder has lost legal entitlement to use the property identified in the permit to install and operate equipment covered by the permit, upon notice that the property owner does not wish to have continued the operation of the permitted equipment, or upon notice that the owner of the permitted equipment no longer wishes to retain the permit for future operation.

22.3(8) *Ownership change of permitted equipment.* The new owner shall notify the department in writing no later than 30 days after the change in ownership of equipment covered by a construction permit pursuant to 567—22.1(455B). The notification to the department shall be mailed to the Air Quality Bureau, Iowa Department of Natural Resources, 6200 Park Avenue, Suite 200, Des Moines, Iowa 50312, and shall include the following information:

a. The date of ownership change;

b. The name, address and telephone number of the responsible official, the contact person and the owner of the equipment both before and after ownership change; and

c. The construction permit number of the equipment changing ownership.

[**ARC 7951C**, IAB 5/15/24, effective 6/19/24; Editorial change: IAC Supplement 7/23/25]

567—22.4(455B) Major stationary sources located in areas designated attainment or unclassified (PSD). As applicable, the owner or operator of a stationary source shall comply with the rules for new source review (NSR) for the PSD program as set forth in 567—Chapter 33. An owner or operator required to apply for a construction permit under this rule shall submit all required fees as required in 567—Chapter 30.

[**ARC 7951C**, IAB 5/15/24, effective 6/19/24]

567—22.5(455B) Major stationary sources located in areas designated nonattainment. As applicable, the owner or operator of a stationary source shall comply with the requirements for the nonattainment major NSR program as set forth in 567—31.20(455B). An owner or operator required to apply for a construction permit under this rule shall submit all required fees as required in 567—Chapter 30.

[**ARC 7951C**, IAB 5/15/24, effective 6/19/24]

567—22.6 Reserved.

567—22.7(455B) Alternative emission control program (bubble concept).

22.7(1) *Applicability.* The owner or operator of any source located in an area with attainment or unclassified status (as published at 40 CFR Section 81.316) or located in an area with an approved SIP demonstrating attainment by the statutory deadline may apply for an alternative set of emission limits if:

a. The applicant is presently in compliance with EPA-approved SIP requirements, or

b. The applicant is subject to a consent order to meet an EPA-approved compliance schedule and the final compliance date will not be delayed by the use of alternative emission limits.

Emission limits for individual emission points included in 567—23.3(455B) (except 23.3(2)*"d,"*23.3(2)*"b"*(3), and 23.3(3)*"a"*(3)) and 567—23.4(455B) (except 23.4(12)*"b"* and 23.4(6)) may be replaced by alternative emission limits. Under this rule, less stringent control limits where costs of emission control are high may be allowed in exchange for more stringent control limits where costs of control are less expensive.

22.7(2) *Demonstration requirements.* The applicant for the alternative emission control program shall have the burden of demonstrating that:

a. The alternative emission control program will not interfere with the attainment and maintenance of ambient air quality standards, including the reasonable further progress or prevention of significant deterioration requirements of the Act;

b. The alternative emission limits are equivalent to existing emission limits in pollution reduction, enforceability, and environmental impact (in the case of a particulate nonattainment area, the difference between the allowable emission rate and the actual emission rate, as of January 1, 1978, cannot be credited in the emissions tradeoff);

c. The pollutants being exchanged are comparable and within the same pollutant category;

d. Hazardous air pollutants designated in 40 CFR Part 61, as adopted by reference in 23.1(3), will not be exchanged for nonhazardous air pollutants;

e. The alternative program will not result in any delay in compliance by any source. Specific situations may require additional demonstration as specified in 44 FR 71780-71788, December 11, 1979, or as requested by the director;

f. The owner or operator of any facility applying for an alternative emission control program that involves the trade-off of sulfur dioxide emissions shall install, calibrate, maintain and operate continuous sulfur dioxide monitoring equipment consistent with EPA reference methods (40 CFR Part 60, Appendix B). The equipment shall be operational within three months of EPA approval of an alternative emission control program.

22.7(3) *Approval process.*

a. The director shall review all alternative emission control program proposals and shall make recommendations on all completed demonstrations to the commission.

b. After receiving recommendations from the director and public comments made available through the hearing process, the commission may approve or disapprove the alternative emission control program proposal.

c. If approved by the commission, the program will be forwarded to the EPA regional administrator as a revision to the SIP. The alternative emission control program must receive the approval of the EPA regional administrator prior to becoming effective.

[**ARC 7951C**, IAB 5/15/24, effective 6/19/24]

567—22.8(455B) Permit by rule.

22.8(1) Permit by rule for spray booths. Spray booths that comply with the requirements contained in this rule will be deemed to be in compliance with the requirements to obtain an air construction permit and an air operating permit. Spray booths that comply with this rule will be considered to have federally enforceable limits so that their potential emissions are less than the major source limits for regulated air pollutants and hazardous air pollutants as defined in 567—24.100(455B). An owner or operator required to apply for a permit by rule under this subrule shall submit fees as required in 567—Chapter 30.

a. Definition. "Sprayed material" is material applied by spray equipment when used in a surface coating process in a spray booth, including but not limited to paint, solvents, and mixtures of paint and solvents. Powder coatings applied in an indoor-vented spray booth equipped with filters or overspray powder recovery systems are not considered sprayed material for purposes of this rule.

b. Facilities that facility-wide spray one gallon per day or less of sprayed material are exempt from all other requirements in 567—Chapter 22, except that they must submit the certification in 22.8(1)*"e"* to the department and keep records of daily sprayed material use. Any spray booth or associated equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred after October 23, 2013, shall use sprayed material with a maximum lead content of 0.35 pounds or less per gallon if the booth or associated equipment is subject to the following NESHAP: 40 CFR Part 63, Subpart HHHHHH or Subpart XXXXXX. Any spray booth or associated equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred after October 23, 2013, that is not subject to the NESHAP or is otherwise exempt from the NESHAP shall use sprayed material with a maximum lead content of 0.02 pounds or less per gallon. The owner or operator must keep the records of daily sprayed material use for 18 months from the date to which the records apply and shall keep safety data sheets (SDS) or equivalent records for at least two calendar years to demonstrate that the sprayed materials contain lead at less than the exemption thresholds. The owner or operator must also certify that the facility is in compliance with or otherwise exempt from the federal regulations specified in 22.8(1)*"e."*

c. Facilities that facility-wide spray more than one gallon per day but never more than three gallons per day are exempt from all other requirements in 567—Chapter 22, except that they must submit the certification in 22.8(1)*"e"* to the department, keep records of daily sprayed material use, and vent emissions from a spray booth(s) through a stack(s) that is at least 22 feet tall, measured from ground level. Any spray booth or associated equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred after October 23, 2013, shall use sprayed material with a maximum lead content of 0.35 pounds or less per gallon if the booth or associated equipment is subject to the following NESHAP: 40 CFR Part 63, Subpart HHHHHH or Subpart XXXXXX. Any spray booth or associated equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred after October 23, 2013, that is not subject to the NESHAP or is otherwise exempt from the NESHAP shall use sprayed material with a maximum lead content of 0.02 pounds or less per gallon. The owner or operator must keep the records of daily sprayed material use for 18 months from the date to which the records apply and shall keep SDS or equivalent records for at least two calendar years to demonstrate that the sprayed materials contain lead at less than the exemption thresholds. The owner or operator

must also certify that the facility is in compliance with or otherwise exempt from the federal regulations specified in 22.8(1)*"e."*

d. Facilities that facility-wide spray more than three gallons per day are not eligible to use the permit by rule for spray booths and must apply for a construction permit as required by 22.1(1) and 22.1(3), unless otherwise exempt.

e. Certification. Facilities that claim to be permitted by provisions of this rule must submit to the department a written notification as directed by the department, certifying that the facility meets the following conditions:

(1) All spray booths and associated equipment are in compliance with the provisions of 22.8(1);

(2) All spray booths and associated equipment are in compliance with all applicable requirements including, but not limited to, the allowable particulate emission rate for painting and surface coating operations of 0.01 gr/scf of exhaust gas as specified in 567—subrule 23.4(13); and

(3) All spray booths and associated equipment currently are or will be in compliance with or otherwise exempt from the NESHAP for paint stripping and miscellaneous surface coating at area sources (40 CFR Part 63, Subpart HHHHHH) and the NESHAP for metal fabricating and finishing at area sources (40 CFR Part 63, Subpart XXXXXX) by the applicable NESHAP compliance dates.

22.8(2) Reserved.

[**ARC 7951C**, IAB 5/15/24, effective 6/19/24]

567—22.9(455B) Special requirements for visibility protection.

22.9(1) to **22.9(3)** Reserved.

22.9(4) *Notification.* For the purpose of the regional haze program under 40 CFR Section 51.308, as amended through January 10, 2017, the department shall notify in writing the owner, operator or designated representative of a source of the department's determination that the source may cause or contribute to visibility impairment in any mandatory Class I area listed in 40 CFR Part 81, Subpart D, as amended through October 5, 1989.

22.9(5) *Analysis.* The owner, operator, or designated representative of a source notified pursuant to 22.9(4) shall prepare and submit an analysis to the department after receipt of written notification by the department that an analysis is required.

22.9(6) *Control technology implementation.* Following the department's review of the analysis submitted pursuant to 22.9(5), an owner or operator of a source notified pursuant to 22.9(4) shall:

a. Submit all necessary permit applications to achieve the emissions requirements established following the completion of analysis performed in accordance with 22.9(5).

b. Install, operate, and maintain the control technology as required by permits issued by the department.

[**ARC 7951C**, IAB 5/15/24, effective 6/19/24]

567—22.10(455B) Permitting requirements for country grain elevators, country grain terminal elevators, grain terminal elevators and feed mill equipment. The requirements of this rule apply only to country grain elevators, country grain terminal elevators, grain terminal elevators and feed mill equipment, as these terms are defined in 22.10(1). This rule does not apply to equipment located at grain processing plants or grain storage elevators, as "grain processing" and "grain storage elevator" are defined in 567—22.1(455B). Compliance with the requirements of this rule does not alleviate any affected person's duty to comply with any applicable state or federal regulations. In particular, the emission standards set forth in 567—Chapter 23, including the regulations for grain elevators contained in 40 CFR Part 60, Subpart DD (as adopted by reference in 567—paragraph 23.1(2)*"ooo"*), may apply. An owner or operator subject to this rule shall submit fees as required in 567—Chapter 30.

22.10(1) *Definitions.* For purposes of 567—22.10(455B), the following terms shall have the meanings indicated in this subrule.

"Country grain elevator" means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded and that meets the following criteria:

1. Receives more than 50 percent of its grain, as "grain" is defined in this subrule, from farmers in the immediate vicinity during harvest season;

2. Is not located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant.

"Country grain terminal elevator" means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded and that meets the following criteria:

1. Receives 50 percent or less of its grain, as "grain" is defined in this subrule, from farmers in the immediate vicinity during harvest season;

2. Has a permanent storage capacity of less than or equal to 2.5 million U.S. bushels, as "permanent storage capacity" is defined in this subrule;

3. Is not located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant.

"Feed mill equipment," for purposes of 567—22.10(455B), means grain processing equipment that is used to make animal feed including, but not limited to, grinders, crackers, hammermills, and pellet coolers, and that is located at a country grain elevator, country grain terminal elevator or grain terminal elevator.

"Grain," as set forth in Iowa Code section 203.1(9), means any grain for which the United States Department of Agriculture has established standards including, but not limited to, corn, wheat, oats, soybeans, rye, barley, grain sorghum, flaxseeds, sunflower seed, spelt (emmer), and field peas.

"Grain processing" means the same as defined in 567—22.1(455B).

"Grain storage elevator" means the same as defined in 567—22.1(455B).

"Grain terminal elevator," for purposes of 567—22.10(455B), means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded and that meets the following criteria:

1. Receives 50 percent or less of its grain, as "grain" is defined in this subrule, from farmers in the immediate vicinity during harvest season;

2. Has a permanent storage capacity of more than 88,100 m^3 (2.5 million U.S. bushels), as "permanent storage capacity" is defined in this subrule;

3. Is not located at an animal food manufacturer, pet food manufacturer, cereal manufacturer, brewery, or livestock feedlot;

4. Is not located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant.

"Permanent storage capacity" means grain storage capacity that is inside a building, bin, or silo.

22.10(2) *Methods for determining potential to emit (PTE).* The owner or operator of a country grain elevator, country grain terminal elevator, grain terminal elevator or feed mill equipment shall use the following methods for calculating the PTE for particulate matter (PM) and for particulate matter with an aerodynamic diameter less than or equal to 10 microns (PM_{10}):

a. Country grain elevators. The owner or operator of a country grain elevator shall calculate the PTE for PM and PM_{10} as specified in the definition of "potential to emit" in 567—22.1(455B), except that "maximum capacity" means the greatest amount of grain received at the country grain elevator during one calendar, 12-month period of the previous five calendar, 12-month periods, multiplied by an adjustment factor of 1.2. The owner or operator may make additional adjustments to the calculations for air pollution control of PM and PM_{10} if the owner or operator submits the calculations to the department using the PTE calculation tool provided by the department, and only if the owner or operator fully implements the applicable air pollution control measures no later than March 31, 2009, or upon startup of the equipment, whichever event first occurs. Credit for the application of some best management practices, as specified in 22.10(3) or in a permit issued by the department, may also be used to make additional adjustments in the PTE for PM and PM_{10} if the owner or operator submits the calculations to the department using the PTE calculation tool provided by the department, and only if

the owner or operator fully implements the applicable best management practices no later than March 31, 2009, or upon startup of the equipment, whichever event first occurs.

b. Country grain terminal elevators. The owner or operator of a country grain terminal elevator shall calculate the PTE for PM and PM_{10} as specified in the definition of "potential to emit" in 567—22.1(455B).

c. Grain terminal elevators. For purposes of the permitting and other requirements specified in 22.10(3), the owner or operator of a grain terminal elevator shall calculate the PTE for PM and PM_{10} as specified in the definition of "potential to emit" in 567—22.1(455B). For purposes of determining whether the stationary source is subject to the PSD requirements set forth in 567—Chapter 33, or for determining whether the source is subject to the operating permit requirements set forth in 567—24.100(455B) through 567—24.300(455B), the owner or operator of a grain terminal elevator shall include fugitive emissions, as "fugitive emissions" is defined in 567—subrule 33.3(1) and in 567—24.100(455B), in the PTE calculation.

d. Feed mill equipment. The owner or operator of feed mill equipment, as "feed mill equipment" is defined in 22.10(1), shall calculate the PTE for PM and PM_{10} for the feed mill equipment as specified in the definition of "potential to emit" in 567—22.1(455B). For purposes of determining whether the stationary source is subject to the PSD requirements set forth in 567—Chapter 33, or for determining whether the stationary source is subject to the operating permit requirements set forth in 567—24.100(455B) through 567—24.300(455B), the owner or operator of feed mill equipment shall sum the PTE of the feed mill equipment with the PTE of the country grain elevator, country grain terminal elevator or grain terminal elevator.

22.10(3) *Classification and requirements for permits, emissions controls, recordkeeping and reporting for Group 1, Group 2, Group 3 and Group 4 grain elevators.* The requirements for construction permits, operating permits, emissions controls, recordkeeping and reporting for a stationary source that is a country grain elevator, country grain terminal elevator or grain terminal elevator are set forth in this subrule.

a. Group 1 facilities. A country grain elevator, country grain terminal elevator or grain terminal elevator may qualify as a Group 1 facility if the PTE at the stationary source is less than 15 tons of PM_{10} per year, as PTE is specified in 22.10(2). For purposes of this paragraph, an "existing" Group 1 facility is one that commenced construction or reconstruction before February 6, 2008. A "new" Group 1 facility is one that commenced construction or reconstruction on or after February 6, 2008.

(1) Group 1 registration. The owner or operator of a Group 1 facility shall submit to the department a Group 1 registration, including PTE calculations, on forms provided by the department, certifying that the facility's PTE is less than 15 tons of PM_{10} per year. The owner or operator of an existing facility shall provide the Group 1 registration to the department on or before March 31, 2008. The owner or operator of a new facility shall provide the Group 1 registration to the department prior to initiating construction or reconstruction of a facility. The registration becomes effective upon the department's receipt of the signed registration form and the PTE calculations.

1. If the owner or operator registers with the department as specified in 22.10(3)*"a"*(1), the owner or operator is exempt from the requirement to obtain a construction permit as specified under 22.1(1).

2. Upon department receipt of a Group 1 registration and PTE calculations, the owner or operator is allowed to add, remove and modify the emissions units or change throughput or operations at the facility without modifying the Group 1 registration, provided that the owner or operator calculates the PTE for PM_{10} on forms provided by the department prior to making any additions to, removals of or modifications to equipment, and only if the facility continues to meet the emissions limits and operating limits (including restrictions on material throughput and hours of operation, if applicable, as specified in the PTE for PM_{10} calculations) specified in the Group 1 registration.

3. If equipment at a Group 1 facility currently has an air construction permit issued by the department, that permit shall remain in full force and effect, and the permit shall not be invalidated by the subsequent submittal of a registration made pursuant to 22.10(3)*"a"*(1).

(2) Best management practices (BMP). The owner or operator of a Group 1 facility shall implement BMP for controlling air pollution at the facility and for limiting fugitive dust at the facility from crossing the property line. The owner or operator shall implement BMP according to the department manual, Best Management Practices (BMP) for Grain Elevators (December 2007; revised July 15, 2014), as adopted by the commission on January 15, 2008, and July 15, 2014, and adopted by reference herein (available from the department, upon request, and on the department's Internet website). No later than March 31, 2009, the owner or operator of an existing Group 1 facility shall fully implement applicable BMP, except that BMPs for grain vacuuming operations shall be fully implemented no later than September 10, 2014. Upon startup of equipment at the facility, the owner or operator of a new Group 1 facility shall fully implement applicable BMP.

(3) Recordkeeping. The owner or operator of a Group 1 facility shall retain a record of the previous five calendar years of total annual grain handled and shall calculate the facility's potential PM_{10} emissions annually by January 31 for the previous calendar year. These records shall be kept on site for a period of five years and shall be made available to the department upon request.

(4) Emissions increases. The owner or operator of a Group 1 facility shall calculate any emissions increases prior to making any additions to, removals of or modifications to equipment. If the owner or operator determines that PM_{10} emissions at a Group 1 facility will increase to 15 tons per year or more, the owner or operator shall comply with the requirements set forth for Group 2, Group 3 or Group 4 facilities, as applicable, prior to making any additions to, removals of or modifications to equipment.

(5) Changes to facility classification or permanent grain storage capacity. If the owner or operator of a Group 1 facility plans to change the facility's operations or increase the facility's permanent grain storage capacity to more than 2.5 million U.S. bushels, the owner or operator, prior to making any changes, shall reevaluate the facility's classification and the allowed method for calculating PTE to determine if any increases to the PTE for PM_{10} will occur. If the proposed change will alter the facility's classification or will increase the facility's PTE for PM_{10} such that the facility PTE increases to 15 tons per year or more, the owner or operator shall comply with the requirements set forth for Group 2, Group 3 or Group 4 facilities, as applicable, prior to making the change.

b. Group 2 facilities. A country grain elevator, country grain terminal elevator or grain terminal elevator may qualify as a Group 2 facility if the PTE at the stationary source is greater than or equal to 15 tons of PM10 per year and is less than or equal to 50 tons of PM10 per year, as PTE is specified in 22.10(2). For purposes of this paragraph, an "existing" Group 2 facility is one that commenced construction, modification or reconstruction before February 6, 2008. A "new" Group 2 facility is one that commenced construction or reconstruction on or after February 6, 2008.

(1) Group 2 permit for grain elevators. The owner or operator of a Group 2 facility may, in lieu of obtaining air construction permits for each piece of emissions equipment at the facility, submit to the department a completed Group 2 permit application for grain elevators, including PTE calculations, on forms provided by the department. Alternatively, the owner or operator may obtain an air construction permit as specified under 22.1(1). The owner or operator of an existing facility shall provide the appropriate completed Group 2 permit application for grain elevators or the appropriate construction permit applications to the department on or before March 31, 2008. The owner or operator of a new facility shall provide the appropriate, completed Group 2 permit application for grain elevators or the appropriate construction permit applications to the department prior to initiating construction or reconstruction of a facility.

1. Upon department issuance of a Group 2 permit to a facility, the owner or operator is allowed to add, remove and modify the emissions units at the facility, or change throughput or operations, without modifying the Group 2 permit, provided that the owner or operator calculates the PTE for

PM_{10} prior to making any additions to, removals of or modifications to equipment, and only if the facility continues to meet the emissions limits and operating limits (including restrictions on material throughput and hours of operation, if applicable, as specified in the PTE for PM_{10} calculations) specified in the Group 2 permit.

2. If a Group 2 facility currently has an air construction permit issued by the department, that permit shall remain in full force and effect, and the permit shall not be invalidated by the subsequent submittal of a Group 2 permit application for grain elevators made pursuant to this rule. However, the owner or operator of a Group 2 facility may request that the department incorporate any equipment with a previously issued construction permit into the Group 2 permit for grain elevators. The department will grant such requests on a case-by-case basis. If the department grants the request to incorporate previously permitted equipment into the Group 2 permit for grain elevators, the owner or operator of the Group 2 facility is responsible for requesting that the department rescind any previously issued construction permits.

(2) BMP. The owner or operator shall implement BMP, as specified in the Group 2 permit, for controlling air pollution at the source and for limiting fugitive dust at the source from crossing the property line. If the department revises the BMP requirements for Group 2 facilities after a facility is issued a Group 2 permit, the owner or operator of the Group 2 facility may request that the department modify the facility's Group 2 permit to incorporate the revised BMP requirements. The department will issue permit modifications to incorporate BMP revisions on a case-by-case basis. No later than March 31, 2009, the owner or operator of an existing Group 2 facility shall fully implement BMP, as specified in the Group 2 permit. Upon startup of equipment at the facility, the owner or operator of a new Group 2 facility shall fully implement BMP, as specified in the Group 2 permit.

(3) Recordkeeping. The owner or operator of a Group 2 facility shall retain all records as specified in the Group 2 permit.

(4) Emissions inventory. The owner or operator of a Group 2 facility shall submit an emissions inventory for the facility for all regulated air pollutants as specified under 567—subrule 21.1(3).

(5) Emissions increases. The owner or operator of a Group 2 facility shall calculate any emissions increases prior to making any additions to, removals of or modifications to equipment. If the owner or operator determines that potential PM_{10} emissions at a Group 2 facility will increase to more than 50 tons per year, the owner or operator shall comply with the requirements set forth for Group 3 or Group 4 facilities, as applicable, prior to making any additions to, removals of or modifications to equipment.

(6) Changes to facility classification or permanent grain storage capacity. If the owner or operator of a Group 2 facility plans to change the facility's operations or increase the facility's permanent grain storage capacity to more than 2.5 million U.S. bushels, the owner or operator, prior to making any changes, shall reevaluate the facility's classification and the allowed method for calculating PTE to determine if any increases to the PTE for PM_{10} will occur. If the proposed change will increase the facility's PTE for PM_{10} such that the facility PTE increases to more than 50 tons per year, the owner or operator shall comply with the requirements set forth for Group 3 or Group 4 facilities, as applicable, prior to making the change.

c. Group 3 facilities. A country grain elevator, country grain terminal elevator or grain terminal elevator may qualify as a Group 3 facility if the PTE for PM_{10} at the stationary source is greater than 50 tons per year, but is less than 100 tons of PM_{10} per year, as PTE is specified in 22.10(2). For purposes of this paragraph, an "existing" Group 3 facility is one that commenced construction, modification or reconstruction before February 6, 2008. A "new" Group 3 facility is one that commenced construction or reconstruction on or after February 6, 2008.

(1) Air construction permit. The owner or operator of a Group 3 facility shall obtain the required construction permits as specified under 22.1(1). The owner or operator of an existing facility shall provide the construction permit applications, as specified in 22.1(3), to the department on or before

March 31, 2008. The owner or operator of a new facility shall obtain the required permits, as specified in 22.1(1), from the department prior to initiating construction or reconstruction of a facility.

(2) Permit conditions. Construction permit conditions for a Group 3 facility shall include, but are not limited to, the following:

1. The owner or operator shall implement BMP, as specified in the permit, for controlling air pollution at the source and for limiting fugitive dust at the source from crossing the property line. If the department revises the BMP requirements for Group 3 facilities after a facility is issued a permit, the owner or operator of the Group 3 facility may request that the department modify the facility's permit to incorporate the revised BMP requirements. The department will issue permit modifications to incorporate BMP revisions on a case-by-case basis.

2. The owner or operator shall retain all records as specified in the permit.

(3) Emissions inventory. The owner or operator shall submit an emissions inventory for the facility for all regulated air pollutants as specified under 567—subrule 21.1(3).

(4) Changes to facility classification or permanent grain storage capacity. If the owner or operator of a Group 3 facility plans to change its operations or increase the facility's permanent grain storage capacity to more than 2.5 million U.S. bushels, the owner or operator, prior to making any changes, shall reevaluate the facility's classification and the allowed method for calculating PTE to determine if any increases to the PTE for PM_{10} will occur. If the proposed change will alter the facility's classification or will increase the facility's PTE for PM_{10} such that the facility PTE increases to greater than or equal to 100 tons per year, the owner or operator shall comply with the requirements set forth for Group 4 facilities, as applicable, prior to making the change.

(5) PSD applicability. If the PTE for PM or PM_{10} at the Group 3 facility is greater than or equal to 250 tons per year, the owner or operator shall comply with requirements specified in 567—Chapter 33, as applicable. The owner or operator of a Group 3 facility that is a grain terminal elevator shall include fugitive emissions, as "fugitive emissions" is defined in 567—subrule 33.3(1), in the PTE calculation for determining PSD applicability.

(6) Recordkeeping. The owner or operator shall keep the records of annual grain handled at the facility and annual PTE for PM and PM_{10} emissions on site for a period of five years, and the records shall be made available to the department upon request.

d. Group 4 facilities. A facility qualifies as a Group 4 facility if the facility is a stationary source with a PTE equal to or greater than 100 tons of PM_{10} per year, as PTE is specified in 22.10(2). For purposes of this paragraph, an "existing" Group 4 facility is one that commenced construction, modification or reconstruction before February 6, 2008. A "new" Group 4 facility is one that commenced construction or reconstruction on or after February 6, 2008.

(1) Air construction permit. The owner or operator of a Group 4 facility shall obtain the required construction permits as specified under 22.1(1). The owner or operator of an existing facility shall provide the construction permit applications, as specified by 22.1(3), to the department on or before March 31, 2008. The owner or operator of a new facility shall obtain the required permits, as specified by 22.1(1), from the department prior to initiating construction or reconstruction of a facility.

(2) Permit conditions. Construction permit conditions for a Group 4 facility shall include, but are not limited to, the following:

1. The owner or operator shall implement BMP, as specified in the permit, for controlling air pollution at the facility and for limiting fugitive dust at the facility from crossing the property line. If the department revises the BMP requirements for Group 4 facilities after a facility is issued a permit, the owner or operator of the Group 4 facility may request that the department modify the facility's permit to incorporate the revised BMP requirements. The department will issue permit modifications to incorporate BMP revisions on a case-by-case basis.

2. The owner or operator shall retain all records as specified in the permit.

(3) PSD applicability. If the PTE for PM or PM_{10} at the facility is equal to or greater than 250 tons per year, the owner or operator shall comply with requirements specified in 567—Chapter 33, as

applicable. The owner or operator of a Group 4 facility that is a grain terminal elevator shall include fugitive emissions, as "fugitive emissions" is defined in 567—subrule 33.3(1), in the PTE calculation for determining PSD applicability.

(4) Recordkeeping. The owner or operator shall keep the records of annual grain handled at the facility and annual PTE for PM and PM_{10} emissions on site for a period of five years, and the records shall be made available to the department upon request.

(5) Operating permits. The owner or operator of a Group 4 facility shall apply for an operating permit for the facility if the facility's annual PTE for PM_{10} is equal to or greater than 100 tons per year as specified in 567—24.100(455B) through 567—24.300(455B). The owner or operator of a Group 4 facility that is a grain terminal elevator shall include fugitive emissions in the calculations to determine if the PTE for PM_{10} is greater than or equal to 100 tons per year. The owner or operator also shall submit annual emissions inventories and fees, as specified in 567—22.106(455B).

22.10(4) *Feed mill equipment.* This subrule sets forth the requirements for construction permits, operating permits, and emissions inventories for an owner or operator of feed mill equipment as "feed mill equipment" is defined in 22.10(1). For purposes of this subrule, the owner or operator of "existing" feed mill equipment shall have commenced construction or reconstruction of the feed mill equipment before February 6, 2008. The owner or operator of "new" feed mill equipment shall have commenced construction or reconstruction of the feed mill equipment on or after February 6, 2008.

a. Air construction permit. The owner or operator of feed mill equipment shall obtain an air construction permit as specified under 22.1(1) for each piece of feed mill equipment that emits a regulated air pollutant. The owner or operator of "existing" feed mill equipment shall provide the appropriate permit applications to the department on or before March 31, 2008. The owner or operator of "new" feed mill equipment shall provide the appropriate permit applications to the department prior to initiating construction or reconstruction of feed mill equipment.

b. Emissions inventory. The owner or operator shall submit an emissions inventory for the feed mill equipment for all regulated air pollutants as specified under 567—subrule 21.1(3).

c. Operating permits. The owner or operator shall sum the PTE of the feed mill equipment with the PTE of the equipment at the country grain elevator, country grain terminal elevator or grain terminal elevator, as PTE is specified in 22.10(2), to determine if operating permit requirements specified in 567—24.100(455B) through 567—24.300(455B) apply to the stationary source. If the operating permit requirements apply, then the owner or operator shall apply for an operating permit as specified in 567—24.100(455B) through 567—24.300(455B). The owner or operator also shall begin submitting annual emissions inventories and fees, as specified under 567—22.106(455B).

d. PSD applicability. For purposes of determining whether the stationary source is subject to the PSD requirements set forth in 567—Chapter 33, the owner or operator shall sum the PTE of the feed mill equipment with the PTE of the equipment at the country grain elevator, country grain terminal elevator or grain terminal elevator. If the PTE for PM or PM_{10} for the stationary source is equal to or greater than 250 tons per year, the owner or operator shall comply with requirements for PSD specified in 567—Chapter 33, as applicable.

[**ARC 7951C**, IAB 5/15/24, effective 6/19/24]

567—22.11(455B) Ambient air quality standards. The state of Iowa ambient air quality standards shall be the National Primary and Secondary Ambient Air Quality Standards as published in 40 CFR Part 50 (1972) and as amended at 38 Federal Register (FR) 22384 (September 14, 1973), 43 FR 46258 (October 5, 1978), 44 FR 8202, 8220 (February 9, 1979), 52 FR 24634-24669 (July 1, 1987), 62 FR 38651-38760, 38855-38896 (July 18, 1997), 71 FR 61144-61233 (October 17, 2006), 73 FR 16436-16514 (March 27, 2008), 73 FR 66964-67062 (November 12, 2008), 75 FR 6474-6537 (February 9, 2010), 75 FR 35520-35603 (June 22, 2010), 78 FR 3086-3287 (January 15, 2013), and 80 FR 65291-65468 (October 26, 2015). The department shall implement these rules in a time frame and schedule consistent with implementation schedules in federal laws and regulations.

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These rules are intended to implement Iowa Code sections 455B.133 and 455B.134.

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◊ Two or more ARCs

1 Effective date of 22.1(455B) [DEQ, 3.1] delayed by the Administrative Rules Review Committee 70 days from June 21, 1978. The Administrative Rules Review Committee at the August 15, 1978 meeting delayed 22.1 [DEQ, 3.1] under provisions of 67GA, SF244, §19. (See HJR 6, 1/22/79).

2 Effective date of 22.100(455B), definition of "12-month rolling period"; 22.200(455B); 22.201(1)*"a," "b,"*; 22.201(2)*"a"*; 22.206(2)*"c,"* delayed 70 days by the Administrative Rules Review Committee at its meeting held October 10, 1995; delay lifted by this Committee December 13, 1995, effective December 14, 1995.

3 Effective date of 22.300 delayed 70 days by the Administrative Rules Review Committee at its meeting held June 11, 1996; delay lifted by this Committee at its meeting held June 12, 1996, effective June 12, 1996.

4 Effective date of 22.1(2), unnumbered introductory paragraphs and paragraphs *"g"* and *"i,"* delayed 70 days by the Administrative Rules Review Committee at its meeting held March 9, 2001.

CHAPTER 24
OPERATING PERMITS

[Prior to IAB 5/15/24, subject appeared in Ch 22]
[Prior to 7/1/83, DEQ Ch 3]
[Prior to 12/3/86, Water, Air and Waste Management[900]]

Chapter rescission date pursuant to Iowa Code section 17A.7: 6/19/29

567—24.1 to **24.99** Reserved.

567—24.100(455B) Title V operating permits—definitions. For purposes of this chapter and unless otherwise stated, the following terms shall have the meaning indicated in this rule:

"12-month rolling period" means the same as defined in 567—22.1(455B).

"40 CFR Part 70" means Part 70 or any specific section within Part 70 that is cited in this chapter, as amended through May 6, 2020, unless otherwise noted.

"40 CFR Part 72" means Part 72 or any specific section within Part 72 that is cited in this chapter, as amended through March 28, 2011, unless otherwise noted.

"Act" means the U.S. Clean Air Act (42 U.S.C. §7401, et seq.), as amended through November 15, 1990.

"Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with the following:

1. 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 two-year period that immediately precedes that date and that is representative of normal source operations. The director may allow the use of a different time period upon a demonstration that it is more representative of normal source operations. 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. Actual emissions for acid rain-affected sources are calculated using a one-year period.
2. Lacking specific information to the contrary, the director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.
3. For any emissions unit that has not begun normal operations on a particular date, actual emissions shall equal the potential to emit of the unit on that date.
4. For purposes of calculating early reductions of hazardous air pollutants, actual emissions shall not include excess emissions resulting from a malfunction or from startups and shutdowns associated with a malfunction.

Actual emissions for purposes of determining fees shall be the actual emissions calculated over a period of one year.

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

"Affected source," as this definition is set forth in 40 CFR §70.2, is adopted by reference.

"Affected state," as this definition is set forth in 40 CFR §70.2, is adopted by reference.

"Affected unit," as this definition is set forth in 40 CFR §70.2, is adopted by reference.

"Allowable emissions" means the emission rate of a stationary source calculated using both the maximum rated capacity of the source, unless the source is subject to federally enforceable limits that restrict the operating rate or hours of operation, and the most stringent of the following:

1. The applicable new source performance standards or national emissions standards for hazardous air pollutants, contained in 567—subrules 23.1(2), 23.1(3), and 23.1(4);
2. The applicable existing source emission standard contained in 567—Chapter 23; or
3. The emissions rate specified in the air construction permit for the source.

"Allowance," as this definition is set forth in 40 CFR §72.2, is adopted by reference.

"Applicable requirement," as this definition is set forth in 40 CFR §70.2, is adopted by reference.

"Area source" means any stationary source of hazardous air pollutants that is not a major source as defined in 567—24.100(455B).

"CFR" means the Code of Federal Regulations, with standard references in this chapter by Title and Part, so that "40 CFR 51" means "Title 40 of the Code of Federal Regulations, Part 51."

"Country grain elevator" means the same as defined in 567—subrule 22.10(1).

"Designated representative" means a responsible natural person authorized by the owner(s) or operator(s) of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted in accordance with Subpart B of 40 CFR Part 72, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the acid rain program. Whenever the term "responsible official" is used in Chapter 24, it shall be deemed to refer to the designated representative with regard to all matters under the acid rain program.

"Draft Title V permit," as this definition is set forth in 40 CFR §70.2, is adopted by reference.

"Electronic format," "electronic submittal," and *"electronic submittal format"* mean the same as defined in 567—22.1(455B).

"Emergency generator" means the same as defined in 567—22.1(455B).

"Emissions allowable under the permit," as this definition is set forth in 40 CFR §70.2, is adopted by reference.

"Emissions unit," as this definition is set forth in 40 CFR §70.2, is adopted by reference.

"EPA conditional method" means the same as defined in 567—22.1(455B).

"EPA reference method" means the same as defined in 567—22.1(455B).

"Existing hazardous air pollutant source" means any source as defined in 40 CFR 61 as adopted by reference in 567—subrule 23.1(3) and 40 CFR §63.72 as adopted by reference in 567—subrule 23.1(4) with respect to Section 112(i)(5) of the Act, the construction or reconstruction of which commenced prior to proposal of an applicable Section 112(d) standard.

"Facility" means, with reference to a stationary source, any apparatus that emits or may emit any air pollutant or contaminant.

"Federal implementation plan" means a plan promulgated by the Administrator to fill all or a portion of a gap or otherwise correct all or a portion of an inadequacy in a state implementation plan, and that includes enforceable emission limitations or other control measures, means, or techniques and provides for attainment of the relevant national ambient air quality standard.

"Federally enforceable" means all limitations and conditions that are enforceable by the Administrator, including but not limited to the requirements of the new source performance standards and national emission standards for hazardous air pollutants contained in 567—subrules 23.1(2), 23.1(3), and 23.1(4); the requirements of such other state rules or orders approved by the Administrator for inclusion in the SIP; and any construction, Title V or other federally approved operating permit conditions.

"Final Title V permit" means the version of a Title V permit issued by the department that has completed all required review procedures.

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

"Hazardous air pollutant" means any of the air pollutants listed in Section 112 of the Act and 40 CFR §63.2 as adopted by reference in 567—subrule 23.1(4).

"High-risk pollutant" means one of the hazardous air pollutants listed in Table 1 in 40 CFR §63.74 as adopted by reference in 567—subrule 23.1(4).

"Major source" means any stationary source (or any group of stationary sources located on one or more contiguous or adjacent properties and under common control of the same person or of persons under common control) belonging to a single major industrial grouping that is any of the following:

1. A major stationary source of air pollutants, as defined in Section 302 of the Act, that directly emits or has the potential to emit 100 tons per year (tpy) or more of any air pollutant subject to regulation (including any major source of fugitive emissions of any such pollutant). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary

source for the purposes of Section 302(j) of the Act, unless the source belongs to one of the stationary source categories listed in this chapter.

2. A major source of hazardous air pollutants according to Section 112 of the Act as follows:

- For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tpy or more of any hazardous air pollutant that has been listed pursuant to Section 112(b) of the Act and these rules or 25 tpy or more of any combination of such hazardous air pollutants. Notwithstanding the previous sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emission from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.
- For Title V purposes, all fugitive emissions of hazardous air pollutants are to be considered in determining whether a stationary source is a major source.
- For radionuclides, "major source" shall have the meaning specified by the Administrator by rule.

3. A major stationary source as defined in Part D of Title I of the Act, including:

- For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified or treated as classified as "marginal" or "moderate," 50 tpy or more in areas classified or treated as classified as "serious," 25 tpy or more in areas classified or treated as classified as "severe" and 10 tpy or more in areas classified or treated as classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 tpy of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under Section 182(f)(1) or (2) of the Act, that requirements under Section 182(f) of the Act do not apply;
- For ozone transport regions established pursuant to Section 184 of the Act, sources with potential to emit 50 tpy or more of volatile organic compounds;
- For carbon monoxide nonattainment areas (1) that are classified or treated as classified as "serious" and (2) in which stationary sources contribute significantly to carbon monoxide levels, and sources with the potential to emit 50 tpy or more of carbon monoxide;
- For particulate matter (PM_{10}), nonattainment areas classified or treated as classified as "serious," sources with the potential to emit 70 tpy or more of PM_{10};
- For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same major group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

"Manually operated equipment" means a machine or tool that is handheld, such as a handheld circular saw or compressed air chisel; a machine or tool for which the work piece is held or manipulated by hand, such as a bench grinder; a machine or tool for which the tool or bit is manipulated by hand, such as a lathe or drill press; and any dust collection system that is part of such machine or tool; but not including any machine or tool for which the extent of manual operation is to control power to the machine or tool and not including any central dust collection system serving more than one machine or tool.

"Maximum achievable control technology (MACT) emission limitation for existing sources" means the definition adopted by reference in 567—subrule 23.1(4).

"Maximum achievable control technology (MACT) emission limitation for new sources" means the definition adopted by reference in 567—subrule 23.1(4).

"Maximum achievable control technology (MACT) floor" means the definition adopted by reference in 567—subrule 23.1(4).

"New Title IV affected source or unit" means a unit that commences commercial operation on or after November 15, 1990, including any such unit that serves a generator with a nameplate capacity of 25 MWe or less or that is a simple combustion turbine.

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

"Permit modification" means a revision to a Title V operating permit that cannot be accomplished under the provisions for administrative permit amendments found in 567—24.111(455B). A permit modification for purposes of the acid rain portion of the permit shall be governed by the regulations pertaining to acid rain found in 567—24.120(455B) through 567—24.146(455B). This definition of "permit modification" shall be used solely for purposes of this chapter governing Title V operating permits.

"Permit revision" means any permit modification or administrative permit amendment.

"Permitting authority" means the Iowa department of natural resources or the director thereof.

"Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air 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 is enforceable by the Administrator. This term does not alter or affect the use of this term for any other purposes under the Act, or the term "capacity factor" as used in Title IV of the Act or the regulations relating to acid rain.

For the purpose of determining potential to emit for country grain elevators, the provisions set forth in 567—subrule 22.10(2) shall apply.

For purposes of calculating potential to emit for emergency generators, "maximum capacity" means one of the following:

1. 500 hours of operation annually, if the generator has actually been operated less than 500 hours per year for the past five years;
2. 8,760 hours of operation annually, if the generator has actually been operated more than 500 hours in one of the past five years; or
3. The number of hours specified in a state or federally enforceable limit.

"Proposed Title V permit," as this definition is set forth in 40 CFR §70.2, is adopted by reference.

"Regulated air contaminant" means the same as "regulated air pollutant."

"Regulated air pollutant" means the following:

1. Nitrogen oxides or any volatile organic compounds;
2. Any pollutant for which a national ambient air quality standard has been promulgated;
3. Any pollutant that is subject to any standard promulgated under Section 111 of the Act;
4. Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act; or
5. Any pollutant subject to a standard promulgated under Section 112 or other requirements established under Section 112 of the Act, including Sections 112(g), (j), and (r) of the Act, including the following:

- Any pollutant subject to requirements under Section 112(j) of the Act. If the Administrator fails to promulgate a standard by the date established pursuant to Section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to Section 112(e) of the Act; and
- Any pollutant for which the requirements of Section 112(g)(2) of the Act have been met, but only with respect to the individual source subject to the Section 112(g)(2) requirement.

6. With respect to Title V, particulate matter, except for PM_{10}, is not considered a regulated air pollutant for the purpose of determining whether a source is considered to be a major source.

"Regulated air pollutant or contaminant (for fee calculation)," which is used only for purposes of 567—Chapter 30, means any regulated air pollutant or contaminant except the following:

1. Carbon monoxide;
2. Particulate matter, excluding PM_{10};
3. Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated under or established by Title VI of the Act;
4. Any pollutant that is a regulated pollutant solely because it is subject to a standard or regulation under Section 112(r) of the Act;
5. Greenhouse gas, as defined in 567—22.1(455B).

"Renewal" means the process by which a permit is reissued at the end of its term.

"Responsible official" means one of the following:

1. For a corporation: a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

- The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or
- The delegation of authority to such representative is approved in advance by the permitting authority;

2. For a partnership or sole proprietorship: a general partner or the proprietor, respectively;
3. For a municipality, state, federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this chapter, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional Administrator of EPA); or
4. For Title IV affected sources:

- The designated representative insofar as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated thereunder are concerned; and
- The designated representative for any other purposes under this chapter or the Act.

"Section 502(b)(10) changes," as this definition is set forth in 40 CFR §70.2, is adopted by reference.

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

"Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under Section 112(b) of the Act.

"Stationary source categories" means any of the following classes of sources:

1. Coal cleaning plants with thermal dryers;
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
9. Hydrofluoric, sulfuric, or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants using the furnace process;
16. Primary lead smelters;

17. Fuel conversion plants;
18. Sintering plants;
19. Secondary metal production plants;
20. Chemical process plants—The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in North American Industry Classification System (NAICS) code 325193 or 312140;
21. Fossil-fuel boilers, or combinations thereof, totaling more than 250 million Btu per hour heat input;
22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
23. Taconite ore processing plants;
24. Glass fiber processing plants;
25. Charcoal production plants;
26. Fossil fuel-fired steam electric plants of more than 250 million Btu per hour heat input;
27. Any other stationary source category, that as of August 7, 1980, is regulated under Section 111 or 112 of the Act.

"Subject to regulation," as this definition is set forth in 40 CFR §70.2, is adopted by reference.

"Title V permit" means an operating permit under Title V of the Act.

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.101(455B) Applicability of Title V operating permit requirements.

24.101(1) Except as provided in 567—24.102(455B), any person who owns or operates any of the following sources shall obtain a Title V operating permit and shall submit fees as required in 567—Chapter 30:

a. Any affected source subject to the provisions of Title IV of the Act;

b. Any major source;

c. Any source, including any nonmajor source, subject to a standard, limitation, or other requirement under Section 111 of the Act (567—subrule 23.1(2), new source performance standards; 567—subrule 23.1(5), emission guidelines);

d. Any source, including any area source, subject to a standard or other requirement under Section 112 of the Act (567—subrules 23.1(3) and 23.1(4), emission standards for hazardous air pollutants), except that a source is not required to obtain a Title V permit solely because it is subject to regulations or requirements under Section 112(r) of the Act;

e. Any solid waste incinerator unit required to obtain a Title V permit under Section 129(e) of the Act;

f. Any source category designated by the Administrator pursuant to 40 CFR §70.3 as amended through December 19, 2005.

24.101(2) Any nonmajor source required to obtain a Title V operating permit pursuant to 24.101(1) is required to obtain a Title V permit only for the emissions units and related equipment causing the source to be subject to the Title V program.

24.101(3) Reserved.

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.102(455B) Source category exemptions.

24.102(1) All sources listed in 24.101(1) that are not major sources, affected sources subject to the provisions of Title IV of the Act, or solid waste incineration units required to obtain a permit pursuant to Section 129(e) of the Act are exempt from the obligation to obtain a Title V permit until such time as the Administrator completes a rulemaking to determine how the program should be structured for nonmajor sources and the appropriateness of any permanent exemptions in addition to those provided for in 24.102(3).

24.102(2) In the case of nonmajor sources subject to a standard or other requirement under either Section 111 or Section 112 of the Act, the Administrator will determine at the time the new or

amended standard is promulgated whether to exempt any or all such applicable sources from the requirement to obtain a Title V permit.

24.102(3) The following source categories are exempt from the obligation to obtain a Title V permit:

a. All sources and source categories that would be required to obtain a Title V permit solely because they are subject to 40 CFR 60, Subpart AAA, Standards of Performance for New Residential Wood Heaters;

b. All sources and source categories that would be required to obtain a Title V permit solely because they are subject to 40 CFR 61, Subpart M, National Emission Standard for Hazardous Air Pollutants for Asbestos, Section 61.145, Standard for Demolition and Renovation, as adopted by reference in 567—subrule 23.1(3);

c. All sources and source categories that would be required to obtain a Title V permit solely because they are subject to any of the following subparts from 40 CFR 63:

(1) Subpart M, National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities, as adopted by reference in 567—subrule 23.1(4).

(2) Subpart N, National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks, as adopted by reference in 567—subrule 23.1(4).

(3) Subpart O, Ethylene Oxide Emissions Standards for Sterilization Facilities, as adopted by reference in 567—subrule 23.1(4).

(4) Subpart T, National Emission Standards for Halogenated Solvent Cleaning, as adopted by reference in 567—subrule 23.1(4).

(5) Subpart RRR, National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production, as adopted by reference in 567—subrule 23.1(4).

(6) Subpart VVV, National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works, as adopted by reference in 567—subrule 23.1(4).

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.103(455B) Insignificant activities. The following are insignificant activities for purposes of the Title V application if not needed to determine the applicability of or to impose any applicable requirement. Title V permit emissions fees are not required from insignificant activities pursuant to 567—paragraph 30.4(2)*"f."*

24.103(1) *Insignificant activities excluded from Title V operating permit application.* In accordance with 40 CFR §70.5, these activities need not be included in the Title V permit application:

a. Mobile internal combustion and jet engines, marine vessels, and locomotives.

b. Equipment, other than anaerobic lagoons, used for cultivating land, harvesting crops, or raising livestock. This exemption is not applicable if the equipment is used to remove substances from grain that were applied to the grain by another person. This exemption also is not applicable to equipment used by a person to manufacture commercial feed, as defined in Iowa Code section 198.3, when that feed is normally not fed to livestock:

(1) Owned by that person or another person, and

(2) Located in a feedlot, as defined in Iowa Code section 172D.1(6), or in a confinement building owned or operated by that person, and

(3) Located in this state.

c. Equipment or control equipment that eliminates all emissions to the atmosphere.

d. Equipment (other than anaerobic lagoons) or control equipment that emits odors unless such equipment or control equipment also emits particulate matter or any other air pollutant or contaminant.

e. Air conditioning or ventilating equipment not designed to remove air contaminants generated by or released from associated equipment.

f. Residential wood heaters, cookstoves, or fireplaces.

g. The equipment in laboratories used exclusively for nonproduction chemical and physical analyses. Nonproduction analyses means analyses incidental to the production of a good or service and includes analyses conducted for quality assurance or quality control activities, or for the assessment of environmental impact.

h. Recreational fireplaces.

i. Barbecue pits and cookers except at a meat packing plant or a prepared meat manufacturing facility.

j. Stacks or vents to prevent escape of sewer gases through plumbing traps for systems handling domestic sewage only. Systems that include any industrial waste are not exempt.

k. Retail gasoline- and diesel fuel-handling facilities.

l. Photographic process equipment by which an image is reproduced upon material sensitized to radiant energy.

m. Equipment used for hydraulic or hydrostatic testing.

n. General vehicle maintenance and servicing activities at the source, other than gasoline fuel handling.

o. Cafeterias, kitchens, and other facilities used for preparing food or beverages primarily for consumption at the source.

p. Equipment using water, water and soap or detergent, or a suspension of abrasives in water for purposes of cleaning or finishing provided no organic solvent has been added to the water, the boiling point of the additive is not less than 100°C (212°F), and the water is not heated above 65.5°C (150°F).

q. Administrative activities, including but not limited to paper shredding, copying, photographic activities, and blueprinting machines. This does not include incinerators.

r. Laundry dryers, extractors, and tumblers processing clothing, bedding, and other fabric items used at the source that have been cleaned with water solutions of bleach or detergents provided that any organic solvent present in such items before processing that is retained from cleanup operations shall be addressed as part of the volatile organic compound emissions from use of cleaning materials.

s. Housekeeping activities for cleaning purposes, including collecting spilled and accumulated materials at the source, but not including use of cleaning materials that contain organic solvent.

t. Refrigeration systems, including storage tanks used in refrigeration systems, but excluding any combustion equipment associated with such systems.

u. Activities associated with the construction, on-site repair, maintenance or dismantlement of buildings, utility lines, pipelines, wells, excavations, earthworks and other structures that do not constitute emission units.

v. Storage tanks of organic liquids with a capacity of less than 500 gallons, provided the tank is not used for storage of any material listed as a hazardous air pollutant pursuant to Section 112(b) of the Act.

w. Piping and storage systems for natural gas, propane, and liquified petroleum gas, excluding pipeline compressor stations and associated storage facilities.

x. Water treatment or storage systems, as follows:

(1) Systems for potable water or boiler feedwater.

(2) Systems, including cooling towers, for process water provided that such water has not been in direct or indirect contact with process steams that contain volatile organic material or materials listed as hazardous air pollutants pursuant to Section 112(b) of the Act.

y. Lawn care, landscape maintenance, and groundskeeping activities.

z. Containers, reservoirs, or tanks used exclusively in dipping operations to coat objects with oils, waxes, or greases, provided no organic solvent has been mixed with such materials.

aa. Cold cleaning degreasers that are not in-line cleaning machines, where the vapor pressure of the solvents used never exceeds 2 kPa (15 mmHg or 0.3 psi) measured at 38°C (100°F) or 0.7 kPa (5 mmHg or 0.1 psi) at 20°C (68°F). (Note: Cold cleaners subject to 40 CFR Part 63 Subpart T are not considered insignificant activities.)

bb. Manually operated equipment used for buffing, polishing, carving, cutting, drilling, machining, routing, sanding, sawing, scarfing, surface grinding or turning.

cc. Use of consumer products, including hazardous substances as that term is defined in the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.), when the product is used at a source in the same manner as normal consumer use.

dd. Activities directly used in the diagnosis and treatment of disease, injury or other medical condition.

ee. Firefighting activities and training in preparation for fighting fires conducted at the source. (Note: Written notification pursuant to 567—paragraph 23.2(3)*"g"* is required at least ten working days before such action commences.)

ff. Activities associated with the construction, repair, or maintenance of roads or other paved or open areas, including operation of street sweepers, vacuum trucks, spray trucks, and other vehicles related to the control of fugitive emissions of such roads or other areas.

gg. Storage and handling of drums or other transportable containers when the containers are sealed during storage and handling.

hh. Individual points of emission or activities as follows:

(1) Individual flanges, valves, pump seals, pressure relief valves, and other individual components that have the potential for leaks.

(2) Individual sampling points, analyzers, and process instrumentation, whose operation may result in emissions.

(3) Individual features of an emission unit such as each burner and sootblower in a boiler or each use of cleaning materials on a coating or printing line.

ii. Construction activities at a source solely associated with the modification or building of a facility, an emission unit, or other equipment at the source. (Note: Notwithstanding the status of this activity as insignificant, a particular activity that entails modification or construction of an emission unit or construction of air pollution control equipment may require a construction permit pursuant to 567—22.1(455B) and may subsequently require a revised Title V operating permit. A revised Title V operating permit may also be necessary for operation of an emission unit after completion of a particular activity if the existing Title V operating permit does not accommodate the new state of the emission unit.)

jj. Activities at a source associated with the maintenance, repair, or dismantlement of an emission unit or other equipment installed at the source, including preparation for maintenance, repair, or dismantlement, and preparation for subsequent startup, including preparation of a shutdown vessel for entry, replacement of insulation, welding and cutting, and steam purging of a vessel prior to startup.

24.103(2) *Insignificant activities that must be included in Title V operating permit applications.*

a. The following are insignificant activities based on potential emissions:

An emission unit that has the potential to emit less than:

5 tons per year of any regulated air pollutant, except:

2.5 tons per year of PM_{10},

0.52 tons per year of $PM_{2.5}$ (does not apply to emission units for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—22.1(455B)) occurred on or before October 23, 2013),

2 lbs per year of lead or lead compounds (40 lbs per year for emission units for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred on or before October 23, 2013),

2,500 lbs per year of any combination of hazardous air pollutants except high-risk pollutants,

1,000 lbs per year of any individual hazardous air pollutant except high-risk pollutants,

250 lbs per year of any combination of high-risk pollutants, or

100 lbs per year of any individual high-risk pollutant.

The definition of "high-risk pollutant" is found in 567—24.100(455B).

b. The following are insignificant activities:

(1) Fuel-burning equipment for indirect heating and reheating furnaces or indirect cooling units using natural or liquefied petroleum gas with a capacity of less than 10 million Btu per hour input per combustion unit.

(2) Fuel-burning equipment for indirect heating or indirect cooling for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred on or before October 23, 2013, with a capacity of less than 1 million Btu per hour input per combustion unit when burning coal, untreated wood, or fuel oil.

Fuel-burning equipment for indirect heating or indirect cooling for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred after October 23, 2013, with a capacity of less than 1 million Btu per hour input per combustion unit when burning untreated wood, untreated seeds or pellets, other untreated vegetative materials, or fuel oil provided that the equipment and the fuel meet the condition specified in 24.103(2)*"b"*(2). Used oils meeting the specification from 40 CFR §279.11 as amended through July 14, 2006, are acceptable fuels. When combusting used oils, the equipment must have a maximum rated capacity of 50,000 Btu or less per hour of heat input or a maximum throughput of 3,600 gallons or less of used oils per year. When combusting untreated wood, untreated seeds or pellets, or other untreated vegetative materials, the equipment must have a maximum rated capacity of 265,600 Btu or less per hour or a maximum throughput of 378,000 pounds or less per year of each fuel or any combination of fuels.

(3) Incinerators with a rated refuse burning capacity of less than 25 pounds per hour for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred on or before October 23, 2013. Incinerators for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred after October 23, 2013, shall not qualify as an insignificant activity. After October 23, 2013, only paint clean-off ovens with a maximum rated capacity of less than 25 pounds per hour that do not combust lead-containing materials shall qualify as an insignificant activity.

(4) Gasoline, diesel fuel, or oil storage tanks with a capacity of 1,000 gallons or less and an annual throughput of less than 40,000 gallons.

(5) A storage tank that contains no volatile organic compounds above a vapor pressure of 0.75 pounds per square inch at the normal operating temperature of the tank when other emissions from the tank do not exceed the levels in 24.103(2)*"a."*

(6) Internal combustion engines that are used for emergency response purposes with a brake horsepower rating of less than 400 measured at the shaft. The manufacturer's nameplate rating at full load shall be defined as the brake horsepower output at the shaft. Emergency engines that are subject to any of the following federal regulations are not considered to be insignificant activities for purposes of 567—24.103(455B):

1. New source performance standards (NSPS) for stationary compression ignition internal combustion engines (40 CFR Part 60, Subpart IIII);

2. New source performance standards (NSPS) for stationary spark ignition internal combustion engines (40 CFR Part 60, Subpart JJJJ); or

3. National emission standards for hazardous air pollutants (NESHAP) for reciprocating internal combustion engines (40 CFR Part 63, Subpart ZZZZ).

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.104(455B) Requirement to have a Title V permit. No source may operate after the time that it is required to submit a timely and complete application, except in compliance with a properly issued Title V operating permit. However, if a source submits a timely and complete application for permit issuance (including renewal), the source's failure to have a permit is not a violation of this chapter until the director takes final action on the permit application, except as noted in this rule. In that case, all terms and conditions of the permit shall remain in effect until the renewal permit has been issued or denied.

24.104(1) This protection shall cease to apply if, subsequent to the completeness determination, the applicant fails to submit, by the deadline specified in writing by the director, any additional information identified as being needed to process the application.

24.104(2) Sources making permit revisions pursuant to 567—24.110(455B) shall not be in violation of this rule.

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.105(455B) Title V permit applications.

24.105(1) *Duty to apply.* For each source required to obtain a Title V operating permit, the owner or operator or designated representative, where applicable, shall submit a complete and timely application in the electronic format specified by the department, if electronic submittal is provided. An owner or operator of a source required to obtain a Title V permit pursuant to 24.101(1) shall submit all required fees as required in 567—Chapter 30.

a. Timely application. Each owner or operator applying for a Title V permit shall submit an application as follows:

(1) Reserved.

(2) Initial application for a new source. The owner or operator of a stationary source that commenced construction or reconstruction after April 20, 1994, or that otherwise became subject to the requirement to obtain a Title V permit after April 20, 1994, shall submit an application to the department within 12 months of becoming subject to the Title V permit requirements.

(3) Application related to 112(g), PSD, or nonattainment. The owner or operator of a stationary source that is subject to Section 112(g) of the Act, that is subject to 567—24.4(455B) or 567—33.3(455B) (prevention of significant deterioration (PSD)), or that is subject to 567—24.5(455B) or 567—31.3(455B) (nonattainment area permitting) shall submit an application to the department within 12 months of commencing operation. In cases in which an existing Title V permit would prohibit such construction or change in operation, the owner or operator must obtain a Title V permit revision before commencing operation.

(4) Renewal application. The owner or operator of a stationary source with a Title V permit shall submit an application to the department for a permit renewal at least 6 months prior to, but not more than 18 months prior to, the date of permit expiration.

(5) Changes allowed without a permit revision (off-permit revision). The owner or operator of a stationary source with a Title V permit who is proposing a change that is allowed without a Title V permit revision (an off-permit revision) as specified in 567—24.110(455B) shall submit to the department a written notification as specified in 567—24.110(455B) at least 30 days prior to the proposed change.

(6) Application for an administrative permit amendment. Prior to implementing a change that satisfies the requirements for an administrative permit amendment as set forth in 567—24.111(455B), the owner or operator shall submit to the department an application for an administrative amendment as specified in 567—24.111(455B).

(7) Application for a minor permit modification. Prior to implementing a change that satisfies the requirements for a minor permit modification as set forth in 567—24.112(455B), the owner or operator shall submit to the department an application for a minor permit modification as specified in 567—24.112(455B).

(8) Application for a significant permit modification. The owner or operator of a source that satisfies the requirements for a significant permit modification as set forth in 567—24.113(455B) shall submit to the department an application for a significant permit modification as specified in 567—24.113(455B) within three months after the commencing operation of the changed source. However, if the existing Title V permit would prohibit such construction or change in operation, the owner or operator shall not commence operation of the changed source until the department issues a revised Title V permit that allows the change.

b. Complete application. To be deemed complete, an application must provide all information required pursuant to 24.105(2), except that applications for permit revision need supply such information only if it is related to the proposed change.

24.105(2) *Standard application form and required information.* To apply for a Title V permit, the standard application form shall be submitted in the electronic format specified by the department, if electronic submittal is provided.

The information submitted must be sufficient to evaluate the source and its application and to determine all applicable requirements and to evaluate the fee amount required by 567—30.4(455B). If a source is not a major source and is applying for a Title V operating permit solely because of a requirement imposed by 24.101(1)*"c"* and 24.101(1)*"d,"* then the information provided in the operating permit application may cover only the emissions units that trigger Title V applicability. The applicant shall submit the information called for by the application form for each emissions unit to be permitted, except for activities that are insignificant according to the provisions of 567—24.103(455B). The applicant shall provide a list of all insignificant activities and specify the basis for the determination of insignificance for each activity.

Unless otherwise specified in 24.128(4), nationally standardized forms shall be used for the acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the Act. The standard application form and any attachments shall require that the following information be provided:

a. Identifying information, including company name and address (or plant or source name if different from the company name), owner's name and agent, and telephone number and names of plant site manager/contact.

b. A description of the source's processes and products (by two-digit Standard Industrial Classification Code), including any associated with each alternate scenario identified by the applicant.

c. The following emissions-related information shall be submitted to the department:

(1) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules.

(2) Identification and description of air pollution control equipment.

(3) Identification and description of compliance monitoring devices or activities.

(4) Limitations on source operations affecting emissions or any work practice standards, where applicable, for all regulated pollutants.

(5) Other information required by any applicable requirement (including information related to stack height limitations developed pursuant to Section 123 of the Act).

(6) Calculations on which the information in 24.105(2)*"c"*(1) to (5) above is based.

(7) Fugitive emissions from a source shall be included in the permit application in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

d. The following air pollution control requirements:

(1) Citation and description of all applicable requirements, and

(2) Description of or reference to any applicable test method for determining compliance with each applicable requirement.

e. Other specific information that may be necessary to implement and enforce other applicable requirements of the Act or of these rules or to determine the applicability of such requirements.

f. An explanation of any proposed exemptions from otherwise applicable requirements.

g. Additional information as determined to be necessary by the director to define alternative operating scenarios identified by the source pursuant to 24.108(12) or to define permit terms and conditions relating to operational flexibility and emissions trading pursuant to 24.108(11) and 567—24.112(455B).

h. A compliance plan that contains the following:

(1) A description of the compliance status of the source with respect to all applicable requirements.

(2) The following statements regarding compliance status: For applicable requirements with which the stationary source is in compliance, a statement that the stationary source will continue to comply with such requirements. For applicable requirements that will become effective during the permit term, a statement that the stationary source will meet such requirements on a timely basis. For requirements for which the stationary source is not in compliance at the time of permit issuance, a narrative description of how the stationary source will achieve compliance with such requirements.

(3) A compliance schedule that contains the following:

1. For applicable requirements with which the stationary source is in compliance, a statement that the stationary source will continue to comply with such requirements. For applicable requirements that will become effective during the permit term, a statement that the stationary source will meet such requirements on a timely basis. A statement that the stationary source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

2. A compliance schedule for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the stationary source will be in noncompliance at the time of permit issuance.

3. This compliance schedule shall resemble and be at least as stringent as any compliance schedule contained in any judicial consent decree or administrative order to which the source is subject. Any compliance schedule shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

(4) A schedule for submission of certified progress reports no less frequently than every six months for sources required to have a compliance schedule in the permit.

i. Requirements for compliance certification, including the following:

(1) A certification of compliance for the prior year with all applicable requirements certified by a responsible official consistent with 24.107(4) and Section 114(a)(3) of the Act.

(2) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods.

(3) A schedule for submission of compliance certifications for each compliance period (one year unless required for a shorter time period by an applicable requirement) during the permit term, which shall be submitted annually, or more frequently if required by an underlying applicable requirement or by the director.

(4) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

(5) Notwithstanding any other provisions of these rules, for the purposes of submission of compliance certifications, an owner or operator is not prohibited from using monitoring as required by 24.108(3), 24.108(4), or 24.108(5) and incorporated into a Title V operating permit in addition to any specified compliance methods.

j. The compliance plan content requirements specified in these rules shall apply and be included in the acid rain portion of a compliance plan for a Title IV affected source, except as specifically superseded by regulations promulgated under Title IV of the Act, with regard to the schedule and method(s) the source shall use to achieve compliance with the acid rain emissions limitations.

24.105(3) *Hazardous air pollutant early reduction application.* Anyone requesting a compliance extension from a standard issued under Section 112(d) of the Act must submit with the Title V permit application information that complies with the requirements established in 567—paragraph 23.1(4) *"d."*

24.105(4) *Acid rain application content.* The acid rain application content shall be as prescribed in the acid rain rules found in 567—24.128(455B) and 567—24.129(455B).

24.105(5) *More than one Title V operating permit for a stationary source.* Following application made pursuant to 24.105(1), the department may, at its discretion, issue more than one Title V

operating permit for a stationary source, provided that the owner or operator does not have, and does not propose to have, a sourcewide emission limit or a sourcewide alternative operating scenario.
[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.106(455B) Annual Title V emissions inventory.

24.106(1) *Emissions fee.* Fees shall be paid as set forth in 567—Chapter 30.

24.106(2) *Emissions inventory and documentation due dates.* The emissions inventory shall be submitted through the electronic format specified by the department. An owner or operator shall, by March 31, submit documentation of actual emissions for the previous calendar year. The department shall calculate the total statewide Title V emissions for the prior calendar year and make this information available to the public no later than April 30 of each year.

24.106(3) *Correction of errors.* If an owner or operator, or the department, finds an error in a Title V emissions inventory, the owner or operator shall submit to the department revised forms making the necessary corrections to the Title V emissions inventory. Corrected forms shall be submitted as soon as possible after the errors are discovered or upon notification by the department.
[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.107(455B) Title V permit processing procedures.

24.107(1) *Action on application.*

a. Conditions for action on application. A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

(1) The permitting authority has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under 567—24.109(455B);

(2) Except for modifications qualifying for minor permit modification procedures under 567—24.112(455B), the permitting authority has complied with the requirements for public participation under 24.107(6);

(3) The permitting authority has complied with the requirements for notifying and responding to affected states under 24.107(7);

(4) The conditions of the permit provide for compliance with all applicable requirements and the requirements of this chapter;

(5) The Administrator has received a copy of the proposed permit and any notices required under 24.107(7), and has not objected to issuance of the permit under 24.107(7) within the time period specified therein;

(6) If the Administrator has properly objected to the permit pursuant to the provisions of 40 CFR §70.8(d) as amended to July 21, 1992, or 24.107(7), then the permitting authority may issue a permit only after the Administrator's objection has been resolved; and

(7) No permit for a solid waste incineration unit combusting municipal waste subject to the provisions of Section 129(e) of the Act may be issued by an agency, instrumentality, or person that is also responsible, in whole or part, for the design and construction or operation of the unit.

b. Time for action on application. The permitting authority shall take final action on each complete permit application (including a request for permit modification or renewal) within 18 months of receiving a complete application, except in the following instances:

(1) When otherwise provided under Title V or Title IV of the Act for the permitting of affected sources under the acid rain program.

(2) In the case of initial permit applications, the permitting authority may take up to three years from the effective date of the program to take final action on an application.

(3) Any complete permit applications containing an early reduction demonstration under Section 112(i)(5) of the Act shall be acted upon within nine months of receipt of the complete application.

c. Prioritization of applications. The director shall give priority to action on Title V applications involving construction or modification for which a construction permit pursuant to 567—subrule 22.1(1) or Title I of the Act, Parts C and D, is also required. The director also shall give

priority to action on Title V applications involving early reduction of hazardous air pollutants pursuant to 567—paragraph 23.1(4)*"d."*

d. Completeness of applications. The department shall promptly provide notice to the applicant of whether the application is complete. Unless the permitting authority requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application shall be deemed complete. If, while processing an application that has been determined to be complete, the permitting authority determines that additional information is necessary to evaluate or take final action on that application, the permitting authority may request in writing such information and set a reasonable deadline for a response. The source's ability to operate without a permit, as set forth in 567—24.104(455B), shall be in effect from the date the application is determined to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the permitting authority. For modifications processed through minor permit modification procedures, a completeness determination shall not be required.

e. Decision to deny a permit application. The director shall decide to issue or deny the permit. The director shall notify the applicant as soon as practicable that the application has been denied. Upon denial of the permit, the provisions of 24.107(1)*"d"* shall no longer be applicable. The new application shall be regarded as an entirely separate application containing all the required information and shall not depend on references to any documents contained in the previous denied application.

f. Fact sheet. A draft permit and fact sheet shall be prepared by the permitting authority. The fact sheet shall include the rationale for issuance or denial of the permit; a brief description of the type of facility; a summary of the type and quantity of air pollutants being emitted; a brief summary of the legal and factual basis for the draft permit conditions, including references to applicable statutes and rules; a description of the procedures for reaching final decision on the draft permit, including the comment period, the address where comments will be received, and procedures for requesting a hearing and the nature of the hearing; and the name and telephone number for a person to contact for additional information. The permitting authority shall provide the fact sheet to the EPA and to any other person who requests it.

g. Relation to construction permits. The submittal of a complete application shall not affect the requirement that any source have a construction permit under Title I of the Act and 567—subrule 22.1(1).

24.107(2) *Confidential information.* If a source has submitted information with an application under a claim of confidentiality to the department, the source shall also submit a copy of such information directly to the Administrator. Requests for confidentiality must comply with 561—Chapter 2.

24.107(3) *Duty to supplement or correct application.* Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date the source filed a complete application but prior to release of a draft permit. Applicants who have filed a complete application shall have 60 days following notification by the department to file any amendments. Any MACT determinations in permit applications will be evaluated based on the standards, limitations, or levels of technology existing on the date the initial application is deemed complete.

24.107(4) *Certification of truth, accuracy, and completeness.* Any application form, report, or compliance certification submitted pursuant to these rules shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under these rules shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

24.107(5) *Early reduction application evaluation.* Hazardous air pollutant early reduction application evaluation review shall follow the procedures established in 567—paragraph 23.1(4)*"d."*

24.107(6) *Public notice and public participation.*

a. The permitting authority shall provide public notice and an opportunity for public comments, including an opportunity for a hearing, before taking any of the following actions: issuance, denial, or renewal of a permit; or significant modification, revocation, or reissuance of a permit.

b. Notice shall be given by posting of the notice, including the draft permit, for the duration of the public comment period on a public website identified by the permitting authority and designed to give general public notice. Notice also shall be given to persons on a mailing list developed by the permitting authority, including those who request in writing to be on the list. The department may use other means if necessary to ensure adequate notice to the affected public.

c. The public notice shall include the following:

(1) Identification of the Title V source.

(2) Name and address of the permittee.

(3) Name and address of the permitting authority processing the permit.

(4) The activity or activities involved in the permit action.

(5) The emissions change involved in any permit modification.

(6) The air pollutants or contaminants to be emitted.

(7) The time and place of any possible public hearing.

(8) A statement that any person may submit written and signed comments, or may request a public hearing, or both, on the proposed permit. A statement of procedures to request a public hearing shall be included.

(9) The name, address, and telephone number of a person from whom additional information may be obtained. Information entitled to confidential treatment pursuant to Section 114(c) of the Act or state law shall not be released pursuant to this provision. However, the contents of a Title V permit shall not be entitled to protection under Section 114(c) of the Act.

(10) Locations where copies of the permit application and the proposed permit may be reviewed and the times at which they shall be available for public inspection.

d. At least 30 days shall be provided for public comment. Notice of any public hearing shall be given at least 30 days in advance of the hearing.

e. Any person may request a public hearing. A request for a public hearing shall be in writing and shall state the person's interest in the subject matter and the nature of the issues proposed to be raised at the hearing. The director shall hold a public hearing upon finding, on the basis of requests, a significant degree of relevant public interest in a draft permit. A public hearing also may be held at the director's discretion.

f. The director shall keep a record of the commenters and of the issues raised during the public participation process and shall prepare written responses to all comments received. At the time a final decision is made, the record and copies of the director's responses shall be made available to the public.

g. The permitting authority shall provide notice and opportunity for participation by affected states as provided by 24.107(7).

24.107(7) *Permit review by the EPA and affected states.*

a. Transmission of information to the Administrator. Except as provided in 24.107(2) or waived by the Administrator, the director shall make available to the Administrator each permit application or modification application, including any attachments and compliance plans; each proposed permit; and each final permit. For purposes of this subrule, the application information may be provided in a computer-readable format compatible with the Administrator's national database management system.

b. Review by affected states. The director shall provide notice of each draft permit to any affected state on or before the time that public notice is provided to the public pursuant to 24.107(6), except to the extent that 24.112(3) requires the timing of the notice to be different. If the director refuses to accept a recommendation of any affected state, submitted during the public or affected state review period, then the director shall notify the Administrator and the affected state in writing. The

notification shall include the director's reasons for not accepting the recommendation(s). The director shall not be required to accept recommendations that are not based on applicable requirements.

c. *EPA objection.* No permit for which an application must be transmitted to the Administrator shall be issued if the Administrator objects in writing to its issuance as not in compliance with the applicable requirements within 45 days after receiving a copy of the proposed permit and necessary supporting information under 24.107(7)*"a."* Within 90 days after the date of an EPA objection made pursuant to this rule, the director shall submit a response to the objection, if the objection has not been resolved.

24.107(8) *Public petitions to the Administrator regarding Title V permits.*

a. If the Administrator does not object to a proposed permit, any person may petition the Administrator within 60 days after the expiration of the Administrator's 45-day review period to make an objection pursuant to 40 CFR §70.8(d).

b. Any person who petitions the Administrator pursuant to the provisions of 40 CFR §70.8(d) shall notify the department by certified mail of such petition immediately, and in no case more than ten days following the date the petition is submitted to the EPA. Such notice shall include a copy of the petition submitted to the EPA and a separate written statement detailing the grounds for the objection(s) and whether the objection(s) was raised during the public comment period. A petition for review shall not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day EPA review period and prior to the Administrator's objection.

c. If the Administrator objects to the permit as a result of a petition filed pursuant to 40 CFR §70.8(d), then the director shall not issue a permit until the Administrator's objection has been resolved. However, if the director has issued a permit prior to receipt of the Administrator's objection, and the Administrator modifies, terminates, or revokes such permit, consistent with the procedures in 40 CFR §70.7, then the director may thereafter issue only a revised permit that satisfies the Administrator's objection. In any case, the source shall not be in violation of the requirement to have submitted a timely and complete application.

24.107(9) *Application denial.* A Title V permit application may be denied if:

a. The director finds that a source is not in compliance with any applicable requirement; or

b. An applicant knowingly submits false information in a permit application.

24.107(10) *Retention of permit records.* The director shall keep all records associated with each permit for a minimum of five years.

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.108(455B) Permit content. Each Title V permit shall include the following elements:

24.108(1) Enforceable emission limitations and standards. Each permit issued pursuant to this chapter shall include emissions limitations and standards, including those operational requirements and limitations that ensure compliance with all applicable requirements at the time of permit issuance.

a. The permit shall specify and reference the origin of and authority for each term or condition and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

b. The permit shall state that, where an applicable requirement of the Act is more stringent than an applicable requirement of regulations promulgated under Title IV of the Act, both provisions shall be incorporated into the permit and shall be enforceable by the Administrator.

c. If an applicable implementation plan allows a determination of an alternative emission limit at a Title V source, equivalent to that contained in the plan, to be made in the permit issuance, renewal, or significant modification process, and the state elects to use such process, then any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

d. If an early reduction demonstration is approved as part of the Title V permit application, the permit shall include enforceable alternative emissions limitations for the source reflecting the reduction that qualified the source for the compliance extension.

e. Fugitive emissions from a source shall be included in the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

f. For all major sources, all applicable requirements for all relevant emissions units in the major source shall be included in the permit.

24.108(2) Permit duration. The permit shall specify a fixed term not to exceed five years except:

a. Permits issued to Title IV affected sources shall have a fixed term of five years.

b. Permits issued to solid waste incineration units combusting municipal waste subject to standards under Section 129(e) of the Act shall have a term not to exceed 12 years. Such permits shall be reviewed every five years.

24.108(3) Monitoring. Each permit shall contain the following requirements with respect to monitoring:

a. All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to Section 114(a)(3) or 504(b) of the Act;

b. Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to 24.108(5). Such monitoring shall be determined by application of the "Periodic Monitoring Guidance" (as amended through October 24, 2012) available from the department;

c. As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods; and

d. As required, Compliance Assurance Monitoring (CAM) consistent with 40 CFR Part 64 (as amended through October 22, 1997).

24.108(4) Recordkeeping. With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:

a. Records of required monitoring information that include the following:

(1) The date, place as defined in the permit, and time of sampling or measurements;

(2) The date(s) the analyses were performed;

(3) The company or entity that performed the analyses;

(4) The analytical techniques or methods used;

(5) The results of such analyses; and

(6) The operating conditions as existing at the time of sampling or measurement; and

b. Retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart and other recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

24.108(5) Reporting. With respect to reporting, the permit shall incorporate all applicable reporting requirements and shall require the following:

a. Submittal of reports of any required monitoring at least every six months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with 24.107(4).

b. Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The director shall define "prompt" in relation to the degree and type of deviation likely to occur and the applicable requirements.

24.108(6) Risk management plan. Pursuant to Section 112(r)(7)(E) of the Act, if the source is required to develop and register a risk management plan pursuant to Section 112(r) of the Act, the permit shall state the requirement for submission of the plan to the air quality bureau of the department. The permit shall also require filing the plan with appropriate authorities and an annual certification to the department that the plan is being properly implemented.

24.108(7) A permit condition prohibiting emissions exceeding any allowances that the affected source lawfully holds under Title IV of the Act or the regulations promulgated thereunder.

a. No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.

b. No limit shall be placed on the number of allowances held by the Title IV affected source. The Title IV-affected source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

c. Any such allowances shall be accounted for according to the procedures established in regulations promulgated under Title IV of the Act.

d. Any permit issued pursuant to the requirements of these rules and Title V of the Act to a unit subject to the provisions of Title IV of the Act shall include conditions prohibiting all of the following:

(1) Annual emissions of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide held by the owners or operators of the unit or the designated representative of the owners or operators.

(2) Exceedances of applicable emission rates.

(3) The use of any allowance prior to the year for which it was allocated.

(4) Contravention of any other provision of the permit.

24.108(8) Severability clause. The permit shall contain a severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

24.108(9) Other provisions. The Title V permit shall contain provisions stating the following:

a. The permittee must comply with all conditions of the Title V permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for a permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

b. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

c. The permit may be modified; revoked, reopened, and reissued; or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

d. The permit does not convey any property rights of any sort, or any exclusive privilege.

e. The permittee shall furnish to the director, within a reasonable time, any information that the director may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee also shall furnish to the director copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee shall furnish such records directly to the Administrator of the EPA along with a claim of confidentiality.

24.108(10) Fees. The permit shall include a provision to ensure that the Title V permittee pays fees to the director pursuant to 567—30.4(455B).

24.108(11) Emissions trading. A provision of the permit shall state that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

24.108(12) Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application and as approved by the director. Such terms and conditions:

a. Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating; and

b. Must ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of the department's rules.

24.108(13) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:

a. Shall include all terms required under 24.108(1) to 24.108(13) and 24.108(15) to determine compliance;

b. Must meet all applicable requirements of the Act and regulations promulgated thereunder and all requirements of this chapter; and

c. May extend the permit shield described in 24.108(18) to all terms and conditions that allow such increases and decreases in emissions.

24.108(14) Federally enforceable requirements.

a. All terms and conditions in a Title V permit, including any provisions designed to limit a source's potential to emit, are enforceable by the Administrator and citizens under the Act.

b. Notwithstanding paragraph 24.108(14)*"a,"* the director shall specifically designate as not being federally enforceable under the Act any terms and conditions included in the permit that are not required under the Act or under any of its applicable requirements. Terms and conditions so designated are not subject to the requirements of 40 CFR §70.7 or §70.8.

24.108(15) Compliance requirements. All Title V permits shall contain the following elements with respect to compliance:

a. Consistent with the provisions of 24.108(3) to 24.108(5), compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to ensure compliance with the terms and conditions of the permit. Any documents, including reports, required by a permit shall contain a certification by a responsible official that meets the requirements of 24.107(4).

b. Inspection and entry provisions that require that, upon presentation of proper credentials, the permittee shall allow the director or the director's authorized representative to:

(1) Enter upon the permittee's premises where a Title V source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(3) Inspect, at reasonable times, any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(4) Sample or monitor, at reasonable times, substances or parameters for the purpose of ensuring compliance with the permit or other applicable requirements.

c. A schedule of compliance consistent with 24.105(2)*"h,"*24.105(2)*"j,"* and 24.105(3).

d. Progress reports, consistent with an applicable schedule of compliance and with the provisions of 24.105(2)*"h"* and 24.105(2)*"j,"* to be submitted at least every six months, or more frequently if specified in the applicable requirement or by the department in the permit. Such progress reports shall contain the following:

(1) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones, or compliance were achieved; and

(2) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

e. Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

(1) The frequency of submissions of compliance certifications, which shall not be less than annually.

(2) The means to monitor the compliance of the source with its emissions limitations, standards, and work practices, in accordance with the provisions of all applicable department rules.

(3) A requirement that the compliance certification include: the identification of each term or condition of the permit that is the basis of the certification; the compliance status; whether compliance was continuous or intermittent; the method(s) used for determining the compliance status of the source, currently and over the reporting period consistent with all applicable department rules; and other facts as the director may require to determine the compliance status of the source.

(4) A requirement that all compliance certifications be submitted to the Administrator and the director.

f. Such additional provisions as the director may require.

g. Such additional provisions as may be specified pursuant to Sections 114(a)(3) and 504(b) of the Act.

h. If there is a federal implementation plan applicable to the source, a provision that compliance with the federal implementation plan is required.

24.108(16) Emergency provisions.

a. For the purposes of a Title V permit, an "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

b. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of 24.108(16)*"c"* are met.

c. Requirements for affirmative defense. The affirmative defense of emergency shall be demonstrated by the source through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An emergency occurred and that the permittee can identify the cause(s) of the emergency;

(2) The permitted facility was at the time being properly operated;

(3) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emissions standards or other requirements of the permit; and

(4) The permittee submitted notice of the emergency to the director by certified mail within two working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of 24.108(5)*"b."* This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

d. In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

e. This provision is in addition to any emergency or upset provision contained in any applicable requirement.

24.108(17) Permit reopenings.

a. A Title V permit issued to a major source shall require that revisions be made to incorporate applicable standards and regulations adopted by the Administrator pursuant to the Act, provided that:

(1) The reopening and revision on this ground is not required if the permit has a remaining term of less than three years;

(2) The reopening and revision on this ground is not required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or

any of its terms and conditions have been extended pursuant to 40 CFR §70.4(b)(10)(i) or (ii) as amended through October 6, 2009; or

(3) The additional applicable requirements are implemented in a general permit that is applicable to the source and the source receives approval for coverage under that general permit.

b. The revisions shall be made as expeditiously as practicable, but not later than 18 months after the promulgation of such standards and regulations. Any permit revision required pursuant to this subrule shall be treated as a permit renewal.

24.108(18) Permit shield. The provisions for a permit shield as set forth in 40 CFR §70.6(f) are adopted by reference.

24.108(19) Emission trades. For emission trades at facilities solely for the purpose of complying with a federally enforceable emissions cap that is established in the permit independent of otherwise applicable requirements, permit applications under this provision are required to include proposed replicable procedures and proposed permit terms that ensure the emission trades are quantifiable and enforceable.

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.109(455B) General permits. The provisions for general permits as set forth in 40 CFR §70.6(d) are adopted by reference.

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.110(455B) Changes allowed without a Title V permit revision (off-permit revisions).

24.110(1) A source with a Title V permit may make Section 502(b)(10) changes to the permitted installation/facility without a Title V permit revision if:

a. The changes are not major modifications under any provision of any program required by Section 110 through Section 112 of the Act, or major modifications of this chapter;

b. The changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions);

c. The changes are not modifications under any provision of Title I of the Act and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions);

d. The changes are not subject to any requirement under Title IV of the Act (revisions affecting Title IV permitting are addressed in 567—24.140(455B) through 567—24.144(455B));

e. The changes comply with all applicable requirements; and

f. For each such change, the permitted source provides to the department and the Administrator by certified mail, at least 30 days in advance of the proposed change, a written notification, including the following, which shall be attached to the permit by the source, the department, and the Administrator:

(1) A brief description of the change within the permitted facility,

(2) The date on which the change will occur,

(3) Any change in emission as a result of the change,

(4) The pollutants emitted subject to the emissions trade,

(5) If the emissions trading provisions of the state implementation plan are invoked, then the Title V permit requirements with which the source shall comply; a description of how the emission increases and decreases will comply with the terms and conditions of the Title V permit,

(6) A description of the trading of emissions increases and decreases for the purpose of complying with a federally enforceable emissions cap as specified in and in compliance with the Title V permit, and

(7) Any permit term or condition no longer applicable as a result of the change.

24.110(2) Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

24.110(3) Notwithstanding any other part of this rule, the director may, upon review of a notice, require a stationary source to apply for a Title V permit if the change does not meet the requirements of 24.110(1).

24.110(4) The permit shield provided in 24.108(18) shall not apply to any change made pursuant to this rule. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of the state implementation plan authorizing the emissions trade.

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.111(455B) Administrative amendments to Title V permits.

24.111(1) An administrative permit amendment is a permit revision that does any of the following:

a. Corrects typographical errors;

b. Identifies a change in the name, address, or telephone number of any person identified in the permit, or provides a similar minor administrative change at the source;

c. Requires more frequent monitoring or reporting by the permittee; or

d. Allows for a change in ownership or operational control of a source where the director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the director.

24.111(2) Administrative permit amendments to portions of permits containing provisions pursuant to Title IV of the Act shall be governed by regulations promulgated by the Administrator under Title IV of the Act.

24.111(3) The director shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected states provided that the director designates any such permit revisions as having been made pursuant to this rule.

24.111(4) The director shall submit to the Administrator a copy of each Title V permit revised under this rule.

24.111(5) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.112(455B) Minor Title V permit modifications.

24.112(1) Minor Title V permit modification procedures may be used only for those permit modifications that satisfy all of the following:

a. Do not violate any applicable requirement;

b. Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the Title V permit;

c. Do not require or change a case-by-case determination of an emission limitation or other standard, or an increment analysis;

d. Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed in order to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include any federally enforceable emissions caps that the source would assume to avoid classification as a modification under any provision of Title I of the Act; and an alternative emissions limit approved pursuant to regulations promulgated under Section 112(i)(5) of the Act;

e. Are not modifications under any provision of Title I of the Act; and

f. Are not required to be processed as a significant modification under 567—24.113(455B).

24.112(2) An application for minor permit revision shall be on the minor Title V modification application form and shall include at least the following:

a. A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

b. The source's suggested draft permit;

c. Certification by a responsible official, pursuant to 24.107(4), that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and

d. Completed forms to enable the department to notify the Administrator and affected states as required by 24.107(7).

24.112(3) The department shall notify the Administrator and affected states within five working days of receipt of a complete permit modification application. Notification shall be in accordance with the provisions of 24.107(7). The department shall promptly send to the Administrator any notification required by 24.107(7).

24.112(4) The director shall not issue a final Title V permit modification until after the Administrator's 45-day review period or until the Administrator has notified the director that the Administrator will not object to issuance of the Title V permit modification, whichever is first. Within 90 days of the director's receipt of an application under the minor permit modification procedures, or 15 days after the end of the Administrator's 45-day review period provided for in 24.107(7), whichever is later, the director shall:

a. Issue the permit modification as proposed;

b. Deny the permit modification application;

c. Determine that the requested permit modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

d. Revise the draft permit modification and transmit to the Administrator the proposed permit modification, as required by 24.107(7).

24.112(5) Source's ability to make change. The source may make the change proposed in its minor permit modification application immediately after it files the application. After the source makes the change allowed by the preceding sentence, and until the director takes any of the actions specified in 24.112(4)*"a"* to 24.112(4)*"c,"* the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

24.112(6) Permit shield. The permit shield under 24.108(18) shall not extend to minor Title V permit revisions.

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.113(455B) Significant Title V permit modifications.

24.113(1) Significant Title V modification procedures shall be used for applications requesting Title V permit modifications that do not qualify as minor or administrative amendments. These include, but are not limited to, all significant changes in monitoring permit terms, every relaxation of reporting or recordkeeping permit terms, and any change in the method of measuring compliance with existing requirements.

24.113(2) Significant Title V permit modifications shall meet all requirements of this chapter, including those for applications, public participation, review by affected states, and review by the Administrator, as those requirements that apply to Title V permit issuance and renewal.

24.113(3) Unless the director determines otherwise, review of significant Title V permit modification applications shall be completed within nine months of receipt of a complete application.

24.113(4) For a change that is subject to the requirements for a significant permit modification (pursuant to 567—24.113(455B)), the permittee shall submit to the department an application for a significant permit modification not later than three months after commencing operation of the changed source unless the existing Title V permit would prohibit such construction or change in operation, in

which event the operation of the changed source may not commence until the department revises the permit.
[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.114(455B) Title V permit reopenings. The provisions for Title V permit reopenings set forth in 40 CFR §70.7(f) are adopted by reference.
[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.115(455B) Suspension, termination, and revocation of Title V permits.

24.115(1) Permits may be terminated, modified, revoked, or reissued for cause. The following examples shall be considered cause for the suspension, modification, revocation, or reissuance of a Title V permit:

a. The director has reasonable cause to believe that the permit was obtained by fraud or misrepresentation.

b. The person applying for the permit failed to disclose a material fact required by the permit application form or the rules applicable to the permit, of which the applicant had or should have had knowledge at the time the application was submitted.

c. The terms and conditions of the permit have been or are being violated.

d. The permittee has failed to pay the Title V permit fees.

e. The permittee has failed to pay an administrative, civil, or criminal penalty imposed for violations of the permit.

24.115(2) If the director suspends, terminates, or revokes a Title V permit under this rule, the notice of such action shall be served on the applicant or permittee by certified mail, return receipt requested. The notice shall include a statement detailing the grounds for the action sought, and the proceeding shall in all other respects comply with the requirements of 561—7.16(17A,455A).
[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.116(455B) Title V permit renewals.

24.116(1) An application for Title V permit renewal shall be subject to the same procedural requirements that apply to initial permit issuance, including those for public participation and review by the Administrator and affected states.

24.116(2) Except as provided in 567—24.104(455B), permit expiration terminates a source's right to operate unless a timely and complete application for renewal has been submitted in accordance with 567—24.105(455B).
[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.117 to **24.119** Reserved.

567—24.120(455B) Acid rain program—definitions. The terms used in 567—24.120(455B) through 567—24.146(455B) shall have the meanings set forth in Title IV of the Act, 42 U.S.C. §7401, et seq., as amended through November 15, 1990, and in this rule. The definitions set forth in 40 CFR Part 72 as amended through March 28, 2011, and 40 CFR Part 76 as amended through October 15, 1999, are adopted by reference.

"Department" means the department of natural resources and is the state acid rain permitting authority.

"Electronic format," "electronic submittal," and *"electronic submittal format"* mean the same as defined in 567— 22.1(455B).

"Title V operating permit" means a permit issued under 567—24.100(455B) through 567—24.116(455B) implementing Title V of the Act.
[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.121 Reserved.

567—24.122(455B) Applicability. The applicability of the acid rain program as set forth in 40 CFR §72.6 is adopted by reference. A certifying official of any unit may petition the Administrator for a determination of applicability under 40 CFR §72.6(c).
[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.123(455B) Acid rain exemptions.

24.123(1) *New unit exemption.* The new unit exemption, as specified in 40 CFR §72.7, except for 40 CFR §72.7(c)(1)(i), is adopted by reference. This exemption applies to new utility units.

24.123(2) *Retired unit exemption.* The retired unit exemption, as specified in 40 CFR §72.8, is adopted by reference. This exemption applies to any affected unit that is permanently retired.

24.123(3) *Industrial utility-unit exemption.* The industrial utility-unit exemption, as specified in 40 CFR §72.14, is adopted by reference. This exemption applies to any noncogeneration utility unit.
[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.124 Reserved.

567—24.125(455B) Standard requirements.

24.125(1) *Permit requirements.* Permit requirements as set forth in 40 CFR §72.9(a) are adopted by reference.

24.125(2) *Monitoring requirements.* Monitoring requirements as set forth in 40 CFR §72.9(b) are adopted by reference.

24.125(3) *Sulfur dioxide requirements.* Sulfur dioxide requirements as set forth in 40 CFR §72.9(c) are adopted by reference.

24.125(4) *Nitrogen oxides requirements.* Nitrogen oxides requirements as set forth in 40 CFR §72.9(d) are adopted by reference.

24.125(5) *Excess emissions requirements.* Excess emissions requirements as set forth in 40 CFR §72.9(e) are adopted by reference.

24.125(6) *Recordkeeping and reporting requirements.* Recordkeeping and reporting requirements as set forth in 40 CFR §72.9(f) are adopted by reference.

24.125(7) *Liability.* Liability provisions as set forth in 40 CFR §72.9(g) are adopted by reference.

24.125(8) *Effect on other authorities.* The provisions for the effect on other authorities as set forth in 40 CFR §72.9(h) is adopted by reference.
[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.126(455B) Designated representative—submissions. The provisions for submission by designated representatives as set forth in 40 CFR 72, Subpart B, are adopted by reference.
[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.127(455B) Designated representative—objections. The provisions for disputes regarding a designated representative as set forth in 40 CFR §72.25 are adopted by reference.
[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.128(455B) Acid rain applications—requirement to apply. The requirement to apply for an acid rain permit as set forth in 40 CFR §72.30 is adopted by reference.

24.128(1) *Duty to reapply.* The duty to reapply, as set forth in 40 CFR §72.30(c), is adopted by reference.

24.128(2) *Submission of copies.* The designated representative shall submit the application in the electronic format specified by the department, if electronic submittal is provided.
[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.129(455B) Information requirements for acid rain permit applications. A complete acid rain permit application shall be submitted on a form approved by the department and include the following elements:

24.129(1) Identification of the affected source for which the permit application is submitted;

24.129(2) Identification of each affected unit at the source for which the permit application is submitted;

24.129(3) A complete compliance plan for each unit, in accordance with 567—24.131(455B);

24.129(4) The standard requirements under 567—24.125(455B); and

24.129(5) If the unit is a new unit, the date that the unit has commenced or will commence operation and the deadline for monitor certification.

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.130(455B) Acid rain permit application shield and binding effect of permit application. The provisions for an acid rain permit application shield and the binding effect of a permit application as set forth in 40 CFR §72.32 are adopted by reference.

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.131(455B) Acid rain compliance plan and compliance options—general. The general provisions for an acid rain compliance plan and compliance options as set forth in 40 CFR §72.40 are adopted by reference.

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.132 Reserved.

567—24.133(455B) Acid rain permit contents—general. The general provisions for acid rain permit contents as set forth in 40 CFR §72.50 are adopted by reference.

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.134(455B) Acid rain permit shield. The general provisions for an acid rain permit shield as set forth in 40 CFR §72.51 are adopted by reference.

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.135(455B) Acid rain permit issuance procedures—general. The department will issue or deny all acid rain permits in accordance with 567—24.100(455B) through 567—24.116(455B), including the completeness determination, draft permit, administrative record, statement of basis, public notice and comment period, public hearing, proposed permit, permit issuance, permit revision, and appeal procedures as amended by 567—24.135(455B) through 567—24.145(455B).

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.136(455B) Acid rain permit issuance procedures—completeness. The department will submit a written notice of application completeness to the Administrator within ten working days following a determination by the department that the acid rain permit application is complete.

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.137(455B) Acid rain permit issuance procedures—statement of basis.

24.137(1) The statement of basis will briefly set forth significant factual, legal, and policy considerations on which the department relied in issuing or denying the draft acid rain permit.

24.137(2) The statement of basis will include the reasons, and supporting authority, for approval or disapproval of any compliance options requested in the permit application, including references to applicable statutory or regulatory provisions and to the administrative record.

24.137(3) The department will submit to the Administrator a copy of the draft acid rain permit and the statement of basis and all other relevant portions of the Title V operating permit that may affect the draft acid rain permit.

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.138(455B) Issuance of acid rain permits.

24.138(1) Proposed permit. After the close of the public comment and EPA 45-day review period (pursuant to 24.107(6) and 24.107(7)), the department will address any objections by the Administrator, incorporate all necessary changes and issue or deny the acid rain permit.

24.138(2) The department will submit the proposed acid rain permit or denial of a proposed acid rain permit to the Administrator in accordance with 567—24.100(455B) through 567—24.116(455B), the provisions of which shall be treated as applying to the issuance or denial of a proposed acid rain permit.

24.138(3) Following the Administrator's review of the proposed acid rain permit or denial of a proposed acid rain permit, the department, or under 40 CFR §70.8(c), the Administrator, will incorporate any required changes and issue or deny the acid rain permit in accordance with 567—24.133(455B) and 567—24.134(455B).

24.138(4) No acid rain permit including a draft or proposed permit shall be issued unless the Administrator has received a certificate of representation for the designated representative of the source in accordance with Subpart B of 40 CFR Part 72.

24.138(5) Permit issuance deadline and effective date.

a. and *b.* Reserved.

c. Each acid rain permit issued in accordance with 24.138(5)*"a"* shall take effect by the later of January 1, 2000, or, where the permit governs a unit under 24.122(1)*"c,"* the deadline for monitor certification under 567—25.2(455B).

d. Each acid rain permit shall have a term of five years commencing on its effective date.

e. An acid rain permit shall be binding on any new owner or operator or designated representative of any source or unit governed by the permit.

24.138(6) Each acid rain permit shall contain all applicable acid rain requirements, shall be a portion of the Title V operating permit that is complete and segregable from all other air quality requirements, and shall not incorporate information contained in any other documents, other than documents that are readily available.

24.138(7) Invalidation of the acid rain portion of a Title V operating permit shall not affect the continuing validity of the rest of the Title V operating permit, nor shall invalidation of any other portion of the Title V operating permit affect the continuing validity of the acid rain portion of the permit.

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.139(455B) Acid rain permit appeal procedures.

24.139(1) Appeals of the acid rain portion of a Title V operating permit issued by the department that do not challenge or involve decisions or actions of the Administrator under 40 CFR Parts 72, 73, 75, 76, 77, and 78 and Sections 407 and 410 of the Act and regulations implementing Sections 407 and 410 shall be conducted according to the procedures in Iowa Code chapter 17A and 561—Chapter 7, as adopted by reference in 567—Chapter 7. Appeals of the acid rain portion of such a permit that challenge or involve such decisions or actions of the Administrator shall follow the procedures under 40 CFR Part 78, as amended through March 20, 2017, and Section 307 of the Act. Such decisions or actions include, but are not limited to, allowance allocations, determinations concerning alternative monitoring systems, and determinations of whether a technology is a qualifying repowering technology.

24.139(2) No administrative appeal or judicial appeal of the acid rain portion of a Title V operating permit shall be allowed more than 30 days following respective issuance of the acid rain portion of the permit that is subject to administrative appeal or issuance of the final agency action subject to judicial appeal.

24.139(3) The Administrator may intervene as a matter of right in any state administrative appeal of an acid rain permit or denial of an acid rain permit.

24.139(4) No administrative appeal concerning an acid rain requirement shall result in a stay of the following requirements:

a. The allowance allocations for any year during which the appeal proceeding is pending or is being conducted;

b. Any standard requirement under 567—24.125(455B);

c. The emissions monitoring and reporting requirements applicable to the affected units at an affected source under 567—25.2(455B);

d. Uncontested provisions of the decision on appeal; and

e. The terms of a certificate of representation submitted by a designated representative under Subpart B of 40 CFR Part 72.

24.139(5) The department will serve written notice on the Administrator of any state administrative or judicial appeal concerning an acid rain provision of any Title V operating permit or denial of an acid rain portion of any Title V operating permit within 30 days of the filing of the appeal.

24.139(6) The department will serve written notice on the Administrator of any determination or order in a state administrative or judicial proceeding that interprets, modifies, voids, or otherwise relates to any portion of an acid rain permit. Following any such determination or order, the Administrator will have an opportunity to review and veto the acid rain permit or revoke the permit for cause in accordance with 24.107(7) and 24.107(8).

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.140(455B) Permit revisions—general.

24.140(1) 567—24.140(455B) through 567—24.145(455B) shall govern revisions to any acid rain permit issued by the department.

24.140(2) A permit revision may be submitted for approval at any time. No permit revision shall affect the term of the acid rain permit to be revised. No permit revision shall excuse any violation of an acid rain program requirement that occurred prior to the effective date of the revision.

24.140(3) The terms of the acid rain permit shall apply while the permit revision is pending.

24.140(4) Any determination or interpretation by the state (including the department or a state court) modifying or voiding any acid rain permit provision shall be subject to review by the Administrator in accordance with 40 CFR §70.8(c), as applied to permit modifications, unless the determination or interpretation is an administrative amendment approved in accordance with 567—24.143(455B).

24.140(5) The standard requirements of 567—24.125(455B) shall not be modified or voided by a permit revision.

24.140(6) Any permit revision involving incorporation of a compliance option that was not submitted for approval and comment during the permit issuance process, or involving a change in a compliance option that was previously submitted, shall meet the requirements for applying for such compliance option under 567—24.131(455B) and Section 407 of the Act and regulations implementing Section 407 of the Act.

24.140(7) For permit revisions not described in 567—24.141(455B) and 567—24.142(455B), the department may, in its discretion, determine which of these rules is applicable.

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.141(455B) Permit modifications.

24.141(1) Permit modifications shall follow the permit issuance requirements of 567—24.135(455B) through 567—24.139(455B) and 24.113(2) and 24.113(3).

24.141(2) For purposes of applying 24.141(1), a permit modification shall be treated as an acid rain permit application, to the extent consistent with 567—24.140(455B) through 567—24.145(455B).

24.141(3) The following permit revisions are permit modifications:

a. Relaxation of an excess emission offset requirement after approval of the offset plan by the Administrator;

b. Incorporation of a final nitrogen oxides alternative emissions limitation following a demonstration period; and

c. Reserved.

d. At the option of the designated representative submitting the permit revision, the permit revisions listed in 24.142(2).

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.142(455B) Fast-track modifications. The requirements for fast-track modifications as set forth in 40 CFR §72.82 are adopted by reference.

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.143(455B) Administrative permit amendment.

24.143(1) Administrative amendments shall follow the procedures set forth in 567—24.111(455B). The department will submit the revised portion of the permit to the Administrator within ten working days after the date of final action on the request for an administrative amendment.

24.143(2) The following permit revisions are administrative amendments:

a. Activation of a compliance option conditionally approved by the department, provided that all requirements for activation under 24.131(3) are met;

b. Changes in the designated representative or alternative designated representative, provided that a new certificate of representation is submitted to the Administrator in accordance with Subpart B of 40 CFR Part 72;

c. Correction of typographical errors;

d. Changes in names, addresses, or telephone numbers;

e. Changes in the owners or operators, provided that a new certificate of representation is submitted within 30 days to the Administrator and the department in accordance with Subpart B of 40 CFR Part 72;

f. Termination of a compliance option in the permit, provided that all requirements for termination under 24.131(4) shall be met and this procedure shall not be used to terminate a repowering plan after December 31, 1999;

g. Changes in the date, specified in a new unit's acid rain permit, of commencement of operation or the deadline for monitor certification; provided that they are in accordance with 567—24.125(455B);

h. The addition of or change in a nitrogen oxides alternative emissions limitation demonstration period, provided that the requirements of regulations implementing Section 407 of the Act are met; and

i. Incorporation of changes that the Administrator has determined to be similar to those in 24.143(2)*"a"* through 24.143(2)*"h."*

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.144(455B) Automatic permit amendment. The provisions for automatic permit amendments as set forth in 40 CFR §72.84 are adopted by reference.

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.145(455B) Permit reopenings. The provisions for permit reopenings as set forth in 40 CFR §72.85 are adopted by reference.

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.146(455B) Compliance certification—annual report.

24.146(1) Applicability and deadline. For each calendar year in which a unit is subject to the acid rain emissions limitations, the designated representative of the source at which the unit is located shall submit to the Administrator and the department, within 60 days after the end of the calendar year, an annual compliance certification report for the unit in compliance with 40 CFR §72.90.

24.146(2) The submission of complete compliance certifications in accordance with 24.146(1) and 567—25.2(455B) shall be deemed to satisfy the requirement to submit compliance certifications under 24.108(15)*"e"* with regard to the acid rain portion of the source's Title V operating permit.
[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.147 Reserved.

567—24.148(455B) Sulfur dioxide opt-ins. The provisions for sulfur dioxide opt-ins as set forth in 40 CFR Part 74 as amended through April 28, 2006, are adopted by reference.
[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.149 to **24.299** Reserved.

567—24.300(455B) Operating permit by rule for small sources. Except as provided in 24.300(11), any source that otherwise would be required to obtain a Title V operating permit may instead register for an operation permit by rule for small sources. Sources that comply with the requirements contained in this rule will be deemed to have an operating permit by rule for small sources. Sources that comply with this rule will be considered to have federally enforceable limits so that their potential emissions are less than the major source thresholds for regulated air pollutants and hazardous air pollutants as defined in 567—24.100(455B).

24.300(1) *Definitions for operating permit by rule for small sources.* For the purposes of 567—24.300(455B), the definitions shall be the same as the definitions found in 567—24.100(455B).

24.300(2) *Registration for operating permit by rule for small sources.*

a. Except as provided in 24.300(3) and 24.300(11), any person who owns or operates a stationary source and meets the following criteria may register for an operating permit by rule for small sources:

(1) The potential to emit air contaminants is equal to or in excess of the threshold for a major stationary source of regulated air pollutants or hazardous air pollutants, and

(2) For every 12-month rolling period, the actual emissions of the stationary source are less than or equal to the emission limitations specified in 24.300(6).

b. Eligibility for an operating permit by rule for small sources does not eliminate the source's responsibility to meet any and all applicable federal requirements including, but not limited to, a MACT standard.

c. Nothing in this rule shall prevent any stationary source that has had a Title V operating permit from qualifying to comply with this rule in the future in lieu of maintaining an application for a Title V operating permit or upon rescission of a Title V operating permit if the owner or operator demonstrates that the stationary source is in compliance with the emissions limitations in 24.300(6).

d. The department reserves the right to require proof that the expected emissions from the stationary source, in conjunction with all other emissions, will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—Chapter 22.

24.300(3) *Exceptions to eligibility.*

a. Any affected source subject to the provisions of Title IV of the Act or any solid waste incinerator unit required to obtain a Title V operating permit under Section 129(e) of the Act is not eligible for an operating permit by rule for small sources.

b. Sources that meet the registration criteria established in 24.300(2)*"a"* and meet all applicable requirements of 567—24.300(455B), and are subject to a standard or other requirement under 567—subrule 23.1(2) (standards of performance for new stationary sources) or Section 111 of the Act are eligible for an operating permit by rule for small sources. These sources shall be required to obtain a Title V operating permit when the exemptions specified in 24.102(1) or 24.102(2) no longer apply.

c. Sources that meet the registration criteria established in 24.300(2)*"a"* and meet all applicable requirements of 567—24.300(455B), and are subject to a standard or other requirement under 567—subrule 23.1(3) (emissions standards for hazardous air pollutants), 567—subrule 23.1(4)

(emissions standards for hazardous air pollutants for source categories), or Section 112 of the Act are eligible for an operating permit by rule for small sources. These sources shall be required to obtain a Title V operating permit when the exemptions specified in 24.102(1) or 24.102(2) no longer apply.

24.300(4) *Stationary source with de minimus emissions.* Stationary sources with de minimus emissions must submit the standard registration form and must meet and fulfill all registration and reporting requirements as found in 24.300(8). Only the recordkeeping and reporting provisions listed in 24.300(4)*"b"* shall apply to a stationary source with de minimus emissions or operations as specified in 24.300(4)*"a"*:

a. De minimus emission and usage limits. For the purpose of this rule, a stationary source with de minimus emissions means:

(1) In every 12-month rolling period, the stationary source emits less than or equal to the following quantities of emissions:

1. 5 tons per year of a regulated air pollutant (excluding hazardous air pollutants (HAPs)), and
2. 2 tons per year of a single HAP, and
3. 5 tons per year of any combination of HAPs.

(2) In every 12-month rolling period, at least 90 percent of the stationary source's emissions are associated with an operation for which the throughput is less than or equal to one of the quantities specified in numbered paragraphs "1" to "9" below:

1. 1,400 gallons of any combination of solvent-containing materials but no more than 550 gallons of any one solvent-containing material, provided that the materials do not contain the following: methyl chloroform (1,1,1-trichloroethane), methylene chloride (dichloromethane), tetrachloroethylene (perchloroethylene), or trichloroethylene;
2. 750 gallons of any combination of solvent-containing materials where the materials contain the following: methyl chloroform (1,1,1-trichloroethane), methylene chloride (dichloromethane), tetrachloroethylene (perchloroethylene), or trichloroethylene, but not more than 300 gallons of any one solvent-containing material;
3. 365 gallons of solvent-containing material used at a paint spray unit(s);
4. 4,400,000 gallons of gasoline dispensed from equipment with Phase I and II vapor recovery systems;
5. 470,000 gallons of gasoline dispensed from equipment without Phase I and II vapor recovery systems;
6. 1,400 gallons of gasoline combusted;
7. 16,600 gallons of diesel fuel combusted;
8. 500,000 gallons of distillate oil combusted; or
9. 71,400,000 cubic feet of natural gas combusted.

b. Recordkeeping for de minimus sources. Upon registration with the department, the owner or operator of a stationary source eligible to register for an operating permit by rule for small sources shall comply with all applicable recordkeeping requirements of this rule. The recordkeeping requirements of this rule shall not replace any recordkeeping requirement contained in a construction permit or in a local, state, or federal rule or regulation.

(1) De minimus sources shall always maintain an annual log of each raw material used and its amount. The annual log and all related material safety data sheets (MSDS) for all materials shall be maintained for a period of not less than the most current five years. The annual log will begin on the date the small source operating permit application is submitted, then on an annual basis, based on a calendar year.

(2) Within 30 days of a written request by the state or EPA, the owner or operator of a stationary source not maintaining records pursuant to 24.300(7) shall demonstrate that the stationary source's emissions or throughput is not in excess of the applicable quantities set forth in 24.300(4)*"a."*

24.300(5) *Provision for air pollution control equipment.* The owner or operator of a stationary source may take into account the operation of air pollution control equipment on the capacity of the source to emit an air contaminant if the equipment is required by federal, state, or local air pollution

control agency rules and regulations or permit terms and conditions that are federally enforceable. The owner or operator of the stationary source shall maintain and operate such air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions.

24.300(6) *Emission limitations.*

a. No stationary source subject to this rule shall emit in every 12-month rolling period more than the following quantities of emissions:

(1) 50 percent of the major source thresholds for regulated air pollutants (excluding hazardous air pollutants), and

(2) 5 tons per year of a single hazardous air pollutant, and

(3) 12.5 tons per year of any combination of hazardous air pollutants.

b. The owner or operator of a stationary source subject to this rule shall obtain any necessary permits prior to commencing any physical or operational change or activity that will result in actual emissions that exceed the limits specified in 24.300(6)*"a."*

24.300(7) *Recordkeeping requirements for non-de minimus sources.* Upon registration with the department the owner or operator of a stationary source eligible to register for an operating permit by rule for small stationary sources shall comply with all applicable recordkeeping requirements in this rule. The recordkeeping requirements of this rule shall not replace any recordkeeping requirement contained in any operating permit, a construction permit, or in a local, state, or federal rule or regulation.

a. A stationary source previously covered by the provisions in 24.300(4) shall comply with the applicable provisions of 24.300(7) (recordkeeping requirements) and 24.300(8) (reporting requirements) if the stationary source exceeds the quantities specified in 24.300(4)*"a."*

b. The owner or operator of a stationary source subject to this rule shall keep and maintain records, as specified in 24.300(7)*"c"* below, for each permitted emission unit and each piece of emission control equipment sufficient to determine actual emissions. Such information shall be maintained on site for five years and be made available to local, state, or EPA staff upon request.

c. Recordkeeping requirements for emission units and emission control equipment. Recordkeeping requirements for emission units are specified in 24.300(7)*"c"*(1) through 24.300(7)*"c"*(4). Recordkeeping requirements for emission control equipment are specified in 24.300(7)*"c"*(5).

(1) Coating/solvent emission unit. The owner or operator of a stationary source subject to this rule that contains a coating/solvent emission unit not permitted under 567—subrule 22.8(1) (permit by rule for spray booths) or uses a coating, solvent, ink or adhesive shall keep and maintain the following records:

1. A current list of all coatings, solvents, inks and adhesives in use. This list shall include MSDS, manufacturer's product specifications, and material VOC content reports for each solvent (including solvents used in cleanup and surface preparation), coating, ink, and adhesive used and show at least the product manufacturer, product name and code, VOC, and hazardous air pollutant content;

2. A description of any equipment used during and after coating/solvent application, including type, make, and model; maximum design process rate or throughput; and control device(s) type and description (if any);

3. A monthly log of the consumption of each solvent (including solvents used in cleanup and surface preparation), coating, ink, and adhesive used; and

4. All purchase orders, invoices, and other documents to support information in the monthly log.

(2) Organic liquid storage unit. The owner or operator of a stationary source subject to this rule that contains an organic liquid storage unit shall keep and maintain the following records:

1. A monthly log identifying the liquid stored and monthly throughput; and

2. Information on the tank design and specifications including control equipment.

(3) Combustion emission unit. The owner or operator of a stationary source subject to this rule that contains a combustion emission unit shall keep and maintain the following records:

1. Information on equipment type, make and model, maximum design process rate or maximum power input/output, minimum operating temperature (for thermal oxidizers) and capacity and all source test information; and

2. A monthly log of fuel type, fuel usage, fuel heating value (for nonfossil fuels; in terms of Btu/lb or Btu/gal), and percent sulfur for fuel oil and coal.

(4) General emission unit. The owner or operator of a stationary source subject to this rule that contains an emission unit not included in 24.300(7)*"c"*(1), (2), or (3) shall keep and maintain the following records:

1. Information on the process and equipment including the following: equipment type, description, make, and model and maximum design process rate or throughput;

2. A monthly log of operating hours and each raw material used and its amount; and

3. Purchase orders, invoices, or other documents to support information in the monthly log.

(5) Emission control equipment. The owner or operator of a stationary source subject to this rule that contains emission control equipment shall keep and maintain the following records:

1. Information on equipment type and description, make and model, and emission units served by the control equipment;

2. Information on equipment design including, where applicable: pollutant(s) controlled; control effectiveness; maximum design or rated capacity; other design data as appropriate including any available source test information and manufacturer's design/repair/maintenance manual; and

3. A monthly log of hours of operation including notation of any control equipment breakdowns, upsets, repairs, or maintenance and any other deviations from design parameters.

24.300(8) *Registration and reporting requirements.*

a. Duty to apply. Any person who owns or operates a source otherwise required to obtain a Title V operating permit and that would be eligible for an operating permit by rule for small sources must either register for an operating permit by rule for small sources or apply for a Title V operating permit. Any source determined not to be eligible for an operating permit by rule for small sources, and operating without a valid Title V operating permit, shall be subject to enforcement action for operation without a Title V operating permit, except as provided for in the application shield provisions contained in 567—24.104(455B). For each source registering for an operating permit by rule for small sources, the owner or operator or designated representative, where applicable, shall present or mail to the Air Quality Bureau, Iowa Department of Natural Resources, 6200 Park Avenue, Suite 200, Des Moines, Iowa 50312, one original and one copy of a timely and complete registration form in accordance with this rule.

(1) Timely registration. Each source registering for an operating permit by rule for small sources shall submit a registration form:

1. By August 1, 1996, if the source became subject to 567—24.101(455B) on or before August 1, 1995, unless otherwise required to obtain a Title V permit under 567—24.101(455B).

2. Within 12 months of becoming subject to 567—24.101(455B) (the requirement to obtain a Title V operating permit) for a new source or a source that would otherwise become subject to the Title V permit requirement after August 1, 1995.

(2) Complete registration form. To be deemed complete, the registration form must provide all information required pursuant to 24.300(8)*"b."*

(3) Duty to supplement or correct registration. Any registrant who fails to submit any relevant facts or who has submitted incorrect information in an operating permit by rule for small sources registration shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, the registrant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete registration.

(4) Certification of truth, accuracy, and completeness. Any registration form, report, or supplemental information submitted pursuant to these rules shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required

under these rules shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

b. At the time of registration for an operating permit by rule for small sources each owner or operator of a stationary source shall submit to the department a standard registration form and required attachments. To register for an operating permit by rule for small sources, applicants shall complete the registration form and supply all information required by the filing instructions. The information submitted must be sufficient to evaluate the source, its registration, and predicted actual emissions from the source and to determine whether the source is subject to the exceptions listed in 24.300(3). The standard registration form and attachments shall require that the following information be provided:

(1) Identifying information, including company name and address (or plant or source name if different from the company name), owner's name and responsible official, and telephone number and names of plant site manager or contact;

(2) A description of source processes and products;

(3) The following emissions-related information shall be submitted to the department on the standard registration form:

1. The total actual emissions of each regulated air pollutant. Actual emissions shall be reported for one contiguous 12-month period within the 18 months preceding submission of the registration to the department;

2. Identification and description of each emission unit with the potential to emit a regulated air pollutant;

3. Identification and description of air pollution control equipment;

4. Limitations on source operations affecting emissions or any work practice standards, where applicable, for all regulated pollutants;

5. Fugitive emissions sources shall be included in the registration form in the same manner as stack emissions if the source is one of the source categories defined as a stationary source category in rule 567—24.100(455B);

(4) Requirements for certification. Facilities that claim to meet the requirements set forth in this rule to qualify for an operating permit by rule for small sources must submit to the department, with a complete registration form, a written statement as follows:

"I certify that all equipment at the facility with a potential to emit any regulated pollutant is included in the registration form, and submitted to the department as required in 24.300(8)*"b."* I understand that the facility will be deemed to have been granted an operating permit by rule for small sources under the terms of 567—24.300(455B) only if all applicable requirements of 567—24.300(455B) are met and if the registration is not denied by the director under 567—24.300(11). This certification is based on information and belief formed after reasonable inquiry; the statements and information in the document are true, accurate, and complete." The certification must be signed by one of the following individuals:

For corporations, a principal executive officer of at least the level of vice president, or a responsible official as defined in 567—24.100(455B).

For partnerships, a general partner.

For sole proprietorships, the proprietor.

For municipal, state, county, or other public facilities, the principal executive officer or the ranking elected official.

24.300(9) *Construction permits issued after registration for an operating permit by rule for small sources.* This rule shall not relieve any stationary source from complying with requirements pertaining to any otherwise applicable construction permit, or to replace a condition or term of any construction permit, or any provision of a construction permitting program. This does not preclude issuance of any construction permit with conditions or terms necessary to ensure compliance with this rule.

a. If the issuance of a construction permit acts to make the source no longer eligible for an operating permit by rule for small sources, the source shall, within 12 months of issuance of the construction permit, submit an application for a Title V operating permit.

b. If the issuance of a construction permit does not prevent the source from continuing to be eligible to operate under an operating permit by rule for small sources, the source shall, within 30 days of issuance of a construction permit, provide to the department the information as listed in 24.300(8) *"b"* for the new or modified source.

24.300(10) *Violations.*

a. Failure to comply with any of the applicable provisions of this rule shall constitute a violation of this rule.

b. A stationary source subject to this rule shall be subject to applicable federal requirements for a major source, including 567—24.101(455B) through 567—24.116(455B) when the conditions specified in either subparagraph (1) or (2) below, occur:

(1) Commencing on the first day following every 12-month rolling period in which the stationary source exceeds a limit specified in 24.300(6), or

(2) Commencing on the first day following every 12-month rolling period in which the owner or operator cannot demonstrate that the stationary source is in compliance with the limits in 24.300(6).

24.300(11) *Suspension, termination, and revocation of an operating permit by rule for small sources.*

a. Registrations may be terminated, modified, revoked, or reissued for cause. The following examples shall be considered cause for the suspension, modification, revocation, or reissuance of an operating permit by rule for small sources:

(1) The director has reasonable cause to believe that the operating permit by rule for small sources was obtained by fraud or misrepresentation.

(2) The person registering for the operating permit by rule for small sources failed to disclose a material fact required by the registration form or the rules applicable to the operating permit by rule for small sources, of which the applicant had or should have had knowledge at the time the registration form was submitted.

(3) The terms and conditions of the operating permit by rule for small sources have been or are being violated.

(4) The owner or operator of the source has failed to pay an administrative, civil or criminal penalty for violations of the operating permit by rule for small sources.

b. If the director suspends, terminates, or revokes an operating permit by rule for small sources under this rule, the notice of such action shall be served on the applicant by certified mail, return receipt requested. The notice shall include a statement detailing the grounds for the action sought, and the proceeding shall in all other respects comply with the requirements of 561—7.16(17A,455A).

24.300(12) *Change of ownership.* The new owner shall notify the department in writing no later than 30 days after the change of ownership of equipment covered by an operating permit by rule for small sources. The notification to the department shall be mailed to Air Quality Bureau, Iowa Department of Natural Resources, 6200 Park Avenue, Suite 200, Des Moines, Iowa 50312, and shall include the following information:

a. The date of ownership change; and

b. The name, address, and telephone number of the responsible official, the contact person, and the owner of the equipment both before and after the change of ownership.

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24; Editorial change: IAC Supplement 7/23/25]

These rules are intended to implement Iowa Code sections 455B.133 and 455B.134.

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[Editorial change: IAC Supplement 7/23/25]

CHAPTER 15
GENERAL LICENSE REGULATIONS

[Prior to 12/31/86, see Conservation Commission[290] Chs 17, 66, 67, and 75]

Chapter rescission date pursuant to Iowa Code section 17A.7: 6/5/29

571—15.1(483A) Scope. The purpose of this chapter is to provide rules for license fees, sales, refunds and administration; implement the wildlife violator compact and penalties for multiple offenses; and administer special licenses available for hunting and fishing.

[**ARC 7893C**, IAB 5/1/24, effective 6/5/24]

DIVISION I
LICENSE SALES, REFUNDS AND ADMINISTRATION

571—15.2(483A) Definitions. For the purposes of this division, the following definitions shall apply, in addition to those found in Iowa Code chapter 483A:

"Administration fee" means the fee collected by the department to pay a portion of the cost of administering the sale of licenses through electronic means.

"Immediate family member" means the spouse, a domestic partner, and all minor children of the licensee or person seeking a license.

"Licensee" means a person who applies for and receives a license under these rules from the department.

"Retail" means the sale of goods or commodities to the ultimate consumer, as opposed to the sale of goods or commodities for further distribution or processing.

"Wholesale" means the sale of goods or commodities for resale by a retailer, as opposed to the sale of goods or commodities to the ultimate consumer.

[**ARC 7893C**, IAB 5/1/24, effective 6/5/24]

571—15.3(483A) Form of licenses. Every license shall contain a general description of the licensee. At the time of application, the applicant for a license must provide the applicant's date of birth and either a social security number or a valid Iowa driver's license number. The license shall be signed by the applicant and shall clearly indicate the privilege granted.

[**ARC 7893C**, IAB 5/1/24, effective 6/5/24]

571—15.4(483A) Administration fee. An administration fee of $1.50 per privilege purchased shall be collected from the purchaser at the time of purchase, except upon the issuance of free landowner deer and turkey hunting licenses, free annual hunting and fishing licenses, free annual fishing licenses, free group home fishing licenses, and boat registrations, renewals, transfers, and duplicates. An administrative fee of $3.65 will be collected from the purchaser at the time of boat registration, renewal, transfer, and duplicate purchases.

[**ARC 7893C**, IAB 5/1/24, effective 6/5/24]

571—15.5(483A) Electronic license sales.

15.5(1) *Designation as license agent.* The director may designate a retail business establishment, an office of a governmental entity, or a nonprofit corporation as an agent of electronically issued licenses in accordance with the provisions of this rule.

15.5(2) *Application.* Application forms to sell electronically issued licenses may be secured by a written or in-person request to the Licensing Section, Department of Natural Resources, 6200 Park Avenue, Suite 200, Des Moines, Iowa 50312. The following information must be provided on the application form:

a. The legal name, address, and telephone number of the entity applying for designation;

b. The hours open for business and general service to the public;

c. A brief statement of the nature of the business or service provided by the applicant;

d. Type of Internet connection (dial up or high speed) used for accessing the electronic licensing system; and

e. A signature by an owner, partner, authorized corporate official, or public official of the entity applying for designation.

15.5(3) *Application review.*

a. The department shall approve or deny the application to sell electronically issued licenses based upon the following criteria:

(1) The need for a license agent in the area;

(2) The hours open for business or general service to the public;

(3) The potential volume of license sales;

(4) The apparent financial stability and longevity of the applicant;

(5) The number of point-of-sale (POS) terminals available to the department; and

(6) Type of Internet connection (dial up or high speed) used for accessing the electronic licensing system.

b. If necessary, the department may utilize a waiting list for license agent designation. The order of priority for the waiting list will be determined by the time of submittal of a complete and correct application and receipt of the required security deposit, as outlined in the application.

15.5(4) *Issuance of electronic licensing equipment.* Upon the director's approval of an application under this rule and designation of a license agent for electronic license sales, the equipment necessary to conduct such sales will be issued to the license agent by the department subject to the following terms and conditions:

a. Prior to the issuance of the electronic licensing equipment, the approved license agent shall furnish to the department an equipment security deposit in an amount to be determined by the department.

b. Prior to the issuance of the electronic licensing equipment, the approved license agent shall enter into an electronic license sales agreement with the department which sets forth the terms and conditions of such sales, including the authorized amounts to be retained by the license agent.

c. Prior to the issuance of the electronic licensing equipment, the approved license agent shall furnish to the department a signed authorization agreement for electronic funds transfer pursuant to subrule 15.5(5).

d. Electronic licensing equipment and supplies must be stored in a manner to provide protection from damage, theft, and unauthorized access. Any damage to or loss of equipment or loss of moneys derived from license sales is the responsibility of the license agent.

e. Upon termination of the agreement by either party, all equipment and supplies, as outlined in the agreement, must be returned to the department. Failure to return equipment and supplies in a usable condition, excluding normal wear and tear, will result in the forfeiture of deposit in addition to any other remedies available to the department by law.

15.5(5) *License fees.* All moneys received from the sale of licenses, less and except the agreed-upon service fee, must be immediately deposited and held in trust for the department.

a. All license agents must furnish to the department a signed authorization agreement for electronic funds transfer authorizing access by the department to a bank account for electronic transfer of license fees received by the license agent.

b. The amount of money due for accumulated sales will be drawn electronically by the department on a weekly basis. The license agent shall be given notice of the amount to be withdrawn at least two business days before the actual transfer of funds occurs. The license agent is responsible for ensuring that enough money is in the account to cover the amount due.

c. License agents may accept or decline payment in any manner other than cash, such as personal checks or credit cards, at their discretion. Checks or credit payments must be made payable to the license agent, not to the department. The license agent shall be responsible for ensuring that the

license fee is deposited in the electronic transfer account, regardless of the payment or nonpayment status of any check accepted by the license agent.

15.5(6) *Termination.* Upon the termination of the electronic license sales agreement pursuant to subrule 15.5(7) or 15.5(8), the department may disconnect or otherwise block the license agent's access to the electronic licensing system.

15.5(7) *Equipment shut down and termination.* The department reserves the right to disconnect the license agent's access to the electronic licensing system or terminate the license agent's electronic license sales agreement for cause. Cause shall include, but is not limited to, the following:

a. Failing to deposit license fees into the electronic transfer account in a sum sufficient to cover the amount due for accumulated sales;

b. Charging or collecting any fees in excess of those authorized by law;

c. Discriminating in the sale of a license in violation of state or federal law;

d. Knowingly making a false entry concerning any license sold or knowingly issuing a license to a person who is not eligible for the license issued;

e. Using license sale proceeds, other than the service fee, for personal or business purposes;

f. Disconnecting or blocking access to the electronic licensing system for a period of 30 days or more; or

g. Violating any of these rules or the terms of the electronic license sales agreement. Repeated violations of these rules may result in termination of the license agent's electronic license sales agreement.

15.5(8) *Voluntary termination.* A license agent may terminate its designation and the electronic license sales agreement at its discretion by providing written notice to the department. Voluntary termination shall become effective 30 days after the department's receipt of notice.

[**ARC 7893C**, IAB 5/1/24, effective 6/5/24; Editorial change: IAC Supplement 7/23/25]

571—15.6(483A) Refund or change requests for special deer and turkey hunting licenses and general licenses.

15.6(1) *Death of licensee.* The fee for a deer or turkey hunting license will be refunded to the licensee's estate when a licensee's death predates the season for which the license was issued and a written request from the licensee's spouse, executor or estate administrator is received by the department within 90 days of the last date of the season for which the license was issued.

15.6(2) *Military duty.* The fee for a deer or turkey hunting license will be refunded if the licensee is a member of the armed forces and is either deployed or activated for a national or state emergency during the season for which the license was issued. A written refund request must be received by the department within 90 days of the last date of the season for which the license was issued.

15.6(3) *License changes.* The department will attempt to change a licensee's choice of season or type of license if a written request is received by the licensing section prior to the start of the established season.

15.6(4) *Other refund requests.* Except as previously described in this rule, the department will not issue refunds for any licenses.

[**ARC 7893C**, IAB 5/1/24, effective 6/5/24]

571—15.7(483A) Proof of residency required. The department shall have the authority to require persons applying for or who have received resident licenses to provide additional information to determine the person's principal and primary residence or domicile and residency status. Whether a person was issued resident or nonresident licenses by the department in previous years shall not be a determining factor of residency. Persons required to provide additional information under this rule shall be notified in writing by the department and shall have 60 days to submit all required information to the department.

[**ARC 7893C**, IAB 5/1/24, effective 6/5/24]

571—15.8(483A) Residency status determination. Upon receipt of information requested from the person, the department may determine whether the person is a resident or a nonresident for purposes of these rules and Iowa Code chapter 483A. The department shall provide the person with written notice of the finding.

[**ARC 7893C**, IAB 5/1/24, effective 6/5/24]

571—15.9(483A) Suspension or revocation of licenses when nonresidents obtain resident licenses.

15.9(1) *Suspension or revocation of license.* If the department finds that a nonresident has obtained a resident license, the department shall provide written notice of intent to revoke and suspend hunting, fishing, or trapping licenses as provided in 571—Chapter 7. If the person requests a hearing, it shall be conducted in accordance with 571—Chapter 7.

15.9(2) *Dates of suspension or revocation.* The suspension or revocation shall be effective upon failure of the person to request a hearing within 30 days of the notice described in subrule 15.9(1) or upon issuance of an order affirming the department's intent to suspend or revoke the license after the hearing. The person shall immediately surrender all licenses and shall not apply for or obtain new licenses for the full term of the suspension or revocation.

[**ARC 7893C**, IAB 5/1/24, effective 6/5/24]

571—15.10(483A) Licenses—fees. Except as otherwise provided by law, a person shall not fish, trap, hunt, harvest, pursue, catch, kill, take in any manner, use, have possession of, sell, or transport all or a part of any wild animal, bird, game, turtle, or fish, the protection and regulation of which is desirable for the conservation of resources of the state, without first obtaining a license for that purpose and paying a fee as follows:

15.10(1) *Residents.*

a. Fishing license, annual — $20.
b. Fishing license, three-year — $60.
c. Fishing license, seven-day — $13.50.
d. Fishing license, one-day — $8.50.
e. Third-line fishing permit, annual — $12.
f. Fishing license, lifetime, 65 years of age or older — $59.50.
g. Fishing license, lifetime, disabled veteran or POW — $5.
h. Paddlefish fishing license, annual — $23.50.
i. Trout fishing fee — $12.50.
j. Boundary waters sport trotline license, annual — $24.
k. Hunting license, annual — $20.
l. Hunting license, annual, including the wildlife habitat fee — $33.
m. Hunting license, three-year, including the wildlife habitat fee — $99.
n. Hunting license, lifetime, 65 years of age or older — $59.50.
o. Combination hunting and fishing license, annual, including the wildlife habitat fee — $53.
p. Combination hunting and fishing license, lifetime, disabled veteran or POW — $5.
q. Deer hunting license — $30.
r. First antlerless deer license — $25.50.
s. Additional antlerless deer license — $12.
t. Wildlife habitat fee — $13.
u. Migratory game bird fee — $10.
v. Wild turkey hunting license — $26.50.
w. Fur harvester license, annual — $24.
x. Fur harvester license, annual, including the wildlife habitat fee — $37.
y. Fur harvester license, annual, under 16 years of age — $5.50.
z. Fur harvester license, lifetime, 65 years of age or older — $59.50.
aa. Fur dealer license, annual — $264.

bb. Aquaculture unit license, annual — $30.
cc. Retail bait dealer license, annual — $36.
dd. Wholesale bait dealer license, annual — $146.50.
ee. Game breeder license, annual — $18.
ff. Taxidermy license, annual — $18.
gg. Trout fishing license, lifetime, 65 years of age or older — $63.
hh. Trout fishing license, lifetime, disabled veteran — $63.
ii. Fishing license, annual, veteran — $5.
jj. Combination hunting and fishing license, annual, veteran — $5.

15.10(2) *Nonresidents.*

a. Fishing license, annual — $46.
b. Fishing license, seven-day — $35.50.
c. Fishing license, three-day — $18.50.
d. Fishing license, one-day — $10.
e. Third-line fishing permit, annual — $12.
f. Paddlefish fishing license, annual — $47.
g. Trout fishing fee — $15.50.
h. Boundary waters sport trotline license, annual — $47.50.
i. Hunting license, annual — $129.
j. Hunting license, annual, including the wildlife habitat fee — $142.
k. Hunting license, annual, under 18 years of age — $30.
l. Hunting license, annual, under 18 years of age, including the wildlife habitat fee — $43.
m. Hunting license, five-day (not applicable to deer or wild turkey seasons) — $75.
n. Hunting license, five-day, including the wildlife habitat fee (not applicable to deer or wild turkey seasons) — $88.
o. Deer hunting license, antlered or any-sex deer — $345.50.
p. Deer hunting license, antlerless-deer-only, required with the purchase of an antlered or any-sex deer hunting license — $146.50.
q. Deer hunting license, antlerless-deer-only — $263.50.
r. Preference point issued under Iowa Code section 483A.7(3)*"b"* or 483A.8(3)*"e"* — $58.50.
s. Holiday deer hunting license issued under Iowa Code section 483A.8(6), antlerless-deer-only — $88.
t. Wildlife habitat fee — $13.
u. Migratory game bird fee — $10.
v. Wild turkey hunting license, annual — $117.
w. Fur harvester license, annual — $232.
x. Fur harvester license, annual, including the wildlife habitat fee — $245.
y. Fur dealer license, annual — $586.50.
z. Fur dealer license, one-day, one location — $292.50.
aa. Location permit for fur dealer — $66.
bb. Aquaculture unit license, annual — $66.
cc. Retail bait dealer license, annual — $146.50.
dd. Wholesale bait dealer license, annual — $292.50.
ee. Game breeder license, annual — $30.50.
ff. Taxidermy license, annual — $30.50.

[**ARC 7893C**, IAB 5/1/24, effective 6/5/24]

571—15.11 to **15.15** Reserved.

DIVISION II
MULTIPLE OFFENDER AND WILDLIFE VIOLATOR COMPACT

571—15.16(481A,481B,482,483A,484A,484B) Multiple offenders—revocation and suspension of hunting, fishing, and trapping privileges from those persons who are determined to be multiple offenders.

15.16(1) *Definitions.* For the purpose of this rule, the following definitions shall apply:

"Department" means the Department of Natural Resources, 6200 Park Avenue, Suite 200, Des Moines, Iowa 50312.

"Multiple offender" means any person who has equaled or exceeded five points for convictions in Iowa Code chapters 481A, 481B, 482, 483A, 484A, 484B, and 716 during a consecutive three-year period as provided in subrule 15.16(3).

"Revocation" means the taking or cancellation of an existing license or privilege.

"Suspension" means to bar or exclude one from applying for or acquiring licenses or privileges for future seasons.

15.16(2) *Recordkeeping procedures.* For the purpose of administering this rule, it shall be the responsibility of the clerk of district court for each county to deliver, on a monthly basis, disposition reports of each charge filed under Iowa Code chapters 456A, 481A, 481B, 482, 483A, 484A, 484B, and 716 to the department. Dispositions and orders of the court of all cases filed on the chapters listed in this subrule shall be sent to the department regardless of the jurisdiction or the department of the initiating officer.

a. License suspensions. In the event of a license suspension pursuant to Iowa Code section 481A.133, the clerk of court shall immediately notify the department.

b. Entering information. Upon receipt of the disposition information from the clerks of court, the department will, on a monthly basis, enter this information into a licensed system that is directly accessible to all law enforcement agencies of the state.

c. Disposition report information. Information from the disposition report that will be entered into an electronic license system which includes but may not be limited to the following:

(1) County of violation,
(2) Name of defendant,
(3) Address of defendant,
(4) Social security or driver's license number,
(5) Date of birth,
(6) Race,
(7) Sex,
(8) Height,
(9) Weight,
(10) Date and time of violation,
(11) Charge and Iowa Code section,
(12) Officer name/C-number who filed charge, and
(13) Date of conviction.

15.16(3) *Point values assigned to convictions.* Point values for convictions shall be assessed as stated in this subrule. Multiple citations and convictions of the same offense will be added as separate convictions:

a. Convictions of the following offenses shall have a point value of three:

(1) Illegal sale of birds, game, fish, or bait.
(2) More than the possession or bag limit for any species of game or fish.
(3) Hunting, trapping, or fishing during the closed season.
(4) Hunting by artificial light.
(5) Hunting from aircraft, snowmobiles, all-terrain vehicles or motor vehicle.

(6) Any violation involving threatened or endangered species.
(7) Any violations of Iowa Code chapter 482, except Iowa Code sections 482.6 and 482.14.
(8) Any violation of nonresident license requirements.
(9) No fur dealer license (resident or nonresident).
(10) Illegal taking or possession of protected nongame species.
(11) The unlawful taking of any fish, turtle, game, or fur-bearing animal.
(12) Illegal taking, possession, or transporting of a raptor.
(13) Hunting, fishing, or trapping while under license suspension or revocation.
(14) Illegal removal of fish, minnows, frogs, or other aquatic wildlife from a state fish hatchery.
(15) Any fur dealer violations except failure to submit a timely annual report.
(16) Any resident or nonresident making false claims to obtain a license.
(17) Illegal taking or possession of hen pheasant.
(18) Applying for or acquiring a license while under suspension or revocation.
(19) Taking game from the wild—see Iowa Code section 481A.61.
(20) Violation of Iowa Code sections 483A.27(7) and 483A.27A.
(21) Any violation of Iowa Code section 716.8 while hunting, fishing, or trapping.

b. Convictions of the following offenses shall have a point value of two:
(1) Hunting, fishing, or trapping on a refuge.
(2) Illegal possession of fur, fish, turtle, or game.
(3) Chasing wildlife from or disturbing dens.
(4) Trapping within 200 yards of an occupied building or private drive.
(5) Possession of undersized or oversized fish.
(6) Shooting within 200 yards of occupied building or feedlot.
(7) No valid resident license relating to deer, turkey, or paddlefish.
(8) Illegal importation of fur, fish, or game.
(9) Failure to exhibit catch to an officer.
(10) Trapping or poisoning game birds, or poisoning game animals.
(11) Violations pertaining to private fish hatcheries and aquaculture.
(12) Violations of the fur dealers reporting requirements.
(13) Violation of Iowa Code section 481A.126 pertaining to taxidermy.
(14) Loaded gun in a vehicle.
(15) Attempting to unlawfully take any fish, turtle, game, or fur-bearing animals.
(16) Attempting to take game before or after legal shooting hours.
(17) Wanton waste of fish, game or fur-bearing animals.
(18) Illegal discharge of a firearm pursuant to Iowa Code section 481A.54.
(19) Any violation of Iowa Code section 482.14 pertaining to commercial fishing.
(20) Failure to tag deer, turkey, or paddlefish.
(21) Applying for or obtaining more than the legal number of licenses allowed for deer or turkey.
(22) Illegal transportation of game, fish or furbearers.
(23) Violation of Iowa Code section 483A.27, except Iowa Code section 483A.27(7).

c. All other convictions of provisions in Iowa Code chapters 481A, 481B, 482, 483A, 484A, and 484B shall have a point value of one.

15.16(4) *Length of suspension or revocation.*

a. The term of license suspension or revocation shall be determined by the total points accumulated during any consecutive three-year period, according to the following: 5 points through 8 points is one year, 9 points through 12 points is two years, and 13 points or over is three years.

b. Any person convicted of a violation of any provision of Iowa Code chapters 481A, 481B, 482, 483A, 484A, and 484B under the circumstances described in Iowa Code section 481A.135(2) shall have an additional suspension of one year. Any person convicted of a violation of any provision of Iowa Code chapters 481A, 481B, 482, 483A, 484A, and 484B under the circumstances described in Iowa Code section 481A.135(3) shall have an additional suspension of two years. Any person

convicted of a violation of any provision of Iowa Code chapters 481A, 481B, 482, 483A, 484A, and 484B under the circumstances described in Iowa Code section 481A.135(4) shall have an additional suspension of three years. The foregoing provisions apply whether or not a person has been found guilty of a simple misdemeanor, serious misdemeanor or aggravated misdemeanor pursuant to Iowa Code sections 481A.135(2), 481A.135(3) and 481A.135(4). If a magistrate suspends the privilege of a defendant to procure another license and the conviction contributes to the accumulation of a point total that requires the department to initiate a suspension, the term of suspension shall run consecutively up to a maximum of five years. After a five-year suspension, remaining time will be calculated at a concurrent rate.

15.16(5) *Points applicable toward suspension or revocation.* If a person pleads guilty or is found guilty of an offense for which points have been established by this rule but is given a suspended sentence or deferred sentence by the court as defined in Iowa Code section 907.1, the assigned points will become part of that person's violation record and apply toward a department suspension or revocation.

15.16(6) *Notification of intent to suspend and revoke license.* If a person reaches a total of five or more points, the department shall provide written notice of intent to revoke and suspend hunting, fishing, or trapping licenses as provided in 571—Chapter 7. If the person requests a hearing, it shall be conducted in accordance with 571—Chapter 7.

15.16(7) *Dates of suspension or revocation.* The suspension or revocation shall be effective upon failure of the person to request a hearing within 30 days of the notice described in subrule 15.16(6) or upon issuance of an order affirming the department's intent to suspend or revoke the license after the hearing. The person shall immediately surrender all licenses and shall not apply for or obtain new licenses for the full term of the suspension or revocation.

[**ARC 7893C**, IAB 5/1/24, effective 6/5/24; Editorial change: IAC Supplement 7/23/25]

571—15.17(456A) Wildlife violator compact. The department has entered into the wildlife violator compact (the compact) with other states for the uniform enforcement of license suspensions. The compact, a copy of which may be obtained by contacting the department's law enforcement bureau, is adopted herein by reference. The procedures set forth in this rule shall apply to license suspensions pursuant to the wildlife violator compact.

15.17(1) *Definitions.* For purposes of this rule, the following definitions shall apply:

"Compliance" with respect to a citation means the act of answering a citation through an appearance in a court or through the payment of all fines, costs, and surcharges, if any.

"Department" means the Iowa department of natural resources.

"Issuing state" means a participating state that issues a fish or wildlife citation to a person.

"Participating state" means any state which enacts legislation to become a member of the wildlife violator compact. Iowa is a participating state pursuant to Iowa Code section 456A.24(14).

15.17(2) *Suspension of licenses for noncompliance.* Upon the receipt of a valid notice of failure to comply, as defined in the compact, the department shall issue a notice of suspension to the Iowa resident. The notice of suspension shall:

a. Indicate that all department-issued hunting (including furbearer) or fishing licenses shall be suspended, effective 30 days from the receipt of the notice, unless the department receives proof of compliance.

b. Inform the violator of the facts behind the suspension with special emphasis on the procedures to be followed in resolving the matter with the court in the issuing state. Accurate information in regard to the court (name, address, telephone number) must be provided in the notice of suspension.

c. Notify the license holder of the right to appeal the notice of suspension within 30 days of receipt. Said appeal shall be conducted pursuant to 571—Chapter 7 but shall be limited to the issues of whether the person so notified has a pending charge in the issuing state, whether the person has

previously received notice of the violation from the issuing state, and whether the pending charge is subject to a license suspension for failure to comply pursuant to the terms of the compact.

d. Notify the license holder that, prior to the effective date of suspension, a person may avoid suspension through an appearance in the court with jurisdiction over the underlying violations or through the payment of all fines, costs, and surcharges associated with the violations.

e. Indicate that, once a suspension has become effective, the suspension may only be lifted upon the final resolution of the underlying violations.

15.17(3) *Reinstatement of licenses.* Any license suspended pursuant to this rule may be reinstated upon the receipt of an acknowledgement of compliance from the issuing state, a copy of a court judgment, or a certificate from the court with jurisdiction over the underlying violations and the payment of applicable Iowa license fees.

15.17(4) *Issuance of notice of failure to comply.* When a nonresident is issued a citation by the state of Iowa for violations of any provisions under the jurisdiction of the natural resource commission which is covered by the suspension procedures of the compact and fails to timely resolve said citation by payment of applicable fines or by properly contesting the citation through the courts, the department shall issue a notice of failure to comply.

a. The notice of failure to comply shall be delivered to the violator by certified mail, return receipt requested, or by personal service.

b. The notice of failure to comply shall provide the violator with 14 days to comply with the terms of the citation. The violator may avoid the imposition of the suspension by answering a citation through an appearance in a court or through the payment of all fines, costs, and surcharges, if any.

c. If the violator fails to achieve compliance, as defined in this rule, within 14 days of receipt of the notice of failure to comply, the department shall forward a copy of the notice of failure to comply to the home state of the violator.

15.17(5) *Issuance of acknowledgement of compliance.* When a person who has previously been issued a notice of failure to comply achieves compliance, as defined in this rule, the department shall issue an acknowledgement of compliance to the person who was issued the notice of failure to comply.

15.17(6) *Reciprocal recognition of suspensions.* Upon receipt of notification from a state that is a member of the wildlife violator compact that the state has suspended or revoked any person's hunting or fishing license privileges, the department shall:

a. Enter the person's identifying information into the records of the department.

b. Deny all applications for licenses to the person for the term of the suspension or until the department is notified by the suspending state that the suspension has been lifted.

[**ARC 7893C**, IAB 5/1/24, effective 6/5/24]

571—15.18 to **15.20** Reserved.

DIVISION III
SPECIAL LICENSES

571—15.21(483A) Fishing license exemption for patients of substance abuse facilities.

15.21(1) *Definition.* For the purpose of this rule, the definition of "substance abuse facility" is identical to the definition of "facility" in Iowa Code section 125.2(8).

15.21(2) *Procedure.* Each substance abuse facility may apply to the department of natural resources for a license exempting patients from the fishing license requirement while fishing as a supervised group as follows:

a. Application shall be made on a form provided by the department and shall include the name, address and telephone number of the substance abuse facility including the name of the contact person. A general description of the type of services or care offered by the facility must be included as well as the expected number of participants in the fishing program and the water bodies to be fished.

b. A license will be issued to qualifying substance abuse facilities and will be valid for all patients under the care of that facility.

c. Patients of the substance abuse facility must be supervised by an employee of the facility while fishing without a license pursuant to this rule. An employee of the substance abuse facility must have the license in possession while supervising the fishing activity of patients.

d. Notwithstanding the provisions of this rule, each employee of the substance abuse facility must possess a valid fishing license while participating in fishing.

[**ARC 7893C**, IAB 5/1/24, effective 6/5/24]

571—15.22(481A) Authorization to use a crossbow for deer and turkey hunting during the bow season by handicapped individuals.

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

"Bow and arrow" means a compound, recurve, or longbow.

"Crossbow" means a weapon consisting of a bow mounted transversely on a stock or frame and designed to fire a bolt, arrow, or quarrel by the release of the bow string, which is controlled by a mechanical or electric trigger and a working safety.

"Handicapped" means a person possessing a physical impairment of the upper extremities that makes a person physically incapable of shooting a bow and arrow. This includes difficulty in lifting and reaching with arms as well as difficulty in handling and fingering.

15.22(2) *Application for crossbow permit.* An individual requesting use of a crossbow for hunting deer or turkey must submit an application for a crossbow permit on forms provided by the department. The application must include a statement signed by the applicant's physician declaring that the individual is not physically capable of shooting a bow and arrow. The physician shall be a licensed physician, osteopathic physician, physician assistant, or advanced registered nurse practitioner. A first-time applicant must submit the crossbow permit application no later than ten days before the last day of the license application period for the season the person intends to hunt.

15.22(3) *Crossbow permit—issuance and use.* Approved applicants will be issued a permit authorizing the individual to hunt deer and turkey with a crossbow. The crossbow permit must be carried with the license and on the person while hunting deer and turkey and must be exhibited to a conservation officer upon request.

15.22(4) *Validity and forfeiture of permit.* A permit authorizing the use of a crossbow for hunting deer and turkey will be valid for as long as the person is incapable of shooting a bow and arrow. If a conservation officer has probable cause to believe the person's handicapped status has improved, making it possible for the person to shoot a bow and arrow, the department may, upon the officer's request, require the person to obtain in writing a current physician's statement. The physician shall be a licensed physician, osteopathic physician, physician assistant, or advanced registered nurse practitioner.

If the person is unable to obtain a current physician's statement confirming that the person is incapable of shooting a bow and arrow, the department may initiate action to revoke the permit pursuant to 571—Chapter 7.

15.22(5) *Restrictions.* Crossbows equipped with pistol grips and designed to be fired with one hand are illegal for taking or attempting to take deer or turkey. All projectiles used in conjunction with a crossbow for deer hunting must be equipped with a broadhead.

[**ARC 7893C**, IAB 5/1/24, effective 6/5/24]

571—15.23(483A) Free hunting and fishing license for low-income persons 65 years of age and older or low-income persons who are permanently disabled.

15.23(1) *Purpose.* Pursuant to Iowa Code section 483A.24(15), the department of natural resources will issue a free annual combination hunting and fishing license to low-income persons who meet the age status or permanently disabled status as defined.

15.23(2) *Definitions.*

"Age status" means a person who has achieved the sixty-fifth birthday.

"Low-income person" means a person who is a recipient of a program administered by the state department of human services for persons who meet low-income guidelines.

"Permanently disabled" means a person who meets the definition in Iowa Code section 483A.4.

15.23(3) *Procedure.* Each person shall apply to the department of natural resources for a license as follows:

a. Application shall be made on a form provided by the department and shall include the name, address, height, weight, color of eyes and hair, date of birth, and gender of the applicant. In addition, applicants shall include a copy of an official document such as a birth certificate if claiming age status, or a copy of an award letter from the Social Security Administration or private pension plan if claiming permanent disabled status. The application shall include an authorization allowing the department of health and human services to verify the applicant's household income if proof of income is provided through the department of health and human services.

b. The free annual hunting and fishing combination license will be issued by the department upon verification of program eligibility. The license issued under this rule will be valid until January 10 of the subsequent year. Proof of eligibility must be submitted each year in order to obtain a free license.

c. A person whose income falls below the federal poverty guidelines may apply for this license by providing either of the following:

(1) A current Notice of Decision letter. For purposes of this rule, a "current Notice of Decision letter" shall mean a letter from the department of health and human services dated in the month the application is received or dated in the five months immediately preceding the month the application is received that describes the applicant's monthly or annual household income.

(2) If a person does not have a Notice of Decision letter as described in subparagraph 15.23(3) *"c"*(1), a document shall be provided that states that the applicant's annual income does not exceed the federal poverty limit for the current year and lists income from all sources, including but not limited to any wages or compensation, social security, retirement income, dividends and interest, cash gifts, rents and royalties, or other cash income. In addition, the applicant shall provide documentation of such income by submitting a copy of the applicant's most recently filed state or federal income tax return to the department. In the event an applicant does not have a tax return that was filed within the last year because the applicant's income level does not require the filing of a tax return, the applicant shall so notify the department, shall provide to the department bank statements, social security statements or other relevant income documentation identified by the department, and shall meet with the department to verify income eligibility under this rule.

Federal poverty guidelines are published in February of each year and will be the income standard for applicants from that time until the guidelines are available in the subsequent year. The guidelines will be shown on the application and will be available upon request from the department.

15.23(4) *Revocation.* Any license issued pursuant to rule 571—15.23(483A) may be revoked, in whole or in part, by written notice, if the director determines that a license holder had provided false information to obtain a license under this chapter or has violated any provision of this chapter and that continuation of the license is not in the public interest. Such revocation shall become effective upon a date specified in the notice. The notice shall state the extent of the revocation and the reasons for the action. Within 30 days following receipt of the notice of a revocation, the license holder may file a notice of appeal, requesting a contested case hearing pursuant to 561—Chapter 7. The notice of appeal shall specify the basis for requesting that the license be reinstated.

[**ARC 7893C**, IAB 5/1/24, effective 6/5/24]

571—15.24(483A) Free annual fishing license for persons who have severe physical or mental disabilities.

15.24(1) *Purpose.* Pursuant to Iowa Code section 483A.24(9), the department of natural resources will issue a free annual fishing license to Iowa residents 16 or more years of age who have

severe mental or physical disabilities who meet the definition of "severe mental disability" or "severe physical disability" in subrule 15.24(2).

15.24(2) *Definitions.* For the purposes of this rule, the following definitions apply:

"Severe mental disability" means a person who has severe, chronic conditions in all of the following areas which:

1. Are attributable to a mental impairment or combination of mental and physical impairments;
2. Result in substantial functional limitations in three or more of the following areas of major life activities: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency;
3. Reflect the person's need for a combination and sequence of services that are individually planned and coordinated; and
4. Requires the full-time assistance of another person to maintain a safe presence in the outdoors.

"Severe physical disability" means a disability that limits or impairs the person's mobility or use of a hand or arm and that requires the full-time assistance of another person or that makes the person dependent on a wheelchair for the person's normal life routine.

15.24(3) *Procedure.* Each person shall apply to the department of natural resources for a license as follows:

a. Application shall be made on a form provided by the department and shall include the name, home address, home telephone number, height, weight, eye and hair color, date of birth, and gender of the applicant and other information as required. The license issued under this rule will be issued by the department upon verification of program eligibility and will be valid until January 10 of the subsequent year. Proof of eligibility must be submitted each year in order to obtain the license.

b. The application shall be certified by the applicant's attending physician with an original signature and, based upon the definition of severe mental disability or severe physical disability as provided for in this rule, declare that the applicant has a severe mental or physical disability. A medical statement from the applicant's attending physician specifying the applicant's type of disability shall be on 8½" x 11" stationery of the attending physician or on paper inscribed with the attending physician's letterhead. For purposes of this rule, the attending physician must be a currently practicing licensed physician, osteopathic physician, physician assistant, or advanced registered nurse practitioner.

15.24(4) *Revocation.* Any license issued pursuant to rule 571—15.24(483A) may be revoked, in whole or in part, by written notice, if the director determines that a license holder had provided false information to obtain a license under this chapter or has violated any provision of this chapter and that continuation of the license is not in the public interest. Such revocation shall become effective upon a date specified in the notice. The notice shall state the extent of the revocation and the reasons for the action. Within 30 days following receipt of the notice of a revocation, the license holder may file a notice of appeal, requesting a contested case hearing pursuant to 561—Chapter 7. The notice of appeal shall specify the basis for requesting that the license be reinstated.

[**ARC 7893C**, IAB 5/1/24, effective 6/5/24]

571—15.25(483A) Transportation tags for military personnel on leave from active duty.

15.25(1) *Military transportation tags for deer and turkey.* The military transportation tag shall include the following information: name, birth date, current address of military personnel; species and sex of animal taken; date of kill; and weapon used. Only conservation officers of the department shall be authorized to issue military transportation tags.

15.25(2) *Annual limit for military transportation tags.* A person receiving a military transportation tag shall be limited to one military deer tag and one military turkey tag annually.

15.25(3) *Regulations apply to military personnel.* With the exception of the license requirement exemption set forth in Iowa Code section 483A.24(7), all hunting and fishing regulations shall apply to active duty military personnel.

[**ARC 7893C**, IAB 5/1/24, effective 6/5/24]

571—15.26(483A) Special nonresident deer and turkey licenses. The commission hereby authorizes the director to issue special nonresident deer and turkey licenses pursuant to the provisions of 561—Chapter 12.

[**ARC 7893C**, IAB 5/1/24, effective 6/5/24]

571—15.27 to **15.39** Reserved.

DIVISION IV
EDUCATION AND CERTIFICATION PROGRAMS

571—15.40(483A) Hunter education program.

15.40(1) This division clarifies the term "hunting license" as used in Iowa Code section 483A.27 in relation to the hunter education course requirement, and explains the requirements for individuals who wish to demonstrate their knowledge of hunter education so as to be eligible to purchase an Iowa hunting license. For the purpose of this division, a hunting license, pursuant to Iowa Code sections 483A.1 and 483A.24, includes:

a. Hunting licenses for legal residents except as otherwise provided.

b. Hunting licenses for nonresidents.

c. Hunting preserve licenses.

d. Free annual hunting and fishing licenses for persons who are disabled or are 65 years of age or older and qualify for low-income status as described in Iowa Code section 483A.24.

e. Veterans' hunting and fishing licenses as described in Iowa Code section 483A.24.

15.40(2) Deer and wild turkey license applications. Individuals are not required to exhibit a certificate showing satisfactory completion of a hunter education course when applying for a deer or wild turkey license.

[**ARC 7893C**, IAB 5/1/24, effective 6/5/24]

These rules are intended to implement Iowa Code chapters 456A, 481A, and 483A.

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CHAPTER 8
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[Prior to 12/17/86, Revenue Department[730]]

Chapter rescission date pursuant to Iowa Code section 17A.7: 3/26/30

701—8.1(421) Definitions. For the purposes of this chapter, the following definitions apply, unless the context otherwise requires:

"Communication" means any method of transfer of data, information, or money by any conduit or mechanism.

"Department" means the Iowa department of revenue.

"Department form" means a form that is distributed by the department.

"Director" means the director of the department or the director's designee.

"Form" means any overall physical arrangement and general layout of communications, using any method of communication, related to tax, alcohol or other administration and prescribed by the director or otherwise required by law.

"GovConnectIowa" means the e-services portal of the department.

"IRS" means the federal Internal Revenue Service.

"Person" means any individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

"Return" means the same as defined in Iowa Code section 421.6.

"Substitute form" means a form that is intended to replace a department form.

This rule is intended to implement Iowa Code section 421.14.

[**ARC 8945C**, IAB 2/19/25, effective 3/26/25]

701—8.2(421) Department forms.

8.2(1) *Generally.* Department forms may be available in electronic format, on paper, or in other formats as prescribed by the director. Communications with the department, for which department forms have been created, shall be carried out using those forms or substitute forms.

8.2(2) *Compliance with department forms.* Each direction of every instruction contained within or accompanying department forms shall be followed, and each question within or accompanying every form shall be answered as if the instructions and forms were contained in these rules.

8.2(3) *Obtaining department forms.* Department forms and instructions may be obtained from Taxpayer Services, Iowa Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306-0457; by telephoning 800.367.3388 or 515.281.3114; or on the department's website at revenue.iowa.gov.

8.2(4) *Filing department forms.* A department form may be filed with the department as directed on the department form or in the corresponding instructions. Filing a department form using any other method requires prior approval from the department. Attempting to file a department form using an unapproved method may, at the discretion of the director, result in the rejection of the form and all information contained therein.

8.2(5) *Electronic reporting.* No prior approval is necessary for electronic reporting when the reporting is in accordance with department policy. Any other electronic reporting of a department form requires department approval unless otherwise authorized. Electronic reporting may be required for certain taxpayers and tax types. Additional information regarding electronic reporting for income taxes is available at iowaforms.gov. Electronic forms for other tax types administered by the department are available through GovConnectIowa.

8.2(6) *Signatures.*

a. Paper filings. Unless expressly prohibited by state or federal law, a return, application, or other form may be submitted using an original signature, or a copy or facsimile of a signature. For

purposes of this rule, "copy or facsimile of a signature" may be a copy or facsimile of an original signature or a copy or facsimile of an electronic signature.

b. Electronic filings. For income tax returns submitted through the IRS e-file program, see rule 701—8.5(422). For all other returns, applications, or other documents, the following applies. Unless expressly prohibited by state or federal law, a return, application or other form accepted by the department as filed by email or other electronic means may be submitted using an electronic signature or a signature designated by the department in lieu of a handwritten signature. For purposes of this rule, "electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a tax return, application, or other document filed with the department and executed or adopted by a person with the intent to sign the return, application, or other document filed with the department. Electronic signatures appear in many forms and may be created by many different technologies. No specific technology is required. For purposes of this rule, "signature designated by the department" means a symbol or other information that is provided by the department to the taxpayer or the taxpayer's representative and is to serve instead of the handwritten signature of the taxpayer. In a situation where the taxpayer or the taxpayer's representative has submitted a return, application, or other document to the department by email, GovConnectIowa, or other electronic means with an electronic signature or signature designated by the department, the department will collect information from the signator to establish the signator's identity.

This rule is intended to implement Iowa Code sections 421.14, 422.13, 422.14, 422.16, 422.36, 423.31, 450.53, 452A.60, and 453A.14.

[**ARC 8945C**, IAB 2/19/25, effective 3/26/25]

701—8.3(421) Substitute forms.

8.3(1) *Generally.* A substitute form may be in electronic format, on paper, or created using other media for communication. Approval shall be obtained prior to the use of any substitute form, unless otherwise noted in this rule. The director may change any department form without providing notice to users of any substitute form. The director may require use of department forms in communications with the department concerning tax administration or other matters.

8.3(2) *Types of substitute forms.* Many types of forms may, upon approval when necessary, be substituted for department forms. Descriptions of a partial list follow.

a. Reproduced forms. A reproduced form is a legible photocopy or an exact copy of a department form. A reproduced form may be used without prior approval of the department if the reproduced form meets the following conditions:

(1) The reproduced form does not vary from the department form in size or any other format specification.

(2) No rule prohibits the reproduction of the department form.

(3) The reproduced form does not vary from criteria stated elsewhere in this chapter.

b. Replacement forms. A replacement form is produced by imagery or otherwise replicated using the department form as a model, but it is not an exact copy of a department form. A form that is created in its entirety, including layout, by computer is a replacement form. A replacement form may include modifications, such as line enlargement or copy deletion. A replacement form must receive department approval prior to use.

c. Federal forms. A federal form is a form that is distributed by the IRS. A federal form, or its alternate, may be used without department approval if the form is approved for federal use and Iowa tax instructions or other administrative instructions authorize or require the use of the federal form in lieu of a department form.

8.3(3) *Registration and approval of substitute forms.*

a. Registration. A developer of a substitute form must register with the department by submitting the Registration for Substitute Forms and Barcode Approval. Each registration is valid for one tax year only. Failure to register with the department may, at the discretion of the director, result in the rejection of the developer's forms and all information contained therein.

b. Approval. Once registered, the developer of a substitute form must request department approval of the form, unless approval is not necessary. The developer may request department approval by submitting a PDF of the form to IDRSubForms@iowa.gov. Those forms listed on the Iowa Substitute Forms Checklist, which is provided with the Registration for Substitute Forms and Barcode Approval, should be submitted for approval. If doubt exists about the need for approval of a particular substitute form, the form should be submitted for consideration. Attempting to file an unapproved substitute form with the department may, at the discretion of the director, result in the rejection of the form and all information contained therein.

8.3(4) *Quality of substitute forms.*

a. General information. All substitute forms must, to the extent practicable, reflect the same size, color, content, design, and legibility as department forms posted on the department's website at revenue.iowa.gov.

b. Printed substitute forms. When printed on paper, a substitute form must use only black ink or black imaging material, unless the corresponding department form indicates otherwise. A printed substitute form generally must be printed on 20-pound white paper stock with a brightness rating of at least 92 on the TAPPI scale.

c. Distinctive markings and symbols. A department form may contain distinctive symbols. These symbols must be reproduced on any substitute forms.

8.3(5) *Filing substitute forms.* A substitute form may be filed with the department as directed on the corresponding department form or instructions or by any other method approved by the department. Attempting to file a substitute form with the department using an unapproved method may, at the discretion of the director, result in the rejection of the form and all information contained therein.

8.3(6) *Removable media and electronic reporting.* Submitting a substitute form on removable media, such as compact disc, requires prior approval from the department. No prior approval is necessary for electronic reporting when the reporting is in accordance with department policy. Any electronic reporting of a substitute form requires department approval, unless otherwise authorized. Additional information regarding electronic reporting is available at Processing Services, P.O. Box 10413, Des Moines, Iowa 50306; or by email at IDRSubForms@iowa.gov.

This rule is intended to implement Iowa Code section 421.14.

[**ARC 8945C**, IAB 2/19/25, effective 3/26/25]

701—8.4 Reserved.

701—8.5(422) Electronic filing of Iowa income tax returns. There is no statutory requirement that individual income taxpayers file their Iowa income tax returns electronically. Some businesses, estates, and trusts may be required to file Iowa tax returns electronically. Taxpayers not subject to an electronic filing requirement also have the option to file by paper. When a taxpayer files an electronic return, all information related to the return should be electronically transmitted through an approved channel. No information is to be submitted on paper unless specifically requested by the department. A taxpayer's electronic Iowa return shall include the same information as if the taxpayer had filed a paper return.

8.5(1) *Definitions.* For the purpose of this rule, the following definitions apply, unless the context otherwise requires:

"Acknowledgment" means a report generated by the department and sent electronically to a transmitter via the IRS indicating the department's acceptance or rejection of an electronic submission.

"Declaration for e-File Return form" means a taxpayer declaration form that authenticates the electronic tax return, authorizes its transmission, and consents to the financial transaction order as designated using the financial institution information provided.

"Direct debit" means an order for electronic withdrawal of funds from a taxpayer's financial institution account for payment to the department.

"Direct deposit" means an order for electronic transfer of a refund into a taxpayer's financial institution account.

"E-file provider" means a firm that is assigned an Electronic Filing Identification Number (EFIN) by the IRS to assume any one or more of the following IRS e-file provider roles: electronic return originator, intermediate service provider, transmitter, software developer, or reporting agent.

"Electronic filing" means a paperless filing of the Iowa income tax return, order for financial transaction, or both by way of the IRS e-file program, also known as federal/state electronic filing (MeF).

"Electronic return originator" or *"ERO"* means an authorized IRS e-file provider that originates the electronic submission by any one of the following methods: electronically sending an electronic tax return to a transmitter that will transmit the electronic tax return to the IRS, directly transmitting the electronic tax return to the IRS, or providing the electronic tax return to an Intermediate Service Provider for processing prior to transmission to the IRS.

"Electronic signature" includes data in electronic form, which is logically associated with other data in electronic form and executed or adopted by a person with the intent to sign a document. This type of signature has the same legal standing as a handwritten signature if the requirements in either paragraph 8.5(2)*"b"* or *"c"* are met. Electronic signatures appear in many forms and may be created by many different technologies. No specific technology is required.

"Intermediate service provider" means the firm that assists with processing submission information between the ERO (or the taxpayer in the case of online filing) and a transmitter.

"Online filing" means the process for taxpayers to self-prepare returns by entering return data directly into commercially available software, software downloaded from an Internet site and prepared offline, or through an online Internet site.

"Origination of an electronic return" means the action by an ERO of electronically sending the return directly to an Intermediate Service Provider, a transmitter, or the IRS.

"Reporting agent" means a firm that originates the electronic submission of certain returns for its clients or transmits the returns to the IRS in accordance with the IRS electronic filing procedures, or both.

"Software developer" means an approved IRS e-file provider that develops software according to IRS and Iowa specifications for the purposes of formatting electronic returns, transmitting electronic returns directly to the IRS, or both. A software developer may sell its software.

"Stockpiling" means collecting returns from taxpayers or from other e-file providers and waiting more than three calendar days after receiving the information necessary for transmission to transmit the returns to the department.

"Transmitter" means a firm that transmits electronic tax return information directly to the IRS and routes electronic acknowledgments from the IRS (and the states) to the firm originating the electronic return.

8.5(2) *Completion and documentation of the electronic return.*

a. The electronic submission must match the prepared return. The taxpayer(s) must declare the authenticity of the electronic return before it is transmitted. If the ERO makes changes to the electronic return after the Declaration for e-File Return form has been signed by the taxpayer(s), a new Declaration for e-File Return form must be completed and signed by the taxpayer(s) before the return is transmitted.

b. Electronic signature via remote transaction. In lieu of in-person handwritten signatures, a paid preparer, at the discretion of the taxpayer, may collect taxpayers' electronic signatures remotely by a process using identity verification and audit trail in the manner that the IRS allows for Form 8879.

c. Electronic signature via in-person transaction. Before a taxpayer electronically signs a Declaration for e-File Return form in which the ERO is physically present with the taxpayer, the ERO must validate the taxpayer's identity unless there is a multiyear business relationship. A multiyear

business relationship is one in which the ERO has originated returns for the taxpayer for a prior tax year and has identified the taxpayer using a valid government picture identification and the method in paragraph 8.5(2)*"b."* For in-person transactions, identity verification through a record check is optional.

d. The ERO must provide the taxpayer with a copy of all information to be filed. The taxpayer and ERO must retain all tax documentation for three years. The Declaration for e-File Return form and accompanying schedules are to be furnished to the department only when specifically requested.

8.5(3) *Direct deposit and direct debit.*

a. Taxpayers designating direct deposit of the Iowa refund or direct debit of payment remitted to the department on electronically filed returns must provide proof of account ownership to the ERO. The department is not responsible for the misapplication of a direct deposit refund or direct debit payment caused by error, negligence, or wrongdoing on the part of the taxpayer, e-file provider, financial institution, or any agent of the above.

b. Once the return has been transmitted, the financial order may not be altered. The department may, when processing procedures allow, grant a taxpayer's timely request to revoke the financial order. The taxpayer is responsible for revoking the financial order if the specified payment is not exactly as intended. A direct deposit or direct debit order will be disregarded by the department if the electronic submission is rejected for any reason as indicated in the acknowledgment.

c. The department may, when processing procedures require, convert a direct deposit order to a paper warrant. If a refund is deposited into an incorrect bank account, the department will issue a paper refund warrant once the funds are returned by the financial institution.

d. Payment withdrawal date.

(1) Funds will be withdrawn from the account specified in the direct debit order no sooner than the date specified by the taxpayer.

(2) Payment must be timely made to prevent the assessment of all applicable penalty and interest. A direct debit payment within an electronic submission is considered timely made when:

1. The department accepts the electronic submission;
2. The electronic postmark date is prior to the tax due date;
3. The payment withdrawal date is prior to the tax due date; and
4. The direct debit payment is honored by the specified financial institution.

(3) When the tax due date has not yet elapsed, the withdrawal date should occur on or before the tax due date. Scheduling a withdrawal date after the tax due date will result in the assessment of all applicable penalty and interest unless the taxpayer otherwise makes payment before the tax due date.

(4) When the tax due date has already elapsed, the withdrawal date should specify immediate payment to prevent the accrual of additional interest.

(5) Withdrawal cannot occur prior to the electronic postmark date. When the taxpayer attempts to schedule a withdrawal date that is prior to the electronic postmark date, the electronic postmark date is the withdrawal date.

(6) If a taxpayer wants to change the withdrawal date specified in a financial order, the taxpayer must revoke the financial order and submit a new financial order. If the department determines that the taxpayer may have erroneously scheduled a withdrawal date, the department may notify the taxpayer of the possible error, but the department is not required to do so.

8.5(4) *Software approval.* Software developers that want to develop electronic submission formatting software for e-filing Iowa returns shall register their respective software products annually with the department. The department publishes specifications, test packages, and testing procedures. Software must pass transmission tests before the department will approve it for electronic filing of Iowa income tax returns. The department will define the test period annually.

8.5(5) *ERO acceptance to participate.* Once accepted by the IRS as an ERO for a specific tax type, the ERO is automatically accepted to e-file Iowa returns of that tax type, provided that the department offers the tax type for e-file.

8.5(6) *Suspension of an e-file provider from participation in the Iowa electronic filing program.*

a. The department may immediately suspend, without notice, an e-file provider from the Iowa electronic filing program. In most cases, a suspension is effective as of the date of the letter informing the e-file provider of the suspension. Before suspending an e-file provider, the department may issue a warning letter describing specific corrective action required to correct deviations set forth in paragraph 8.5(6)*"b."* An e-file provider will be automatically prohibited from participating in the Iowa electronic filing program if denied participation in, or suspended from, the federal electronic filing program.

b. An e-file provider that is eligible to participate in the federal electronic filing program may be suspended from the Iowa electronic filing program if any of the following conditions occur. The list is for illustrative purposes only and is not deemed to be all-inclusive.

(1) Deterioration in the format of electronic returns transmitted.

(2) Unacceptable cumulative error or rejection rate or failure to correct errors resulting from the transmission of electronic returns.

(3) Untimely received, illegible, incomplete, missing, or unapproved substitute Declaration for e-File Return forms when requested by the department.

(4) Stockpiling returns at any time while participating in the Iowa electronic filing program.

(5) Failure on the part of the transmitter to retrieve acknowledgments within two working days of the department's providing them.

(6) Failure on the part of the transmitter to initiate the communication of acknowledgments to the ERO within two working days of the department's providing them.

(7) Significant complaints about the e-file provider.

(8) Failure on the part of the e-file provider to cooperate with the department's efforts to monitor e-file providers, investigate electronic filing abuse, and investigate the possible filing of fraudulent returns.

(9) Submitting the electronic return with information that is not identical to information on the Declaration for e-File Return form.

(10) Transmitting the electronic return with software not approved by the department for use in the Iowa electronic filing program for the given tax type and tax period.

(11) Failure on the part of the e-file provider to provide W-2s, 1099s, or out-of-state tax returns when requested by the department.

8.5(7) *Administrative procedure for denial of participation or suspension of participation.*

a. When a firm has requested participation in the Iowa electronic filing program but there is reason to deny the request, the department shall send written notice to the firm advising that entry into the program has been denied. When an e-file provider is a participant in the Iowa electronic filing program but is to be suspended from the program for any condition described in subrule 8.5(6), the department will send written notice to notify the e-file provider about its suspension from the program.

b. When the firm either disagrees with the denial of participation or the suspension from participation, the firm must file a written appeal to the department within 60 days of the date of the denial or the suspension. The written appeal must be filed pursuant to rule 701—7.8(17A). During the administrative review process, the denial of the firm's participation in or the suspension of the firm from the Iowa electronic filing program shall remain in effect.

This rule is intended to implement Iowa Code sections 422.21 and 422.68.

[**ARC 8945C**, IAB 2/19/25, effective 3/26/25]

701—8.6(421) Electing to receive communications in electronic format in lieu of paper. A taxpayer that is a registered account holder in GovConnectIowa may elect to receive notices, correspondence, or other communication electronically through GovConnectIowa in lieu of receiving them by mail.

8.6(1) *How to make the election.* The election must be made by selecting the appropriate setting on GovConnectIowa.

8.6(2) *Limitations.*

a. This election only exists for persons registered in GovConnectIowa.

b. Unless specified elsewhere in rule, this option is limited to notices, correspondence, or other communications on tax types managed in GovConnectIowa.

c. Where the department finds it beneficial to continue to send items by regular mail, the department may continue to send regular mail even if an electronic copy is also provided and even if the person elects to receive electronic mail.

8.6(3) *When service occurs.* If the department sends a notice, correspondence, or other communication by both mail and electronic communication, service occurs upon the earlier of when the communication is posted to GovConnectIowa or mailed.

8.6(4) *Taxpayer authorized representatives.* Authorized representatives as described in rule 701—8.8(17A,22,421,422) cannot opt out of paper mail for the taxpayers they represent. For each account an authorized representative represents, the authorized representative will receive paper copies of notices, correspondence, or other communication sent to the represented taxpayer. If the authorized representative creates a login and requests and is granted account access for the represented taxpayer, the authorized representative will be able to view electronic versions of the notices, correspondence, or other communication the represented taxpayer receives, but the authorized representative will still receive paper copies of those notices, correspondence, or other communication.

This rule is intended to implement Iowa Code section 421.60(11).

[**ARC 8945C**, IAB 2/19/25, effective 3/26/25]

701—8.7(422,533) Mandatory electronic filing for certain business entity and fiduciary taxpayers. Iowa corporate and fiduciary income and franchise taxpayers, credit unions subject to the moneys and credits tax, and pass-through entities subject to Iowa income reporting requirements, are required to file their annual returns in an electronic format approved by the department for any tax year in which certain criteria are met. This rule provides information needed to determine whether any entity is subject to this electronic filing requirement for a given tax year.

8.7(1) *Definitions.*

"Business entity," when used in this rule, means entities taxed as corporations, partnerships, S corporations, and financial institutions as defined in Iowa Code section 422.61.

"Fiduciary taxpayer" means the same as "fiduciary" as defined in Iowa Code section 422.4.

"Iowa tax credits" means refundable and nonrefundable tax credits authorized under the Iowa Code for the tax year in which they are claimed or applied, but does not include credits for prior payments.

"Return," when used in this rule, means Form IA 1120, IA 1120S, IA 1120F, IA 1065, IA PTE-C, IA 1041, or Iowa credit union moneys and credits tax return, as context requires, and includes amended returns, supporting schedules, attachments, or lists that are supplemental to or part of the filed return.

"Taxpayer," unless the context otherwise requires, means any business entity, financial institution, credit union or fiduciary taxpayer as defined in this rule.

"Tax year" means any period of up to 12 months, including periods of less than 12 months, for which a taxpayer subject to this rule is required to file an Iowa income tax, franchise tax, moneys and credits, or information return.

"Total gross receipts" means gross receipts or sales from all business operations conducted within and without Iowa without any adjustment for returns and allowances, and also includes receipts from all interest, dividends, rents, and royalties; income from ordinary and capital gains; and the distributive share of income received by the taxpayer from a partnership, S corporation, estate, or trust.

8.7(2) *Electronic format for filing.* The following are the only approved methods of electronic filing:

a. Business entity and fiduciary taxpayers. A business entity or fiduciary taxpayer that meets any of the criteria for mandatory electronic filing in subrule 8.7(3) shall file a paperless Iowa income or franchise tax return by way of the Internal Revenue Service (IRS) Modernized e-File (MeF) program, also known as federal/state electronic filing, in a manner consistent with the requirements of rule 701—8.5(422).

b. Moneys and credits taxpayers. Credit unions shall file a paperless Iowa moneys and credits tax return using an electronic form provided by the department through GovConnectIowa.

8.7(3) *Criteria for mandatory electronic filing.* This subrule applies to business entities for tax years ending on or after December 31, 2022; to fiduciary taxpayers for tax years ending on or after December 31, 2023; and to moneys and credits taxpayers for any tax year ending on or after December 31, 2024. Every taxpayer required to file an Iowa income, franchise, or moneys and credits tax return for an applicable year must file using the electronic format specified in subrule 8.7(2) if the taxpayer meets any of the following criteria for the tax year:

a. Gross receipts. The taxpayer has $250,000 or more in total gross receipts for the tax year.

b. Iowa tax credits. The taxpayer claims or applies $25,000 or more of Iowa tax credits on the return for the tax year.

c. Iowa Schedules K-1. The taxpayer is required to issue ten or more Iowa Schedules K-1 to its partners, members, shareholders, or beneficiaries for the tax year.

d. Consolidated corporate return. The taxpayer elects or is required to file or be included on an Iowa consolidated corporate income tax return under Iowa Code section 422.37 for the tax year.

e. Moneys and credits return. All credit unions required to file an Iowa moneys and credits tax return for a tax year are required to file electronically.

f. Composite return. Any partnership, S corporation, or fiduciary filer that is both required to file an Iowa composite return and required to electronically file an income tax return for any period under this subrule must also electronically file the composite return for that period.

8.7(4) *Returns not in compliance with this rule.* Any return filed in any manner other than the manner specified in subrule 8.7(2) by a taxpayer that meets any of the criteria for mandatory electronic filing as described in subrule 8.7(3) is not a valid return. The taxpayer is a nonfiler for the tax year for which the return was required, and may be subject to the failure to file penalties as provided for in rules 701—10.6(421) and 701—10.9(421), until such time as the taxpayer files the return in the proper electronic format. This subrule shall not apply if an exception has been granted under subrule 8.7(5).

8.7(5) *Exceptions.* At the department's discretion, exceptions to the electronic filing requirement under this rule may be granted for good cause. The taxpayer bears the burden to prove that good cause exists for the failure to file electronically. Except as provided in paragraph 8.7(5)*"b,"* a claim that the return preparation software purchased or licensed by a taxpayer or taxpayer's return preparer does not include all of the features necessary to comply with the taxpayer's Iowa filing obligations shall not be considered good cause for purposes of granting an exception to the electronic filing requirement.

a. Requests for exceptions to the electronic filing requirement.

(1) Form of request. Requests for exceptions to the electronic filing requirement must be submitted by mail or online through GovConnectIowa on forms provided by the department.

(2) Timing of request. Requests for exceptions to the electronic filing requirement must be submitted before the return is filed.

(3) Department determination. The department will notify the taxpayer in writing whether a request for an exception to the electronic filing requirement has been approved or denied. If the department does not respond to a taxpayer's valid request for an exception to the electronic filing requirement within 90 days of the date the request is received, the request shall be deemed accepted.

(4) Applicability of exception. An exception to the electronic filing requirement, if granted, shall only be valid for the tax year for which it was approved.

b. Special relief provided by the department. The department may, at its discretion, offer a good-cause exception to the electronic filing requirement for filers of a specific return type or form for a

specific filing period by providing such an exception in the instructions for that return type or form or by an order issued by the director. Taxpayers must comply with all instructions provided by the department in order to qualify for relief.

c. Temporary one-time relief for business entity and fiduciary taxpayers. For tax years ending on or before December 31, 2023, if the department determines a taxpayer that filed a paper return was required to file in an electronic manner as provided in this rule, the department will notify the taxpayer in writing of the requirements of this rule. If the taxpayer properly files in an electronic manner within 30 days of the date of the notification under this paragraph, the department shall grant an exception to the requirements of this rule and deem the originally filed paper return a valid return. A taxpayer shall only be granted the benefit of this paragraph for one eligible return.

d. Temporary one-time relief for moneys and credits taxpayers. For tax years ending on or before December 31, 2024, if the department determines a moneys and credits taxpayer that filed a paper return was required to file in an electronic manner as provided in this rule, the department will notify the taxpayer in writing of the requirements of this rule. If the taxpayer properly files in an electronic manner within 30 days of the date of the notification under this paragraph, the department shall grant an exception to the requirements of this rule and deem the originally filed paper return a valid return. A taxpayer shall only be granted the benefit of this paragraph for one eligible return.

This rule is intended to implement 2022 Iowa Acts, House File 2552, division II.

[**ARC 8945C**, IAB 2/19/25, effective 3/26/25]

701—8.8(17A,22,421,422) Authorized representatives—powers of attorney and representative certifications. No individual will be recognized as representing any taxpayer in regard to any tax claim, tax appeal, or other tax matter before the department or in any communication with or hearing before the department, or any agent thereof, unless a written authorization in compliance with this rule and Iowa Code section 421.59 is first filed with the department. If a taxpayer wishes to allow the department to discuss otherwise confidential tax matters with an individual without giving that individual authority to act on the taxpayer's behalf, the taxpayer must provide the department with written authorization to disclose such confidential tax information as provided in rule 701—5.7(17A,22,99G,123,421-454).

8.8(1) *Individuals authorized to represent a taxpayer, generally; transfers of decision-making authority.*

a. If a taxpayer wishes to have any other individual act on the taxpayer's behalf in matters before the department, the taxpayer must file with the department an IDR power of attorney form, as described in subrule 8.8(5), authorizing that individual to do so. This applies even if an individual desires to represent a taxpayer only through correspondence with the department but does not intend to personally appear before the department in a hearing or conference.

b. Individuals with the authority to act on behalf of a taxpayer, including pursuant to Iowa Code section 421.59(2) or chapter 633B, must file a representative certification form as described in subrule 8.8(6).

8.8(2) *Powers authorized.*

a. An IDR power of attorney or representative certification form, or other form designated by the department, as applicable, is required by the department before an individual can perform one or more of the following acts on behalf of the taxpayer:

(1) To receive copies of any notices or documents sent by the department, its representatives, or its attorneys.

(2) To receive, but not to endorse or collect, checks made payable to the taxpayer in payment of a refund of Iowa taxes, penalties, or interest. Certain representatives with a valid representative certification form or equivalent authorization may be authorized to receive, endorse, and collect checks made payable to the taxpayer in payment of a refund of Iowa taxes, penalties, or interest.

(3) To execute waivers (including offers of waiver) of restrictions on assessment or collection of deficiencies in tax and waivers of notice of disallowance of a claim for credit or refund.

(4) To execute consents extending the statutory period for assessment or collection of taxes.

(5) To fully represent the taxpayer in any hearing, determination, final or otherwise, or appeal. Subrule 8.8(8) contains additional requirements.

(6) To enter into any settlement or compromise with the department.

(7) To execute any release from liability necessary as a prerequisite to divulging otherwise confidential information concerning the taxpayer.

(8) To authorize a third party as authorized representative or disclosure designee for the taxpayer.

(9) To waive, withdraw, or dismiss any claims or defenses or amend a pleading, to the extent permitted by subrule 7.8(7).

b. The taxpayer may limit the scope of the authority of an authorized representative appointed via an IDR power of attorney form by expressly stating the limitations, if any, on the IDR power of attorney form submitted to the department. The scope of authority of an authorized representative may not expand beyond those powers authorized in this rule.

8.8(3) *Submitting a form.*

a. Submit separately. An IDR power of attorney form or representative certification is not accepted as an attachment to a tax return except as provided by these rules. A power of attorney form or representative certification form must be submitted in accordance with the submission instructions on the form(s).

b. Original or electronic forms accepted. The department may accept either an original form, an electronically scanned and transmitted form, or a copy of a form. A copy received by facsimile transmission (fax) or email may be accepted.

c. Timely submission. The form must be submitted within six months of the date of signature, or it will be considered invalid.

d. Appointment of a representative via another form. The department designates certain returns or other departmental forms on which a taxpayer may appoint an authorized representative.

e. Signature. The signature on the form must be a handwritten signature, a digital signature with a digital certificate, or a signature otherwise accepted by the IRS for purposes of third-party authorization.

8.8(4) *Communications with represented taxpayers.* Any notice or other written communication (or copy thereof) from the department provided to the authorized representative, where required or permitted to be given to the taxpayer, will be given to the taxpayer as well.

8.8(5) *Powers of attorney.* Taxpayers must ensure that all required fields of the IDR power of attorney form are properly completed.

a. Individuals who may execute an IDR power of attorney form. Individuals who are permitted to execute an IDR power of attorney form are as follows:

(1) Individual. In matters involving an individual taxpayer, an IDR power of attorney form must be signed by the taxpayer or the taxpayer's authorized representative.

(2) Joint or combined returns. In matters involving a joint return, each taxpayer must complete and submit an IDR power of attorney form, even if the taxpayers are represented by the same appointee(s). In any matter concerning a joint return, the authorized representative of one spouse cannot perform any act with respect to a tax matter that the spouse represented cannot perform alone.

b. Contents of the IDR power of attorney form. A valid IDR power of attorney form contains the following information:

(1) Legal name and address of the taxpayer;

(2) Identification number of the taxpayer (i.e., social security number (SSN), federal employer identification number (FEIN), or any federal- or Iowa-issued tax identification number), or other number as approved by the department;

(3) Name, mailing address, and identification number of the representative (i.e., preparer's tax identification number (PTIN), SSN, centralized authorization file (CAF) number, any federal- or Iowa-issued tax identification number, or other number as approved by the department);

(4) Description of the matter(s) for which representation is authorized, which may include:

1. The type of tax(es) involved or an indication that all tax types are within the scope of authority;

2. The specific year(s) or period(s) involved or an indication that the scope is unlimited (not to exceed three years into the future beyond the signature date);

3. Iowa tax permit number;

4. No limitation on tax type, year/period, or permit will allow the authorized representative to act for any tax type/year/period/permit.

(5) A clear expression of the taxpayer's intention concerning any restrictions to the scope of authority granted to the recognized representative(s) as provided in subrule 8.8(2).

(6) A signature on the form, which may be a handwritten signature, a digital signature with a digital certificate, or a signature otherwise accepted by the IRS for purposes of third-party authorization.

(7) Any other information required by the department.

c. Authorization period for an IDR power of attorney form.

(1) An IDR power of attorney form may be used to authorize representation for tax periods that end within three years after the date on which the form is signed by the taxpayer. The authority granted may concern an unlimited number of tax periods that have ended prior to the date on which the IDR power of attorney form is received by the department; however, tax periods must be stated if the intention is to limit the periods. If the tax period section is left blank, all tax periods, including those ending up to three years in the future, are included.

(2) The authority granted by an IDR power of attorney form ceases to be effective for tax periods as defined in subparagraph 8.8(5)*"c"*(1) upon revocation by the taxpayer; incapacity of the taxpayer; death of the taxpayer; or withdrawal, death, or incapacity of the authorized representative.

d. Evaluation of documentation provided. The department will evaluate the IDR power of attorney form and any additional documentation to confirm authority. Authority to act before the department only covers those matters and time frames covered by the submitted documentation. The party claiming authority to act before the department on behalf of a taxpayer has the burden to prove, to the satisfaction of the department, the existence and extent of the claimed authority.

e. Revocation and withdrawal.

(1) Revocation by the taxpayer.

1. By written statement. By filing a statement of revocation with the department, a taxpayer may revoke authority granted by an IDR power of attorney form without authorizing a new representative. The statement of revocation must indicate that the authority of the previous representative is revoked and be signed by the taxpayer. The name and address of each representative whose authority is revoked must be listed (or a copy of the prior IDR power of attorney form must be attached). If the writing indicates that authorization should be revoked from "all" authorized representatives, this will apply to all representatives appointed via an IDR power of attorney form or an entity representative form.

2. By filing a new IDR power of attorney form. Filing a new IDR power of attorney form for a particular tax type(s) and tax period(s) automatically revokes a previously granted authority for the same tax type(s) and tax period(s). For a previously designated authorized representative to remain as the taxpayer's authorized representative when a subsequent IDR power of attorney form is filed, the taxpayer must include the representative on the newly submitted IDR power of attorney form. This rule applies regardless of whether the power of attorney authority is authorized by an IDR power of attorney form or on a return as described in subrule 8.8(7). This subrule does not apply to entities appointed as authorized entity representatives under subrule 8.8(9).

(2) Withdrawal by the authorized representative. By filing a statement with the department, an authorized representative may withdraw from representation in a matter in which an IDR power of attorney form has been filed. The statement must be signed by the representative and identify the name, identification number, and address of the taxpayer(s); the name, address and identification number of the representative withdrawing; and the matter(s) from which the representative is

withdrawing. A representative may withdraw from multiple matters by including with the statement a list of all matters and taxpayers for which withdrawal is desired.

(3) Administrative revocation by the department. The department may administratively revoke any third-party access authority, including those appointed via the IDR power of attorney form or representative certification form.

8.8(6) *Representative certification; durable and general powers of attorney.*

a. Authorized representatives. Individuals with the authority to act on behalf of a taxpayer granted outside of IDR, including pursuant to Iowa Code section 421.59(2) or chapter 633B, must file with the department a form certifying their authority to represent the taxpayer prior to utilizing that authority with the department. Individuals authorized by an IDR power of attorney form should not file a representative certification form for themselves.

b. Contents of the representative certification form. The representative certification form must include the following information:

(1) Legal name and address of the taxpayer;

(2) Identification number of the taxpayer (i.e., SSN, FEIN, any federal- or Iowa-issued tax identification number relative to matters covered by the IDR power of attorney form, or other number as approved by the department);

(3) Name, mailing address, and identification number (i.e., SSN, CAF number, any federal- or Iowa-issued tax identification number, or other number as approved by the department) of the representative.

(4) Proof of authority must be included with the form as follows:

1. Durable power of attorney or general power of attorney other than an IDR power of attorney form: a copy of the power of attorney document;

2. Guardian, conservator, or custodian appointed by a court: documentation as required in Iowa Code section 421.59(2)*"a"*;

3. Receiver appointed pursuant to Iowa Code chapter 680: a copy of the relevant court order(s);

4. Licensed attorney appearing on behalf of the taxpayer or the taxpayer's estate in a court proceeding: a copy of the filed notice of appearance in the relevant court proceeding;

5. Parent or guardian of a minor taxpayer: a copy of the return signed by the parent or guardian or proof of status as parent or guardian, such as a birth certificate or equivalent document, stating parent and minor taxpayer's names, as well as the minor taxpayer's date of birth. By submitting a copy of a return signed by the parent or guardian, the parent or guardian will only have authority in relation to that return. Without other authorization, such as a court-ordered guardianship, a parent's right to access a minor taxpayer's account will cease when the minor taxpayer reaches majority;

6. Executor or personal representative: a copy of the will or court order appointing the individual;

7. Trustee: a copy of the certificate of trust, trust document, or court order appointing the representative;

8. The following categories of authorized representative do not require documentation:

- Individual holding one of the following titles within a corporation, association, partnership, or other entity:
  - Officer/employee of corporation/association;
  - Designated partner authorized to act on behalf of a partnership;
  - Individual authorized to act on behalf of a limited liability company in tax matters;
- Governmental representative.
- Successor of a very small estate under Iowa Code section 633.356(2).

(5) Affirmation of authority to act on behalf of the taxpayer, and agreement to only act within that authority. Affirmation will be signed under penalty of perjury.

(6) A signature of the representative on the form, which must be a handwritten signature, a digital signature with a digital certificate, or a signature otherwise accepted by the IRS for purposes of third-party authorization;

(7) Any other information requested by the department.

c. Evaluation of documentation provided. The department will evaluate documentation submitted in support of a representative certification to confirm authority. Authority to act before the department shall only cover those matters and time frames covered by the submitted documentation. The party claiming authority to act before the department on behalf of a taxpayer has the burden to prove, to the satisfaction of the department, the existence and extent of the claimed authority.

d. Revocation. A representative certification may be revoked in the following ways:

(1) By the representative being withdrawn, following procedures in subparagraph 8.8(5)*"e"*(2).

(2) By the taxpayer, following procedures in subparagraph 8.8(5)*"e"*(1).

(3) By another representative. An authorized representative properly appointed by a representative certification or an IDR power of attorney form may notify the department that an authorized representative no longer has authority to act on behalf of the taxpayer by filing a statement of revocation with the department. The notification statement must indicate the taxpayer's name, address, and identification; state that the authority of the former representative has ceased; and be signed by a current authorized representative. Also, the name and address of each representative who no longer has authority must be listed (or a copy of the prior representative certification form must be attached).

(4) Administrative revocation by the department, following procedures in paragraph 8.8(5)*"e."*

8.8(7) *Returns that may be used to grant power of attorney authority.* An IDR power of attorney form is not needed for individuals who have been named as an authorized representative on a fiduciary return of income filed under Iowa Code section 422.14, a corporation or S corporation return filed under Iowa Code section 422.36 or 422.37, a partnership return filed under Iowa Code section 422.15, a franchise tax return filed under Iowa Code section 422.62, a moneys and credits return filed under Iowa Code section 533.329, or a tax return filed under Iowa Code chapter 450.

8.8(8) *Individuals authorized to represent themselves or others in a contested case proceeding.* The right to represent oneself or others in connection with any contested case proceeding before the department or administrative hearings division is limited to the following classes of individuals, so long as such representation is not barred by another provision of law. Representatives must have a valid IDR power of attorney form or valid representative certification form on file with the department to represent others in a contested case proceeding. The right to represent a taxpayer before the department or the administrative hearings division does not confer the right to represent the taxpayer in a judicial proceeding.

a. Individuals representing themselves. One spouse may not represent the other in contested case proceedings unless the spouse is acting in a capacity described in paragraphs 8.8(8)*"b"* through *"j"*;

b. Attorneys duly qualified and entitled to practice in the courts of the state of Iowa;

c. Attorneys who are entitled to practice before the highest court of record of any other state and who have complied with the requirements for admission to practice before the courts of the state of Iowa pro hac vice;

d. Accountants who are authorized, permitted, or licensed under Iowa Code chapter 542;

e. Duly authorized directors or officers of corporations representing the corporation of which they are respectively a director or officer. Attorneys who are acting in the capacity of a director or officer of a corporation must comply with paragraph 8.8(8)*"b"* or *"c"*;

f. Partners representing their partnership. Attorneys who are acting in the capacity of a partner must meet the requirements of paragraph 8.8(8)*"b"* or *"c"*;

g. Fiduciaries including trustees, receivers, guardians, personal representatives, administrators, and executors. For purposes of this rule, a fiduciary is considered to be the taxpayer and not a representative of the taxpayer;

h. Government officials authorized by law;

i. Enrolled agents, currently enrolled under 31 CFR Section 10.6(2011) for practice before the IRS, representing a taxpayer in proceedings under Iowa Code chapter 422; and

j. Conservators, guardians, or durable powers of attorney appointed to handle tax matters.

8.8(9) *Entities as authorized representatives.*

a. Appointment.

(1) A taxpayer may authorize an entity to act on its behalf in tax-related matters by following the procedures described in this subrule in a manner approved by the department. By appointing an authorized entity representative, the taxpayer consents to the authorized entity representative, and any individuals submitted to the department by the authorized entity representative, as described in paragraph 8.8(9)*"c,"* sending and receiving the taxpayer's information to and from the department and taking any other action described in these rules. By appointing an authorized entity representative, the taxpayer understands that the authorized entity representative is solely responsible for maintaining an accurate list of individuals allowed to act on the taxpayer's behalf. The taxpayer agrees that any improper disclosure or use of the taxpayer's information by the entity or entity's current or former employees, agents, or contractors is solely the responsibility of the entity and the entity's employees, agents, or contractors. The department is not liable for any acts or omissions of the entity or the entity's employees, agents, or contractors.

(2) The taxpayer's consent must be in writing, in a form specified by the department, including a signature and date. The signature must be a handwritten signature, a digital signature with a digital certificate, or a signature otherwise accepted by the IRS for purposes of third-party authorization.

b. Department approval of authorized entity representatives.

(1) The department will review authorized entity representative appointments.

(2) The department has the authority to approve, deny, or remove third-party access to any entity or individual employee upon review.

c. Duties of the authorized entity representative.

(1) The authorized entity representative is responsible for managing access for individual employees that it authorizes to act on behalf of the taxpayer in a manner defined by the department. The authorized entity representative provides the department a single point of contact for matters involving the entity's status as an approved entity representative.

(2) The authorized entity representative single point of contact must have a valid IA 2848 or representative certification form on file on behalf of the authorized entity representative.

(3) The authorized entity representative will provide information regarding each individual employee authorized to act on behalf of the taxpayer as determined by the department. This information will be used to identify the individual employee when contacting the department. The authorized entity representative will maintain with the department an accurate and up-to-date list of individual employees that the authorized entity representative has authorized to act on a taxpayer's behalf under this rule. The authorized entity representative will remove any individuals from its list with the department as soon as an individual is no longer employed by the entity or is no longer authorized by the entity to act on behalf of a taxpayer. The authorized entity representative shall submit all information and changes to information to the department via GovConnectIowa.

(4) The authorized entity representative is responsible for the actions taken by its employees, agents, and contractors on behalf of the taxpayer.

(5) The authorized entity representative shall remain in good standing with the department.

d. Powers authorized. An authorized entity representative may be granted any or all of the powers described in subrule 8.8(2). The taxpayer may limit the authorized entity representative as described therein and by tax type. If the tax type field is left blank, all tax types are included within the scope of the authorized entity representative's authority.

e. Contents of form. A valid IDR authorized entity representative form contains the information specified in paragraph 8.8(5)*"b."*

f. Authorization period.

(1) An authorized entity representative may be used to authorize representation for an unlimited number of tax periods prior to or following the date on which the form is received by the department. If the tax period is left blank, all tax periods are included.

(2) At any time while the taxpayer has an effective authorized entity representative appointment filed with the department, the taxpayer consents to allowing the authorized entity representative and any individuals listed by the authorized entity representative, as described in paragraph 8.8(9)*"c,"* to send and receive the taxpayer's information to and from the department and take any other action described in these rules.

(3) The authority granted by an IDR power of attorney form ceases to be effective upon revocation by the taxpayer or withdrawal or dissolution of the authorized entity representative. It is the sole responsibility of the taxpayer to revoke an authorized entity representative.

g. Revocation and withdrawal.

(1) Revocation by the taxpayer. Such appointment may be revoked by the taxpayer at any time, via GovConnectIowa or in writing to the department. The revocation must include the name and identification number of the taxpayer, the name of the representative entity, an indication of the wish to withdraw, and the taxpayer's dated signature. If the revocation indicates that authorization should be revoked from "all" authorized representatives, this will apply to all representatives appointed via an IDR power of attorney form or entity representative form.

(2) Withdrawal by the authorized entity representative. By filing a statement with the department, an authorized entity representative may withdraw from representation appointed under this subrule. The statement must be signed by the authorized entity representative single point of contact and must identify the name and address of the taxpayer(s) and the matter(s) from which the authorized entity representative is withdrawing. An authorized entity representative may withdraw from multiple matters by including with the statement a list of all matters and taxpayers for which withdrawal is desired. Such statement shall be signed by the authorized entity representative single point of contact.

(3) Administrative revocation by the department. The department may administratively revoke any entity representative authority.

This rule is intended to implement Iowa Code chapters 17A, 22, 421, and 422.

[**ARC 8945C**, IAB 2/19/25, effective 3/26/25]

701—8.9(421) Tax return preparers.

8.9(1) *Definitions.* Unless otherwise indicated in this rule or required by the context, all words and phrases used in this rule that are defined under Iowa Code sections 421.62, 421.63, and 421.64 shall have the same meaning as provided under those Iowa Code sections.

"An enrolled agent enrolled to practice before the federal Internal Revenue Service (IRS) pursuant to 31 CFR §10.4" means an individual who has an active status as an enrolled agent under 31 CFR §10.4(a) or (d) and is not currently under suspension or disbarment from practice before the IRS. An enrolled agent does not include an enrolled retirement plan agent under 31 CFR §10.4(b) or a registered tax return preparer under 31 CFR §10.4(c).

"An individual admitted to practice law in this state or another state" means an individual who has an active license to practice law in this state or another state, is considered in good standing with the licensing authority of this or another state, and is currently authorized to engage in the practice of law.

"An individual licensed as a certified public accountant or a licensed public accountant under Iowa Code chapter 542 or a similar law of another state" means an individual who has an active certified public accountant license or an active public accountant license under Iowa Code chapter 542 or a similar law of another state and is in good standing with the accountancy examining board or similar authority of another state.

"Hour of continuing education" means a minimum of 50 minutes spent by a tax return preparer in actual attendance at or completion of an IRS-approved provider of continuing education course.

"New tax preparer" means an individual who qualifies as a tax return preparer for the current tax year but would not have qualified as such during any prior calendar year. Paragraph 8.9(8)*"a"* includes examples regarding who qualifies as a new tax preparer.

8.9(2) *Penalty for tax return preparer's failure to include preparer tax identification number (PTIN) on income tax returns or claims for refund.* A tax return preparer who fails to include the tax return preparer's PTIN on any income tax return or claim for refund prepared by the tax return preparer and filed with the department is subject to a penalty pursuant to Iowa Code section 421.62(2). Paragraph 8.9(8)*"c"* includes examples pertaining to the tax return preparer PTIN requirement.

8.9(3) *Tax return preparer continuing education requirement.*

a. Requirements. A tax return preparer shall complete a minimum of 15 hours of continuing education courses each year. At least two hours of continuing education shall be on professional ethics, and the remaining hours shall pertain to federal or state income tax. Each course shall be taken from an IRS-approved provider of continuing education. If a course offered by an IRS-approved provider is primarily on state-specific income tax content, the course will qualify for the continuing education requirements under Iowa Code section 421.64 and this rule, even if such course does not count toward federal continuing professional education. Tax return preparers who complete more than the required 15 hours of continuing education in one calendar year cannot count the excess hours toward a subsequent year's requirement. Paragraph 8.9(8)*"b"* includes examples pertaining to the tax return preparer continuing education requirement.

b. Exceptions. Iowa Code section 421.62(1)*"d"* provides a list of individuals who are not considered a tax return preparer for the purposes of the continuing education requirement. The individuals listed in Iowa Code section 421.62(2)*"c"* must still provide their PTINs on the Iowa tax returns they prepare and are subject to the penalty outlined in subrule 8.9(2).

8.9(4) *Preparation of income tax returns or claims for refund.* An individual prepares an income tax return or claim for refund when the individual signs (or should sign) a return, either because the individual completes the return or because the individual assumes final responsibility for preliminary work completed by other individuals.

8.9(5) *Approved providers and courses.*

a. Approved providers of continuing education. Any IRS-approved provider of continuing education is acceptable. It is not mandatory that a continuing education course be taken from an Iowa provider.

b. Approved continuing education course subject matters. Only continuing education courses on the topics of federal or state income tax or professional ethics are approved for credit.

c. Approved continuing education format. Continuing education courses that satisfy the requirements of Iowa Code section 421.64 and this rule may be taken for credit in person, online, or by self-study as long as the courses are administered by an IRS-approved provider of continuing education.

8.9(6) *Reporting hours of continuing education and retaining records.*

a. Reporting hours of continuing education to the department. Tax return preparers shall report their continuing education hours to the department by February 15 of the calendar year following the year in which hours were completed to be eligible to prepare income tax returns or claims for refund. Hours must be reported using IA Form 78-012 or by completing the Income Tax Preparer Continuing Education form on GovConnectIowa. If a tax return preparer fails to complete the required minimum hours of continuing education by the date prescribed in this subrule, the individual must show that failure to do so was reasonable under the circumstances and not willful or reckless conduct. IRS-approved providers are not required to report continuing education courses to the department.

b. Retaining records of continuing education. Tax return preparers are required to retain records of continuing education completion for a minimum of five years. This record retention shall include but not be limited to certificates of completion if offered by the IRS-approved provider of continuing education upon completion of a course.

8.9(7) *Reinstatement of a tax return preparer.* When a tax return preparer fails to complete the minimum 15 hours of continuing education courses but demonstrates that the failure was reasonable under the circumstances and not willful or reckless conduct, the department may require the tax return preparer to make up any uncompleted hours and submit a completed IA Form 78-012 to the

department or complete the Income Tax Preparer Continuing Education form on GovConnectIowa by a date set by the department before the tax return preparer may engage in activity as a tax return preparer.

8.9(8) *Examples.*

a. Tax return preparer examples.

EXAMPLE 1: During prior calendar years, an individual, N, prepared nine or fewer income tax returns or claims for refund for a fee or other consideration. During the current calendar year, N, for a fee or other consideration, prepares ten income tax returns or claims for refund. N meets the definition of a "tax return preparer" for the current calendar year. Therefore, N will be subject to the penalty for failure to include N's PTIN on every income tax return or claim for refund that N prepares during the current calendar year. However, N also qualifies as a new tax preparer for the current calendar year because this is the first year N satisfies the definition of a "tax return preparer." Therefore, N does not need to complete 15 hours of continuing education courses during the prior calendar year to prepare returns in the current calendar year. N will need to complete the minimum 15 hours of continuing education courses during the current calendar year to be eligible to prepare returns during the following calendar year if N meets the definition of "tax return preparer" in the following calendar year.

EXAMPLE 2: An individual, B, prepared ten income tax returns or claims for refund during a prior calendar year for a fee or other consideration. Therefore, B is a tax return preparer. B continues to prepare income tax returns or claims for refund for a fee or other consideration during the current calendar year, but B only prepares a total of nine such tax returns throughout the current calendar year. B does not complete any hours of continuing education courses during the current calendar year. B will not be eligible to prepare ten or more income tax returns or refund claims for a fee or other consideration during the next calendar year because, even though B did not prepare ten or more income tax returns or claims for refund in the current calendar year, B would have been classified as a tax return preparer in a prior calendar year. Thus, B is not considered a new tax preparer.

b. Continuing education requirement examples.

EXAMPLE 3: During the calendar year, an individual, P, prepares ten income tax returns or claims for refund for a fee or other consideration. Therefore, P is a tax return preparer. During the calendar year, P also completes 30 hours of continuing education courses from programs offered by an IRS-approved provider of continuing education, 4 hours of which are on professional ethics and the remaining hours on income tax. P is eligible to prepare returns during the next calendar year. However, P must complete 15 additional hours of continuing education courses offered by an IRS-approved provider, including 2 hours on professional ethics and the remaining hours on income tax, during the next calendar year to be eligible to prepare returns in the following calendar year if P is to meet the definition of "tax return preparer" in the following calendar year. P's excess hours completed in a previous calendar year cannot be applied toward the 15 hours of continuing education courses that P must complete in a future calendar year.

EXAMPLE 4: During the prior calendar year, a tax return preparer, P, completes 12 hours of continuing education courses from programs offered by an IRS-approved provider of continuing education. Two of the hours are on professional ethics, and the rest relate to income tax. P is not eligible to prepare income tax returns or claims for refund during the current calendar year, regardless of the tax year of the returns P is preparing, because P has not completed a total of 15 continuing education hours during the prior calendar year. During the current calendar year, P completes 15 hours of continuing education courses from programs offered by an IRS-approved provider. Two of P's hours are from professional ethics courses, and the remaining 13 hours are from income tax courses. P is eligible to prepare returns during the following calendar year, regardless of the tax years of the returns P prepares. However, P is still ineligible to prepare returns for the remaining duration of the current calendar year, regardless of the tax years of the returns P wishes to prepare.

c. PTIN requirement examples.

EXAMPLE 5: An individual, X, works at a firm in the business of preparing income tax returns for a fee or other consideration. X completes a substantial amount of preliminary work on ten returns (that are not the returns of X's employer) described in this rule during the scope of X's employment during the calendar year, but X does not assume final responsibility for the work or sign the returns. Instead, X's supervisor, Y, reviews the work completed by X and signs the returns. Y is a tax return preparer because Y assumed final responsibility for the returns. Therefore, Y's PTIN is required on all of the returns. X's PTIN is not required on any of the returns, nor will X incur any penalties for omitting X's PTIN on the returns.

EXAMPLE 6: An individual, X, has a partnership with another individual, Y, in which X and Y prepare income tax returns for a fee or other consideration. X completes ten income tax returns during the calendar year. However, before X signs or files the returns, X asks Y to review the returns. Y reviews the returns and suggests substantial changes, but Y then gives the returns back to X. X makes the necessary changes, then signs and files the returns. X is a tax return preparer. X's PTIN is required on all of the returns because X assumed final responsibility for the returns. Y's PTIN is not required on any of the returns. If X omits X's PTIN on any of the returns, X will incur a $50 civil penalty for each violation unless X shows that the omission was reasonable under the circumstances and not willful or reckless conduct.

EXAMPLE 7: An individual, X, completes five income tax returns and five claims for refund for a fee or other consideration during a calendar year. X does not sign the returns, even though no other paid tax return preparer reviewed X's work and took final responsibility for the return. X's PTIN is required on all of the returns because X is a paid tax return preparer for those returns, even though X failed to sign the returns as required. X is subject to a fine of $50 per return that omitted the required PTIN because X is a tax return preparer.

This rule is intended to implement Iowa Code sections 421.62, 421.63, and 421.64.

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COMMUNICATIONS NETWORK, IOWA[751]

[Prior to 7/23/25, see Telecommunications and Technology Commission, Iowa[751]]

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CHAPTER 1
DESCRIPTION OF ORGANIZATION

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

751—1.1(17A,8D) Purpose. The Iowa telecommunications and technology commission and the Iowa communications network were established by Iowa Code chapter 8D to coordinate communications of state government, effect maximum practical consolidation and joint use of communications services and manage, develop, operate and ensure compatibility of the fiberoptic network.

751—1.2(17A,8D) Organization. The commission's structure consists of five commissioners and the state auditor and the chief information officer as ex officio members of the commission. The commission has the sole authority to manage, develop, operate and ensure compatibility of the state communications network. The network is supervised by the commission and operated by the executive director of the network or the executive director's designee. The executive director has rulemaking authority.

[**ARC 8924C**, IAB 2/19/25, effective 3/26/25]

751—1.3(17A,8D) Advisory committees. The commission may establish or dissolve committees and advisory groups from time to time as necessary.

[**ARC 9600B**, IAB 7/13/11, effective 8/17/11]

751—1.4(17A,8D) Education telecommunications council. Rescinded **ARC 4983C**, IAB 3/11/20, effective 4/15/20.

751—1.5(17A,8D) Administrative elements.

1.5(1) *Executive director.* The executive director or the executive director's designee administers the programs and the services of the commission in compliance with the Iowa Code and the rules adopted by the executive director.

1.5(2) *Administrative elements.* In order to carry out the functions of the commission, the agency consists of the divisions as established by the executive director and bureaus within each division as deemed necessary to fulfill the functions of the agency. Additionally, the executive director may from time to time reorganize the agency in order to more efficiently and effectively carry out the functions of the commission. The major functions of the agency include but are not limited to:

a. Networking and engineering, including network operations, engineering, and project management. The bureau is responsible for all operational aspects of the fiberoptic network.

b. Facilities, including outside plant and technical assistance.

c. Financial management, including budgeting, accounts receivable and payable, and internal auditing.

d. Procurement and contracting.

e. Business services, including customer sales and customer relations.

[**ARC 8924C**, IAB 2/19/25, effective 3/26/25]

751—1.6(17A,8D) Location of offices.

1.6(1) *Main office.* The main office is located in the Grimes State Office Building, 400 E. 14th Street, Des Moines, Iowa 50319. The telephone number is 515.725.4692. The toll-free number is 1.877.426.4692. The fax number is 515.725.4727. The email address is ICN.info@iowa.gov. The home page Internet address is icn.iowa.gov.

1.6(2) *Network.* The hub for the network is located in the Joint Forces Headquarters (JFHQ) Armory, 6100 N.W. 78th Avenue, Johnston, Iowa 50131.

[**ARC 8924C**, IAB 2/19/25, effective 3/26/25]

751—1.7(8D) Business hours.

1.7(1) *Normal business hours.* The normal business hours of the main office are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. The Network Operations Center (NOC) operates on a 24-hour, seven-day-a-week basis at the network hub in the JFHQ Armory in Johnston, Iowa.

1.7(2) *Emergency incident reports.* The 24-hour emergency telephone number for reporting cable cuts, system failures or other incidents is 1.800.572.3940 or 515.725.4400.

[**ARC 8924C**, IAB 2/19/25, effective 3/26/25]

These rules are intended to implement Iowa Code sections 17A.3(1)*"a,"* 8D.1, 8D.3(3)*"b,"* 8D.4, 8D.5 and 8D.6.

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CHAPTER 2
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

751—2.1(17A,22) Purpose and scope.

2.1(1) This chapter implements Iowa Code section 22.11 by establishing commission policies and procedures for the maintenance of records. The purpose of this chapter is to facilitate public access to open records. It also seeks to facilitate sound commission determinations with respect to the handling of records and the implementation of the fair information practices Act. This commission is committed to the policies set forth in Iowa Code chapter 22; commission staff shall cooperate with members of the public in implementing the provisions of that chapter.

2.1(2) This chapter does not:

a. Require the commission to index or retrieve records which contain information about individuals by that person's name or other personal identifier.

b. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.

c. Govern the maintenance or disclosure of, notification of, or access to records in the possession of the commission which are governed by the rules of another commission.

d. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.

e. Make available records compiled in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations.

751—2.2(17A,22) Definitions. As used in this chapter:

"Commission" means the Iowa telecommunications and technology commission.

"Confidential record" means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the commission is prohibited by law from making available for examination by members of the public, and records or information contained in records that are specified as confidential by Iowa Code section 22.7 or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

"Custodian" means the commission or a person lawfully delegated authority by its executive director to act for the commission in implementing Iowa Code chapter 22.

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

"Personally identifiable information" means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

"Record" in these rules means the whole or a part of a "public record" as defined in Iowa Code section 22.1.

"Record system" means any group of records under the control of the commission from which a record may be retrieved by a personal identifier such as the name of an individual, number, symbol or other unique retriever assigned to an individual.

"Subject" means that person identified in a record.

751—2.3(17A,22) Requests for access to records.

2.3(1) *Location of record.* A request for access to a record should be directed to the executive director or the particular commission office where the record is kept. If the location of the record is

not known by the requester, the request shall be directed to the executive director at the ICN main office location as listed in 751—subrule 1.6(1). If a request for access to a record is misdirected, commission personnel will promptly forward the request to the appropriate person within the commission.

2.3(2) *Office hours.* Open records shall be made available during all customary office hours which are 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

2.3(3) *Request for access.* Requests for access to open records may be made in writing or in person. The office may also accommodate telephone requests where appropriate. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail or telephone requests shall include the name, address and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

2.3(4) *Response to requests.* Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access unfeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code section 22.8(4) or 22.10(4) or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 751—2.4(17A,22) and other applicable provisions of law.

2.3(5) *Security of record.* No person may, without permission from the custodian, search or remove any record from commission files. Examination and copying of commission records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

2.3(6) *Copying.* A reasonable number of copies of an open record may be made in the commission's office. If photocopy equipment is not available in the commission office where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere.

2.3(7) *Fees.*

a. When charged. To the extent permitted by applicable provisions of law, the payment of fees may be waived in the case of small requests when the imposition of fees is inequitable or when a waiver is in the public interest. Charges for examination or copies requested in writing by a person in a capacity as representative of another governmental entity or where copies are provided under provisions of a written commission contract may be waived.

b. Copying and postage costs. Anyone making a request for reproduction of the commission's records will prepay for services at the following rates, in addition to actual mailing costs:

(1) Photocopies (direct copies on 8½″ x 11″ or 8½″ x 14″ paper)—50 cents per page. For direct photocopies on 11″ x 17″ paper—65 cents per page. The fee for photocopies exceeding 11″ x 17″ will be reviewed and reasonable fees will be provided to the requester upon determination of the commission's ability to photocopy.

(2) Paper copy from microfilm records—50 cents per page.

(3) Microfiche copy from microfilm records—$1 per fiche.

(4) The actual reproduction cost will be charged for any blueprint, picture, oral tape or any other work product not subject to photocopying.

(5) Computer-stored information. Tape files—$100 per file, copied only to 9-track tape with standard IBM labels. Three UP gummed mailing labels and 4 UP Cheshire labels, 30 cents per 1000 records read, and $10 per 1000 labels written. There will be a $15 charge for information copied on

computer diskette. A minimum charge of $15 or actual cost will be assessed, whichever is greater. Electronic copies (8½″ x 11″, 8½″ x 14″, or 11″ x 17″) will be provided at no cost. Requests for electronic copies exceeding 11″ x 17″ will be reviewed and reasonable fees will be provided to the requester upon determination of the commission's ability to transmit and duplicate. Programming time over ten minutes will be charged at the rate of $25 per hour or any portion of an hour.

c. Supervisory fee. An hourly fee may be charged for actual commission expenses in supervising the examination and copying of requested records when the supervision time required is in excess of one-half hour. The custodian shall prominently post in commission offices the hourly fee to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly wage of a commission clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function.

d. Search fees. If the request requires research or if the record or records cannot reasonably be readily retrieved by the office, the requester will be advised of this fact. Reasonable search fees ($15 per hour or any portion of one hour) may be charged where appropriate for either paper or electronic copy requests. In addition, all costs for retrieval and copying of information stored in electronic storage systems may be charged to the requester.

e. Advance deposits.

(1) When the estimated total fee chargeable under this subrule exceeds $25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

751—2.4(17A,22) Access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 751—2.3(17A,22).

2.4(1) *Proof of identity.* A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

2.4(2) *Requests.* The custodian may require that a request to examine and copy a confidential record be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

2.4(3) *Notice to subject of record and opportunity to obtain injunction.* After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specified period of time during which disclosure will be delayed for that purpose.

2.4(4) *Request denied.* When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification that is signed by the custodian and that includes:

a. The name and title or position of the custodian responsible for the denial; and

b. A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to this requester.

2.4(5) *Request granted.* When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

751—2.5(17A,22) Requests for treatment of a record as a confidential record and its withholding from examination. The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order, to refuse to disclose that record to members of the public.

2.5(1) *Persons who may request.* Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order, authorizes the custodian to treat the record as a confidential record, may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

2.5(2) *Request.* A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the custodian. The request must set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. Requests for treatment of a record as such a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

A person filing such a request shall, if possible, accompany the request with a copy of the record in question from which those portions for which such confidential record treatment has been requested have been deleted. If the original record is being submitted to the commission by the person requesting such confidential treatment at the time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are confidential.

2.5(3) *Failure to request.* Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted business information to the commission does not request that it be withheld from public inspection under Iowa Code section 22.7(3) or 22.7(6), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

2.5(4) *Timing of decision.* A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection is filed, or when the custodian receives a request for access to the record by a member of the public.

2.5(5) *Request granted or deferred.* If a request for such confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

2.5(6) *Request denied and opportunity to seek injunction.* If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8 or other applicable provision of law. However, such a record need not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify the requester in writing of the time period allowed to seek injunctive relief or the reason for the determination that no

reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

2.5(7) *Processing of business confidentiality claims.*

a. Applicability/availability. Businesses which provide information to the commission in applications, reports or otherwise in recorded form, or from or about which information is obtained and recorded by the commission, may request that information not be disclosed to others for reasons of business confidentiality. Until such time as a request for confidentiality is received by the commission, the information provided to the commission will be available to the public pursuant to subrule 2.3(3). If a claim is received after the information itself is received, the commission will make such efforts as are administratively practicable to associate the claim with all copies of the previously received information. However, the commission cannot ensure that such efforts will be effective, in light of the possibility of prior disclosure or dissemination of the information beyond the commission's reasonable control.

b. Form. A business which submits information to the commission may assert a business confidentiality claim in the manner prescribed in the application or instruction, if any, otherwise by placing on or attaching to the information, at the time it is submitted, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret," "proprietary," or "company confidential." When only a portion of the information is claimed to be confidential, only that portion shall be deleted from the application, report or other recorded submission, with appropriate reference to a separate claim for business confidentiality, which separate claim shall be submitted as specified above. If a request not to disclose information is filed with the commission, the party shall file together with the document a second copy of the document from which has been deleted the information for which such party wishes to claim confidential treatment. The business shall conspicuously indicate on the face of the original document that it is confidential information and shall file a claim for confidential status in accordance with the provisions of 2.5(7)*"c."*

A business which has reason to believe that the commission has received information which the business asserts to be confidential may request that such information, described with reasonable specificity, be maintained as confidential, in the same manner as specified above.

c. Contents of claim. All claims for confidentiality must be substantiated with the following information:

(1) A statement of all measures the business has taken to protect the confidentiality of the information, and a statement of intent to continue to take such measures;

(2) Practices and policies of other businesses, if known, regarding confidentiality of similar information;

(3) A statement that the information is not, and has not been, reasonably attainable without the consent of the business by other persons other than government bodies by use of legitimate means;

(4) A statement demonstrating that disclosure of the information is likely to cause substantial harm to the business's competitive position;

(5) A reference to any other determinations of confidential status of the information or similar information.

d. Initial action by commission. All claims will be reviewed within ten days of receipt for completeness. If the claim does not include the substantiation required by 2.5(7)*"c,"* the business making the claim will be so notified by certified mail. If the substantiation or comment regarding the inapplicability of 2.5(7)*"c"* is not received by the commission within ten days of the date on the return receipt, the commission will place the information in the public file. Otherwise, all information claimed to be confidential will be treated as such by the commission until further notice. A timely response from the notice under this paragraph will be ruled on by the commission within ten days, based on the compliance with 2.5(7)*"c."*

e. Initiation of official determination. All claims not rejected under 2.5(7)*"d"* shall receive an official determination when a request for disclosure covering such information is received by the commission or when the commission deems it advisable to make a determination because a request for disclosure is likely to be received or because of administrative burdens in maintaining the information confidential. The procedures and criteria below shall be followed.

f. Substantive criteria for use in confidentiality determinations. Determinations shall hold that business information is entitled to confidential treatment for the benefit of a particular person if:

(1) The business has taken and intends to continue to take reasonable measures to protect the confidentiality of the information;

(2) The information is not readily obtainable by others by legitimate means;

(3) The claim is not unreasonable in view of the nature of the information, the interests, and normal practices of the business, and the practices of other businesses;

(4) No statute or rule specifically requires disclosure of the information; and

(5) There is a substantial likelihood that disclosure of the information would cause substantial harm to the competitive position of the business.

Prior determinations by the courts, the commission or other agencies on the information or similar information shall be given due consideration and effect.

g. Preliminary determination—opportunity for comment. The commission shall transmit its preliminary determination regarding a claim for business confidentiality to the claimant by certified mail, notifying the claimant of the opportunity to provide comments within ten days, subject to reasonable extension upon written request, and that failure to comment will be construed to indicate agreement with the preliminary determination. If the determination is in response to a request for disclosure, the person requesting the disclosure shall be sent a similar notice in the same manner within ten days of the request.

h. Final determination. A final decision shall be issued within ten days after the close of the comment period to the preliminary determination. If any substantial comments are received, the final decision shall be made by the executive director or the commission's designee. If no substantial comments are received, the claimant and the person requesting disclosure, if any, shall be notified that the preliminary determination is the final decision.

i. Contested case status. All procedures within this rule shall not be considered contested case proceedings as provided in Iowa Code chapter 17A.

751—2.6(17A,22) Procedure by which additions, dissents or objections may be entered into certain records. Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents or objections entered into, a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any commission proceeding. Requester shall send the request to review such a record or the written statement of additions, dissents or objections to the custodian or to the attorney general. The request to review a written statement must be dated and signed by requester and shall include the current address and telephone number of the requester or the requester's representative.

751—2.7(17A,22) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records that may be disclosed, and the particular person or class of persons to whom the record may be disclosed (and, where applicable, the time period during which the record may be disclosed). The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed, may be required to provide proof of identity. (Additional requirements may be necessary for special classes of

records.) Appearance of counsel on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the commission to disclose records about that person to the person's attorney.

751—2.8(17A,22) Notice to suppliers of information. When a commission form requests a person to supply information about that person, the commission shall notify the person of the use that will be made of the information, which persons outside the commission might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested. This notice may be given in these rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally or by other appropriate means. Notice need not be given in connection with discovery requests in litigation or administrative proceedings, subpoenas, investigations of possible violations of law or similar demands for information.

751—2.9(17A,22) Disclosures without the consent of the subject.

2.9(1) Open records are routinely disclosed without the consent of the subject.

2.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 751—2.10(17A,22) or in any notice for a particular record system.

b. To a recipient who has provided the commission with advance written assurance that the record will be used solely as a statistical research or reporting record; provided that the record is transferred in a form that does not identify the subject.

c. To another government commission or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government commission or instrumentality has submitted a written request to the commission specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

e. To the legislative services agency.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

751—2.10(17A,22) Routine use.

2.10(1) Defined. "Routine use" means the disclosure of a record without the consent of the subject or subjects for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

2.10(2) To the extent allowed by law, the following uses are considered routine uses of all commission records:

a. Disclosure to those officers, employees and agents of the commission who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action or regulatory order.

c. Disclosure to the commission or officer which this office is advising or representing in the matter in question or to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the commission.

d. Transfer of information within the commission, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

e. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the commission is operating a program lawfully.

f. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

751—2.11(17A,22) Consensual disclosure of confidential records.

2.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to commission disclosure of confidential records as provided in rule 751—2.7(17A,22).

2.11(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the commission may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

751—2.12(17A,22) Release to subject.

2.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 751—2.6(17A,22). However, the commission need not release the following records to the subject:

a. The identity of a person providing information to the commission need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. See Iowa Code section 22.7(5).

d. As otherwise authorized by law.

2.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the commission may take reasonable steps to protect confidential information relating to another subject.

751—2.13(17A,22) Availability of records.

2.13(1) *General.* Commission records are open for public inspection and copying unless otherwise provided by rule or law.

2.13(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Sealed bids received prior to the time set for public opening of bids;

b. Bids that are opened and only the vendor's name is announced. The proposals will remain confidential until the proposals have been evaluated and the notice of intent to award a contract is made. See Iowa Code section 72.3;

c. Tax records made available to the commission;

d. Records which are exempt from disclosure under Iowa Code section 22.7;

e. Minutes of closed meetings of a government body;

f. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1) *"d"*;

g. Those portions of commission staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases when disclosure of these statements would:

(1) Enable law violators to avoid detection;

(2) Facilitate disregard of requirements imposed by law; or

(3) Give a clearly improper advantage to persons who are in an adverse position to the commission.

h. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

i. Trade secrets which are recognized and protected as such by law including but not limited to network plans from authorized users.

j. Reports to the commission and the agency which, if released, would give advantage to competitors and serve no public purpose including network redesign and engineering or other research and development working papers for improvement or enhancement of the network.

k. Any data processing software developed by the agency.

l. Records concerning security procedures or emergency preparedness developed and maintained by the commission or other federal or state agency for the protection of governmental employees, visitors to the agency, persons in the care, custody, or under the control of the agency, or property under the jurisdiction of the agency, if disclosure could reasonably be expected to jeopardize such employees, visitors, or property. Pursuant to Iowa Code section 22.7(50), specific records or classes of records to which this protection also applies may include specific information related to the physical network, contract- and vendor-related records and information associated with security and emergency preparedness, and similar or related records and information.

m. Any other records made confidential by law.

2.13(3) *Authority to release confidential records.* The commission may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 751—2.4(17A,22). If the commission initially determines that it will release such records, the commission may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 2.4(3).

[**ARC 2497C**, IAB 4/13/16, effective 3/25/16]

751—2.14(17A,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the commission by personal identifier in record systems as defined in rule 751—2.2(17A,22). For each record system, this rule describes the legal authority for the collection of that information and the means of storage of that information and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system. The record systems maintained by the commission are:

2.14(1) Payroll and personnel information system.*

2.14(2) Vendor files.

2.14(3) Certificates of insurance for contractors performing work for the commission.

2.14(4) Referrals to the attorney general.

2.14(5) Contract and lease files.

2.14(6) Accounts receivable and accounts payable system.*

2.14(7) Various grant planning files, confidential trade secrets, litigation files.

All of the above-listed records are collected pursuant to the authority of Iowa Code Supplement chapter 8D. All are stored in paper form with those items noted by an asterisk (*) also stored in electronic form. Supplementary records in these categories are stored in paper form or on microfilm or microfiche. None of the information stored can be matched, collated or compared.

751—2.15(17A,22) Other groups of records. This rule describes groups of records maintained by the commission other than record systems as defined in rule 751—2.2(17A,22). These records are routinely available to the public. However, the commission's files of these records may contain confidential information designated as confidential by the originator of the records in conformance with Iowa Code chapter 22. In addition, some records may contain information about individuals. All storage is in paper form with those items noted by an asterisk (*) also stored in electronic form. None of the information can be matched, collated or compared.

2.15(1) *Rule making.* Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. This information is not stored in an automated data processing system.

2.15(2) *Commission records.* Agendas, minutes and materials presented to the commission are available from the office of the executive director, except these records concerning closed sessions which are confidential under Iowa Code section 21.5 or which are otherwise confidential by law.

2.15(3) *Meeting participants.* Commission records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not stored in an automated data processing system.

2.15(4) *Publications.* News releases, annual reports, project reports, and commission newsletters, for example, are available from the commission offices for public information. Commission news releases, project reports, and newsletters may contain information about individuals, including commission staff or members of the commission, the councils or committees.

2.15(5) *Statistical reports.* Periodic reports for various commission programs are available from the commission offices for public information.

2.15(6) *Published materials.* The commission uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law.

2.15(7) *Policy manuals.* The commission's policy manual, containing the policies and procedures for programs administered by the commission, is available in the office of the commission. Policy manuals do not contain information about individuals.

2.15(8) *Asset files.* Asset management database and inventory database contain a listing of the assets owned by the network.*

2.15(9) *Mailing lists/contact lists.* Names, mailing addresses, and telephone numbers of state employees, commission members, officials in government of other states, and members of the general public*, for example, may be used for distribution of informational material, such as newsletters, policy directives or educational bulletins. They are also used to provide contacts for coordination of services or as reference information sources.

2.15(10) *Authorized user lists.* The network maintains a list of persons authorized to use the network.

2.15(11) *Bid/purchasing process.* For example, specifications, proposals, bid documents, awards, contracts, agreements, leases, performance bonds, requisitions, purchase orders, supply orders, and correspondence.

2.15(12) *Project files.* For example, plans, specifications, contracts, studies, drawings, photos, blueprints, requests for services, lease/rental files, and 28E agreements.

2.15(13) *Data processing files.* For example, operations logs, data base user requests, job number maintenance/update, data entry format book, integrated data dictionary, computer output

forms designations, system software, hardware/software documentation and configurations, problem determinations and resolutions records, and incident reports.

2.15(14) *Administrative records.*

a. Reports: For example, weekly, monthly, annual, biennial, statistical, analysis, and activity.

b. Correspondence: For example, public, interdepartmental, and internal.

c. Policies and procedures.

d. Organizational charts, and table of authorized positions.

e. Memberships: Professional/technical organizations.

f. Planning: Disaster recovery plans, emergency operation plans.

g. Budget and financial records.

h. Accounting records such as accounts receivable, accounts payable, receipts, invoices, claims, vouchers, and departmental billings.

i. Legislative files such as pending bills, enrolled bills, legislative proposals, and copies of amendments.

2.15(15) *Other records.* All other records that are not exempted from disclosure by law are open.

These rules are intended to implement Iowa Code section 22.11, Iowa Code Supplement section 8D.3(3)*"b,"* and 1996 Iowa Acts, House File 2407.

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CHAPTER 3
DECLARATORY ORDERS

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

751—3.1(17A) Petition for declaratory order. Any person may file a petition with the Iowa telecommunications and technology commission for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the commission at the ICN main office location as listed in 751—subrule 1.6(1). A petition is deemed filed when it is received by that office. The commission shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the commission an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE IOWA TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	}	PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by 3.7(17A).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

751—3.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the commission shall give notice of the petition to all persons not served by the petitioner pursuant to rule 3.6(17A) to whom notice is required by any provision of law. The Iowa telecommunications and technology commission may also give notice to any other persons.

751—3.3(17A) Intervention.

3.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

3.3(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the Iowa telecommunications and technology commission.

3.3(3) A petition for intervention shall be filed at the ICN main office location as listed in 751—subrule 1.6(1). Such a petition is deemed filed when it is received by that office. The

commission will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE IOWA TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	}	PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

751—3.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The Iowa telecommunications and technology commission may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

751—3.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the executive director at the ICN main office location as listed in 751—subrule 1.6(1).

751—3.6(17A) Service and filing of petitions and other papers.

3.6(1) *When service required.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

3.6(2) *Filing—when required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Iowa telecommunications and technology commission at the ICN main office location as listed in 751—subrule 1.6(1). Petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the Iowa telecommunications and technology commission.

3.6(3) *Method of service, time of filing, and proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided by rule 751—4.12(17A).

751—3.7(17A) Consideration. Upon request by petitioner, the Iowa telecommunications and technology commission must schedule a brief and informal meeting between the original petitioner, all intervenors, and the commission, a member of the commission, or a member of the staff of the commission, to discuss the questions raised. The commission may solicit comments from any person

on the questions raised. Also, comments on the questions raised may be submitted to the commission by any person.

751—3.8(17A) Action on petition.

3.8(1) Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the executive director or designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

3.8(2) The date of issuance of an order or of a refusal to issue an order is as defined in rule 751—4.2(17A).

751—3.9(17A) Refusal to issue order.

3.9(1) The Iowa telecommunications and technology commission shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the commission to issue an order.
3. The commission does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other commission or judicial proceeding, that may definitively resolve them.
5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a commission decision already made.
9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.
10. The petitioner requests the commission to determine whether a statute is unconstitutional on its face.

3.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final commission action on the petition.

3.9(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

751—3.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

751—3.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

751—3.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the commission, the petitioner, and any intervenors (who consent to be bound) and is applicable only in circumstances

where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the commission. The issuance of a declaratory order constitutes final commission action on the petition.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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CHAPTER 4
CONTESTED CASES

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

751—4.1(17A) Scope and applicability. This chapter applies to contested case proceedings conducted by the Iowa telecommunications and technology commission. Contested cases generally include, but are not limited to, appeals of administrative orders issued by the executive director and the withdrawal of an authorized user's right to use the service offered by the commission.

751—4.2(17A) Definitions. Except where otherwise specifically defined by law:

"Commission" means the Iowa telecommunications and technology commission, as designated in Iowa Code chapter 8D, as having appellate jurisdiction over a particular matter.

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

"Executive director" means the director or an authorized representative of the commission.

"Issuance" means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

"Party" means each person or commission named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

"Presiding officer" means the administrative law judge or, under certain circumstances, members of the commission or the entire commission.

"Proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the entire commission did not preside.

751—4.3(17A) Time requirements.

4.3(1) Time shall be computed as provided in Iowa Code section 4.1(34).

4.3(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute or by rule. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

751—4.4(17A) Requests for contested case proceeding. Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the commission action in question.

The request for a contested case proceeding should state the name and address of the requester, identify the specific commission action which is disputed, and where the requester is represented by a lawyer identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute.

751—4.5(17A) Notice of hearing.

4.5(1) *Delivery.* Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

a. Personal service as provided in the Iowa Rules of Civil Procedure; or

b. Certified mail, return receipt requested; or

c. First-class mail; or

d. Publication, as provided in the Iowa Rules of Civil Procedure.

4.5(2) *Contents.* The notice of hearing shall contain the following information:

a. A statement of the time, place, and nature of the hearing;

b. A statement of the legal authority and jurisdiction under which the hearing is to be held;

c. A reference to the particular sections of the statutes and rules involved;

d. A short and plain statement of the matters asserted. If the commission or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;

e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the commission or the state and of parties' counsel where known;

f. Reference to the procedural rules governing conduct of the contested case proceeding;

g. Reference to the procedural rules governing informal settlement;

h. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (e.g., the commission, members of the commission, administrative law judge from the department of inspections and appeals); and

i. Notification of the time period in which a party may request, pursuant to Iowa Code section 17A.11(1) and rule 4.6(17A), that the presiding officer be an administrative law judge.

751—4.6(17A) Presiding officer.

4.6(1) In each contested case in which Iowa Code chapter 17A requires an evidentiary hearing, the chair of the commission will determine whether the hearing shall be held before the commission, one or more members of the commission, or an administrative law judge. Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies or describes the presiding officer as the commission head or members of the commission.

4.6(2) The executive director may deny the request only upon a finding that one or more of the following apply:

a. Neither the commission nor any officer of the commission under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

c. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

d. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

e. Funds are unavailable to pay the costs of an administrative law judge and an intercommission appeal.

f. The request was not timely filed.

g. The request is not consistent with a specified statute.

4.6(3) The executive director shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge with the qualifications identified in subrule 4.6(4), the parties shall be notified at least 10 days prior to the hearing if a qualified administrative law judge will not be available.

4.6(4) An administrative law judge assigned to act as presiding officer in telecommunications matters shall have the following technical expertise: must befamiliar with telecommunications transactions.

4.6(5) Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the commission. A party must seek any available intracommission appeal in order to exhaust adequate administrative remedies.

4.6(6) Unless otherwise provided by law, commission heads and members of multimembered commission heads, when reviewing a proposed decision upon intracommission appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

751—4.7(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the commission in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

751—4.8(17A) Telephone or network proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference or on the Iowa Communications Network in which all parties have an opportunity to participate. Other telephone or network proceedings, including the hearing for the contested case proceeding, may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone or network hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen. The cost of the telephone hearing or network hearing may be assessed equally to each party.

751—4.9(17A) Disqualification.

4.9(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

a. Has a personal bias or prejudice concerning a party or a representative of a party;

b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;

c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;

d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;

e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

f. Has a spouse or relative within the third degree of relationship that (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or

g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

4.9(2) The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other commission functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 and subrules 4.9(3) and 4.23(9).

4.9(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the rec-ord a statement of the reasons for the determination that withdrawal is unnecessary.

4.9(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 4.9(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 4.25(17A) and seek a stay under rule 4.29(17A).

751—4.10(17A) Consolidation—severance.

4.10(1) *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

4.10(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

751—4.11(17A) Pleadings.

4.11(1) Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

4.11(2) Petition.

a. Any petition required in a contested case proceeding shall be filed within 20 days of delivery of the notice of hearing or subsequent order of the presiding officer, unless otherwise ordered.

b. A petition shall state in separately numbered paragraphs the following:

(1) The persons or entities on whose behalf the petition is filed;

(2) The particular provisions of statutes and rules involved;

(3) The relief demanded and the facts and law relied upon for such relief; and

(4) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

4.11(3) Answer. An answer shall be filed within 20 days of service of the petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any.

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

4.11(4) Amendment. Any notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

751—4.12(17A) Service and filing of pleadings and other papers.

4.12(1) *When service required.* Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the commission, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

4.12(2) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

4.12(3) *Filing—when required.* After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the executive director of the commission at the ICN main office location as listed in 751—subrule 1.6(1). All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the commission.

4.12(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the ICN main office location as listed in 751—subrule 1.6(1), delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

4.12(5) *Proof of mailing.* Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

> I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Iowa Telecommunications and Technology Commission at the ICN main office location as listed in 751—subrule 1.6(1) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).
>
> (Date) (Signature)

751—4.13(17A) Discovery.

4.13(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

4.13(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 4.13(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

4.13(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

751—4.14(17A) Subpoenas.

4.14(1) *Issuance.*

a. A commission subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

4.14(2) *Motion to quash or modify.* The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

751—4.15(17A) Motions.

4.15(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

4.15(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the commission or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

4.15(3) The presiding officer may schedule oral argument on any motion.

4.15(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the commission or an order of the presiding officer.

4.15(5) Motions for summary judgment. Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 237 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

Motions for summary judgment must be filed and served at least 45 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 4.28(17A) and appeal pursuant to rule 4.27(17A).

751—4.16(17A) Prehearing conference.

4.16(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the executive director to all parties. For good cause the presiding officer may permit variances from this rule.

4.16(2) Each party shall bring to the prehearing conference:

a. A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and

b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

c. Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

4.16(3) In addition to the requirements of subrule 4.16(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters which the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters which will expedite the hearing.

4.16(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

751—4.17(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

4.17(1) A written application for a continuance shall:

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

b. State the specific reasons for the request; and

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

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The commission may waive notice of such requests for a particular case or an entire class of cases.

4.17(2) In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

g. The existence of a conflict in the schedules of counsel, parties, or witnesses;

h. The timeliness of the request; and

i. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

751—4.18(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with commission rules. Unless otherwise provided, a withdrawal shall be with prejudice.

751—4.19(17A) Intervention.

4.19(1) *Motion.* A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

4.19(2) *When filed.* Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

4.19(3) *Grounds for intervention.* The movant shall demonstrate that (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

4.19(4) *Effect of intervention.* If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

751—4.20(17A) Hearing procedures.

4.20(1) The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

4.20(2) All objections shall be timely made and stated on the record.

4.20(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

4.20(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

4.20(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

4.20(6) Witnesses may be sequestered during the hearing.

4.20(7) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

b. The parties shall be given an opportunity to present opening statements;

c. Parties shall present their cases in the sequence determined by the presiding officer;

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

751—4.21(17A) Evidence.

4.21(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

4.21(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

4.21(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

4.21(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

4.21(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

4.21(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

751—4.22(17A) Default.

4.22(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

4.22(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

4.22(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final commission action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 4.27(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

4.22(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

4.22(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

4.22(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 236.

4.22(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 4.25(17A).

4.22(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

4.22(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues but, unless the defaulting party has appeared, it cannot exceed the relief demanded.

4.22(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 4.29(17A).

751—4.23(17A) Ex parte communication.

4.23(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the commission or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 4.9(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

4.23(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

4.23(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

4.23(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 4.12(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

4.23(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

4.23(6) The executive director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 4.23(1).

4.23(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 4.17(17A).

4.23(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

4.23(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately

disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

4.23(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension, or revocation of the privilege to practice before the commission. Violation of ex parte communication prohibitions by commission personnel shall be reported to the executive director for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

751—4.24(17A) Recording costs. Upon request, the commission shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

751—4.25(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the commission may review an interlocutory order of the presiding officer. In determining whether to do so, the commission shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the commission at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

751—4.26(17A) Posthearing procedures and orders.

4.26(1) *Filing by parties of briefs and proposed findings.* The presiding officer may ask the parties to submit proposed findings and conclusions of law and a proposed order or briefs. Copies of the submission shall be served on all parties. The submission schedule, including waiver or briefs, shall be determined at the close of the hearing.

4.26(2) *Final decision or order.*

a. When a quorum of the entire commission presides over the reception of evidence at the hearing, its decision is a final decision. The decision shall be in writing and shall include findings of fact and conclusions of law in conformance with Iowa Code chapter 17A.

b. In a contested case in which the hearing is held before an administrative law judge or a panel of commission members constituting less than a quorum of the board, the presiding officer or panel shall render a proposed decision. The proposed decision shall be in writing and shall include findings of fact and conclusions of law in conformance with Iowa Code chapter 17A. The proposed decision becomes the final decision of the commission without further proceedings unless there is an appeal to, or review on motion of, the commission within 30 days.

4.26(3) *Decisions and orders.*

a. By whom prepared. The presiding officer who presided at the reception of evidence shall prepare a proposed or final decision or order in each case. Findings of fact shall be prepared by the presiding officer at the reception of the evidence in a case unless the officer becomes unavailable. If the officer is unavailable, the findings of fact may be prepared by another person qualified to be a presiding officer who has read the record, unless demeanor of witnesses is a substantial factor. If demeanor is a substantial factor and the presiding officer is unavailable, the portions of the hearing involving demeanor shall be heard again or the case shall be dismissed.

b. Content of decision or order. The proposed or final decision or order shall:

(1) Be in writing or stated in the record.

(2) Include findings of fact. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of underlying facts supporting the findings. If a party

submitted proposed finding of fact in accordance with subrule 4.26(1), the decision or order shall include a ruling upon each proposed finding.

(3) Include conclusions of law, supported by cited authority or reasoned opinion.

c. Delivery. A copy of the proposed decision or order shall be delivered to the parties either by personal service or by certified mail, return receipt requested.

751—4.27(17A) Appeals and review.

4.27(1) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the commission within 30 days after issuance of the proposed decision.

4.27(2) *Review.* The commission member of the commission may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

4.27(3) *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the commission. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. If a commission member or the commission initiates review of a proposed decision, the executive director shall mail a notice of review to all parties. The notice of appeal or the notice of review shall specify:

a. The parties initiating the appeal;

b. The proposed decision or order appealed from;

c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

d. The relief sought;

e. The grounds for relief.

4.27(4) *Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The commission may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

4.27(5) *Scheduling.* The commission shall issue a schedule for consideration of the appeal.

4.27(6) *Briefs and arguments.* Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs.

The commission may resolve the appeal on the briefs or provide an opportunity for oral argument. The commission may shorten or extend the briefing period as appropriate.

751—4.28(17A) Applications for rehearing.

4.28(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

4.28(2) *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the commission decision on the existing record and whether, on the basis of the grounds enumerated in subrule 4.27(4), the applicant requests an opportunity to submit additional evidence.

4.28(3) *Time of filing.* The application shall be filed with the commission within 20 days after issuance of the final decision.

4.28(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the commission shall serve copies on all parties.

4.28(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the commission grants the application within 20 days after its filing.

751—4.29(17A) Stays of commission actions.

4.29(1) *When available.*

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

b. Any party to a contested case proceeding may petition the commission for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

4.29(2) *When granted.* In determining whether to grant a stay, the presiding officer or commission shall consider the factors listed in Iowa Code section 17A.19(5)*"c."*

4.29(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the commission or any other party.

751—4.30(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

751—4.31(17A) Emergency adjudicative proceedings.

4.31(1) *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the Constitution and other provisions of law, the commission may issue a written order in compliance with Iowa Code section 17A.18A to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the commission by emergency adjudicative order. Before issuing an emergency adjudicative order the commission shall consider factors including, but not limited to, the following:

a. Whether there has been a sufficient factual investigation to ensure that the commission is proceeding on the basis of reliable information;

b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and

e. Whether the specific action contemplated by the commission is necessary to avoid the immediate danger.

4.31(2) *Issuance of order.*

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

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

(1) Personal delivery;

(2) Certified mail, return receipt requested, to the last address on file with the commission;

(3) Certified mail to the last address on file with the commission;

(4) First-class mail to the last address on file with the commission; or

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

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

4.31(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the commission shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

4.31(4) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the commission shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

Issuance of a written emergency adjudicative order shall include notification of the date on which commission proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further commission proceedings to a later date will be granted only in compelling circumstances upon application in writing.

751—4.32(17A,8D) Informal procedure prior to hearing. Any person who desires to pursue informal settlement of any contested case may request a meeting with appropriate staff. The request should be made in writing to the executive director, setting forth a concise statement of the circumstances giving rise to the controversy, the text or citation to any applicable law, commission rule, or decision, and a statement of the settlement proposed. A request for informal settlement should be received by the executive director not less than 15 days before the board meeting at which it is to be considered. The executive director shall schedule consideration of the request at the next regular board meeting occurring more than 15 days after the request for an informal settlement is made. Not more than 10 days after the commission meeting at which the request is scheduled for consideration, the executive director will notify the petitioner in writing of the commission's disposition of the request. If the commission determines that a conference is appropriate, the party will be notified when, where, and with whom such a conference is to be held. The terms of any settlement agreed to by the parties shall be embodied in a written stipulation. Upon receipt of the request, all formal contested case procedures are stayed, except in the case of emergency orders as provided in rule 4.31(17A). If informal settlement is unsuccessful, formal contested case proceedings may be instituted in accordance with rule 4.5(17A).

These rules are intended to implement Iowa Code chapters 8D and 17A.

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CHAPTER 5
PURCHASING

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

751—5.1(8D) Applicability of competitive bidding.

5.1(1) The commission shall use competitive bidding to purchase goods and services from private agencies when the estimated annual value of the contract is equal to or greater than $5,000 or when the estimated value of the multiyear service contract in the aggregate, including any renewals, is equal to or greater than $15,000, unless there is adequate justification for a sole-source procurement pursuant to subrule 5.1(2) or another provision of law.

a. When the estimated annual value of the contract is equal to or greater than $5,000, but less than $50,000, or the estimated value of the multiyear contract in the aggregate, including any renewals, does not exceed $150,000, the commission, in its sole discretion, shall use either a formal or informal competitive selection process to procure the goods or services.

b. When the estimated annual value of the contract is equal to or greater than $50,000 or the estimated value of the multiyear contract in the aggregate, including any renewals, exceeds $150,000, the commission shall use a formal competitive bidding process to procure the goods or services.

c. For any single item, the commission may spend up to the maximum amount permitted by Iowa Code Supplement section 8D.11 to acquire the item. This maximum amount is not applicable to purchases under the contracting authority permitted by Iowa Code section 8D.13 or any other authority of the commission.

5.1(2) The commission shall avoid sole-source procurements unless clearly necessary and justifiable. The commission may purchase goods or services using a sole-source procurement under the following circumstances:

a. The executive director or commission's designee determines that one vendor is the only one qualified or eligible or is quite obviously the most qualified or eligible to provide the goods or perform the services; or

b. The goods or services being purchased involve work that is of such a specialized nature or related to a specific geographic location that only a single source, by virtue of experience, expertise, proximity to the project, or ownership of intellectual property rights, could most satisfactorily provide the service; or

c. The commission is hiring the services of experts, advisors, counsel, or consultants to assist in any type of legal proceeding including but not limited to testifying or assisting in the preparation of quasi-judicial or judicial proceedings; or

d. The federal government or other provider of funds for the service being purchased, other than the state of Iowa, has imposed clear and specific restrictions on the commission's use of the funds in a way that restricts the commission to only one service provider; or

e. Applicable law requires, provides for, or permits the use of a sole-source procurement; or

f. There is an immediate or emergency need for the item or service; or

g. The item is maintenance services for the network for which the vendor supplies remote maintenance service for network components or software or the vendor supplies software upgrades, patches, modifications or the like electronically or for which the service will preserve equipment or software warranties.

5.1(3) When the annual value of the contract exceeds $5,000 or when the estimated value of the multiyear contract in the aggregate, including renewals, is equal to or greater than $15,000, the commission shall complete a sole-source justification form. The sole-source justification form shall be reviewed, approved and signed by both the executive director and the chief financial officer before the commission proceeds with the sole-source procurement.

[**ARC 3958C**, IAB 8/15/18, effective 9/19/18]

751—5.2(8D) Methods of obtaining bids or proposals used by the commission. The commission shall obtain bids or proposals by one of the following methods. If more than one method is applicable to the purchase of a particular item, the commission shall choose the method of bidding to be utilized. For any method used, the commission may provide notice of the solicitation electronically and vendors may submit proposals electronically unless the bidding documents provide otherwise.

5.2(1) *Formal invitations to bid.*

a. A formal invitation to bid may be required for any item if cost is the major criterion for selection. Other criteria may also be used, provided that the commission describes the criteria in the bid documents. The commission shall prepare a written invitation-to-bid form and shall transmit the form either by mail, electronically, or digitally to selected vendors in the business of providing the goods or services sought by the commission.

b. The invitation to bid shall contain the due date and time of the bid opening, a complete description of the item needed, and any other necessary or proper items. The price quoted by the vendors shall remain binding throughout the applicable time period.

5.2(2) *Informal selection process.*

a. The commission may use an informal selection process when permitted by rule 5.1(8D). An informal selection process is a streamlined competitive bidding process in which the commission makes an effort to contact at least three prospective vendors to solicit bids or proposals to provide the goods or services sought by the commission. Informal bids or proposals may be obtained by the commission through use of a written bid form faxed or mailed to selected vendors, email, posting a notice on the commission's website and inviting bids or proposals electronically or over the telephone.

b. Written informal bids and proposals shall be opened as received, and informal telephone bids shall be recorded as received. If a bid is received over the telephone, a telephone bid form shall be used to record the bid received. If a bid is received by email, the email shall be printed or stored in a secure electronic format so that the bid can be retrieved and read in machine-readable form. The information contained in the email shall be recorded on a form similar to the telephone bid form. If an informal bid is received by fax, the information on the fax shall be recorded on a form similar to the form used for telephone bids.

5.2(3) *Formal requests for proposals.*

a. Whenever a requirement exists for an item and cost may not be the sole criterion for selection and rule 5.1(8D) requires the commission to conduct a formal competitive selection process, the commission shall issue a formal request for proposal. The purpose of a request for proposal is to provide the vendor with sufficient information about the commission's requirements and goals to allow the vendor to propose a solution to the commission's requirements.

b. The terms quoted by the vendor shall remain binding throughout the applicable time frame.

c. The commission may request best and final offers as part of the request-for-proposal process.

5.2(4) *Auctions and reverse auctions.*

a. The commission may purchase items at auction when the auction is conducted electronically, digitally or otherwise. For any single item, the commission may spend up to the maximum amount permitted by Iowa Code section 8D.11 as amended by 2007 Iowa Acts, House File 851, section 2, to acquire the item. However, the commission shall not make a bid for any item for which the bid price at the auction exceeds the reasonable market price of an item. The commission shall perform a market analysis prior to the auction to determine the market price for items available by auction. The commission shall retain the market analysis with any other documentation for the purchase of the item at the auction.

b. The commission may purchase items using a reverse auction. A reverse auction is a price negotiation technique using secure Internet-based technology. This technique involves posting a requirement on an Internet site accessible by the public that allows vendors to post bids publicly. The buyer offers to purchase a product or service for a maximum amount (reserve price), and then the sellers or suppliers bid down the purchase price the buyer will actually pay for fulfillment. Vendors are able to see the current bids (but not the identity of the bidders) and post new or revised bids that are

lower, thus increasing competition. When the commission conducts a reverse auction, the following requirements shall be met:

(1) The invitation to bid or the request for proposals shall provide notification of the intent to use the reverse auction process and provide instructions for participating in that process. The bidding documents shall also provide notification that a bidder's consent to disclosure of the bidder's bid price as part of the auction process is required in order to participate.

(2) The commission shall determine the specifications and requirements of the items to be acquired.

(3) The commission shall identify and provide notice to potential vendors concerning the proposed acquisition.

(4) The commission shall establish prequalification requirements to be met by a vendor in order to be eligible to participate in the reverse auction. The prequalification requirements shall be included in the bidding documents.

(5) Prior to conducting a reverse auction, the commission shall establish a threshold amount, which shall be the maximum amount that the commission is willing to pay for the items to be acquired.

(6) Evaluation factors other than price shall be clearly listed and explained. The commission may direct bidders to supply technical proposals or other information in order to evaluate other factors and to use the reverse auction only as a price negotiation tool.

(7) The commission shall set the time of the auction.

(8) The commission shall establish minimum bid decrements.

(9) The commission shall establish the currency for the offering of bids.

(10) The commission shall establish the language for the bids.

(11) The commission may purchase additional quantities of the item if there are additional funds left at the end of the auction. The commission shall purchase additional quantities from the successful vendor.

751—5.3(8D) Items purchased through the department of administrative services. Goods and services may be obtained by the commission through the department of administrative services whenever procurement through administrative services is appropriate and in the best interests of the commission. Items procured through administrative services may be obtained by administrative services in any manner deemed appropriate by administrative services.

751—5.4(8D) Notice of bids or requests.

5.4(1) The commission shall post solicitations of formal bids or requests on the commission's Internet web page.

5.4(2) The commission expressly adopts 11 IAC 105.7(1) and shall enforce the notice requirements and consequences for insufficient notice contained therein.

5.4(3) All contracts of the commission shall comply with the legal notice requirements relating to targeted small businesses.

751—5.5(8D) Contract purchases. The commission may enter into contract purchase agreements for items, groups of items, or services. Contract purchase agreements are subject to the competitive bidding requirements previously outlined where applicable. The commission may also purchase items from other contracts obtained by other governmental entities if the law or the contract allows.

751—5.6(8D) Blanket purchase agreements. If the commission foresees a requirement for frequent purchases of off-the-shelf items, the commission may establish blanket purchase agreements. A blanket purchase agreement is a formally approved charge account that is designed to reduce paperwork and the number of checks issued. Blanket purchase agreements are subject to the competitive bidding requirements previously outlined where applicable.

751—5.7(8D) Prospective vendor selection.

5.7(1) Any firm or business legally transacting business within Iowa at the time the contract for goods or services is executed, may request placement on the approved vendor list for a particular service or commodity by filing a vendor application form with the commission. The commission may mail copies of solicitation documents to vendors on the list for a particular item or to any other vendor which the commission chooses to contact. A vendor may be refused placement on the list or suspended or permanently removed from the list for any of the following reasons:

a. Failure to respond to three consecutive solicitations;

b. Failure to deliver within specified delivery dates;

c. Failure to deliver in accordance with specifications;

d. Attempts to influence the decision of any state employee involved in the procurement process;

e. Evidence of agreements by the vendor to restrain trade or impede competitive bidding;

f. Any other activities of the vendor which the commission determines would render the vendor unsuitable; and

g. Failure to pay subcontractors.

5.7(2) The executive director shall notify a vendor in writing prior to refusing placement on the list, suspending the vendor from the list, or permanently removing the vendor from the list. The vendor shall be provided a reasonable opportunity to explain and cure any misconduct identified by the executive director. If the executive director ultimately refuses placement on the list or removes the vendor from the list, the vendor may appeal the executive director's action to the commission pursuant to the criteria for vendor appeals contained in these rules.

5.7(3) The commission shall select vendors to receive solicitation documents based on the commission's knowledge of the vendors in the particular market. The initial vendor selection shall be designed to promote the competitive bidding process, the set-aside procurement programs, and the best interests of the commission. The commission shall also provide solicitation documents to qualified vendors upon request when the request is made during the solicitation period. The vendor is solely responsible for ensuring that solicitation documents are received by the vendor.

751—5.8(8D) Bids and proposals to conform with specifications. All bids and proposals must conform to the specifications indicated by the commission. Bids and proposals which do not conform to the specifications stated may be rejected. The commission reserves the right to waive deficiencies in the bids or proposals if in the judgment of the commission the best interests of the commission would be served by the waiver.

751—5.9(8D) Time of delivery. When evaluating bids or proposals the commission may consider the time of delivery when determining the successful vendor.

751—5.10(8D) Cash discounts. When evaluating bids or proposals the commission may consider cash discounts.

751—5.11(8D) Tie bids. The commission shall resolve ties among bids or proposals which are equal in all respects by drawing lots unless only one of the tied bidders is an Iowa business. If only one of the bidders tied for an award is an Iowa business, the Iowa business shall be given preference over all tied out-of-state businesses. An Iowa business is a resident of the state of Iowa. If it is necessary to draw lots, the drawing shall be held in the presence of the vendors who submitted the tied bids or proposals whenever practical. If the tied vendors are not present, the drawing shall be held in front of at least two persons, and the commission shall document the drawing.

751—5.12(8D) Time of submission. Vendors shall submit all formal bids and proposals in sufficient time to actually reach the commission prior to the date and time set for the opening of the bids or proposals. Vendors shall submit all informal bids in time to reach the commission prior to the time

specified by the commission. Bids and proposals received after the date and time set for opening or for submission shall be returned to the vendor unopened. The commission shall notify all vendors to which invitations to bid or requests for proposals were sent of any changes in the time of submission. If a formal invitation to bid or request for proposal is canceled prior to the time set for opening the bids or proposals, the commission shall return unopened any responses already received. If an informal invitation to bid is canceled prior to the time set for receiving bids, the commission shall destroy any bids already received.

751—5.13(8D) Modification or withdrawal of bids or proposals. Vendors may modify or withdraw bids or proposals prior to the time and date set for the bid or proposal opening. Modifications or withdrawals shall be in writing and delivered in a sealed envelope which properly identifies the correct bid or proposal to be modified or withdrawn. Vendors may withdraw a bid or proposal after opening only with the approval of the commission if the commission finds that an honest error was made by the vendor which will cause undue financial hardship to the vendor and which will not cause undue financial hardship or inconvenience to the commission.

751—5.14(8D) Financial security. The commission may require bid security, litigation security, and performance security on formal bids or proposals. When required, security may be by certified check, cashier's check, certificate of deposit, or letter of credit made payable to the commission, or any other form specified by the commission.

751—5.15(8D) Rejection of bids and proposals. The commission reserves the right to reject any or all bids or proposals. The commission may reject bids and proposals because of faulty specifications, abandonment of the project, insufficient funds, evidence of unfair or flawed bidding procedures, failure of a vendor to meet the commission's requirements, insufficient evidence of a vendor's financial capability to perform the contract, or for any other reason if the commission determines that the best interests of the commission will be served by rejecting any or all bids. Following the rejection of bids or proposals, the commission may request new bids or proposals at any time deemed convenient by the commission.

751—5.16(8D) Background and informational statements. Bidders may be required to describe their organizational structure, to identify key personnel and to submit personnel to criminal history checks and background investigations. Any changes in key personnel during the bidding process or during the contract term must be reported to the commission before the change occurs.

751—5.17(8D) Vendor appeals. Any vendor whose bid or proposal has been timely filed and that is aggrieved by the commission's notice of intent to award may appeal the decision by filing a written notice of appeal before the Iowa telecommunications and technology commission, within five days of the date of the notice of intent to award, exclusive of Saturdays, Sundays, and legal state holidays. The commission's address is listed in 751—subrule 1.6(1). The commission must actually receive the notice of appeal at this address within the specified time frame to be considered timely. The notice shall state the following:

1. The relief demanded and the facts and law relied upon for relief;
2. The particular provisions of the statutes and rules involved with specific reference to the grounds identified in Iowa Code section 17A.19(10);
3. On whose behalf the petition is filed; and
4. The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

751—5.18(8D) Procedures for vendor appeal. The vendor appeal shall be a contested case proceeding and shall be conducted in accordance with 751 IAC 4, unless the provisions of this rule provide otherwise.

5.18(1) *Hearing.* Upon receipt of a notice of vendor appeal, the commission shall contact the department of inspections and appeals to arrange for a hearing. The department of inspections and appeals shall send a written notice of the date, time and location of the appeal hearing to the aggrieved vendor or vendors. The presiding officer shall hold a hearing on the vendor appeal within 45 days of the date the notice of appeal was received by the commission.

5.18(2) *Discovery.* The parties shall serve any discovery requests upon the other parties at least 20 days prior to the date set for hearing. The parties must serve responses to discovery at least 10 days prior to the date set for the hearing.

5.18(3) *Witnesses and exhibits.* The parties shall contact each other regarding witnesses and exhibits at least ten days prior to the time set for the hearing. The parties must meet prior to the hearing regarding the evidence to be presented in order to avoid duplication or the submission of extraneous materials.

5.18(4) *Evidence for a telephone or network hearing.* If the hearing is conducted by telephone or on the fiberoptic network, the parties must deliver all exhibits to the office of the presiding officer three days prior to the time the hearing is conducted. Any exhibits which have not been served on the opposing party should be served at least seven days prior to the hearing.

5.18(5) *Contents of decision.* The administrative law judge shall issue a proposed decision in writing that includes findings of fact and conclusions of law stated separately. The decision shall be based on the record of the contested case and shall conform with Iowa Code chapter 17A. The decision shall be sent to all parties by first-class mail.

5.18(6) *Record requirements.* The record of the contested case shall include all materials specified in Iowa Code subsection 17A.12(6). The record shall also include any request for a contested case hearing and other relevant procedural documents regardless of their form.

a. Method of recording. Oral proceedings in connection with a vendor appeal shall be recorded either by mechanized means or by certified shorthand reporters. Parties requesting that the hearing be recorded by certified shorthand reporters shall bear the costs.

b. Transcription. Oral proceedings in connection with a hearing in a case or any portion of the oral proceedings shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party.

c. Tapes. Copies of tapes of oral proceedings may be obtained from the presiding officer at the requester's expense.

d. Retention time. The recording or stenographic notes of oral proceedings or the transcription shall be filed and maintained by the commission for at least five years from the date of the proposed decision.

5.18(7) *Dismissal.* A ruling dismissing all of a party's claims or a voluntary dismissal is a proposed decision under Iowa Code section 17A.15.

5.18(8) *Stay of agency action for vendor appeal.*

a. When available.

(1) Any party appealing the issuance of a notice of intent to award a contract may petition the presiding officer for a stay of the award pending its review. The petition for stay shall be filed with the notice of appeal and shall state the reasons justifying a stay.

(2) Any party adversely affected by a final decision and order may petition the commission which issued the decision for a stay of that decision and order pending judicial review. The petition for stay shall be filed with the executive director within ten days of receipt of the final decision and order and shall state the reasons justifying a stay.

b. When granted. The presiding officer or commission, as appropriate, shall grant a stay when it concludes that the movant has satisfied the standards for the grant of a stay included in 751—subrule 4.29(2).

c. Vacation. A stay may be vacated by the issuing authority upon application of the commission or any other party.

751—5.19(8D) Review of proposed decision.

5.19(1) The proposed decision shall become the final decision of the commission 15 days after mailing of the proposed decision, unless prior to that time a party submits an appeal from, or a commission member requests a review of the proposed decision.

5.19(2) A party appealing the proposed decision shall mail a copy of the notice of an appeal to all other parties. If a commission member requests a review of the proposed decision, the commission will mail a copy of the request for review to all parties. Within 15 days after mailing of a notice of appeal or of a request for review, any party may submit to the commission (in an original and eight copies) exceptions to and a brief in support of or opposition to the proposed decision, copies of which exceptions or brief shall be mailed by the submitting party to all other parties to the proceeding. The executive director shall notify the parties if the commission deems oral arguments by the parties to be appropriate. The executive director will schedule review of the proposed decision at the next commission meeting occurring not less than 30 days after mailing of the notice of appeal or request for review.

5.19(3) A party appealing a proposed decision shall mail or deliver the notice of appeal to the executive director of the Iowa telecommunications and technology commission at the ICN main office location as listed in 751—subrule 1.6(1). Failure to request review will preclude judicial review unless the commission reviews a decision on its own motion. Notice of the review will be sent to all parties participating in the appeal.

5.19(4) The commission shall review the proposed decision based on the record and limited to issues raised in the hearing. The commission shall not take any further evidence and shall not consider issues that were not raised at the hearing. The issues shall be specified in the party's request for review. The party seeking review shall be responsible for transcribing any tape of the proceeding before the presiding officer and file the transcript as part of the record for review. The party seeking review shall bear the cost of the transcription regardless of the method used to transcribe the tape.

5.19(5) Each party shall have opportunity to file exceptions to the proposed decision and to present briefs in support of or in opposition to the proposed decision. The commission may set a deadline for submission of briefs. When the commission consents, oral arguments may be presented. A party wishing to make an oral argument shall specifically request it. All parties shall be notified in advance of the scheduled time and place.

5.19(6) Requests for rehearing shall be made to the commission within 20 days of issuing a final decision. A rehearing may be granted when new legal issues are raised, new evidence is available, an obvious mistake is corrected, or when the decision fails to include adequate findings or conclusions on all issues. A request for rehearing is not necessary to exhaust administrative remedies.

5.19(7) Judicial review of the commission's final decisions may be sought in accordance with Iowa Code section 17A.19.

751—5.20(8D) Purchasing cooperative or consortium.

5.20(1) Membership. The commission may join a purchasing cooperative or consortium composed of public or private entities, or both, for the purpose of reducing overall telecommunications business costs for the commission and its authorized users.

5.20(2) Prior to joining a purchasing cooperative or consortium, the commission shall review membership obligations to ensure that the commission's membership obligations are not inconsistent with the laws and rules governing the commission.

5.20(3) Notwithstanding the provisions of subrules 5.20(1) and 5.20(2), the commission may purchase goods and services through the cooperative or consortium without conducting a separate competitive bidding process so long as the cooperative or consortium uses or used a competitive bidding process or procedure.

These rules are intended to implement Iowa Code sections 8D.3(3)*"b"* and 8D.11.

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CHAPTER 6
CONTRACTS FOR PROFESSIONAL SERVICES
Rescinded IAB 12/22/04, effective 1/26/05
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CHAPTER 7
AUTHORIZED USE AND USERS

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

751—7.1(8D) Definitions. For the purposes of interpreting these rules, the following definitions are applicable.

"Authorized facility" means a site operated by an authorized user that is consistent with the written mission of the authorized user.

"Authorized use" means use of the network by an authorized user or by persons acting on behalf of an authorized user as provided in this chapter for the following purposes of the authorized user: (1) state or federal communications as defined in this chapter; (2) education or educational purposes as defined in this chapter; (3) training programs provided under state law and training programs developed by authorized users; (4) telemedicine or related purposes as defined in this chapter; (5) official governmental use by a state agency or a federal agency as defined in this chapter consistent with authorized purposes under applicable state or federal law; (6) establishing and operating a shared data only network for law enforcement, emergency management, disaster services, emergency warning and other emergency information dissemination services to federal, state and local law enforcement agencies and local emergency management offices; or (7) city of Des Moines.

"Authorized user" means a private or public agency except for a public or private agency which was required pursuant to Iowa Code section 8D.9(1) to certify to the commission not later than July 1, 1994, of the agency's intent to become a part of the network and which did not provide such certification. Agencies that obtain legislative approval to join the network after July 1, 1994, will be treated as a public or private agency for purposes of this definition and all provisions of Iowa Code chapter 8D.

"Commission" means the Iowa telecommunications and technology commission.

"Dial-up access" means the ability of an authorized user using technical or mechanical means to access a computer network using a telecommunications facility and modem.

"Direct connection" means a connection to the network by an authorized facility using owned, leased or contracted telecommunications facilities.

"Educational use" means a use that is within the written mission of an accredited nonpublic school, a nonprofit institution of higher education eligible for tuition grants, an institution under the control of the board of regents, a school corporation, a city library, a regional library as provided in Iowa Code chapter 256, and a county library as provided in Iowa Code chapter 336.

"Federal agency" means each board, commission, department, or agency of the executive, legislative, and judicial branches of the United States, or the U.S. Post Office which receives a federal grant for pilot or demonstration projects or the independent establishments and corporations of the federal government as identified from time to time in The United States Government Manual, the official handbook of the federal government, published on an annual basis by the Office of the Federal Register as a special edition of the Federal Register. The Manual includes comprehensive information on the agencies of the legislative, judicial, and executive branches. The Manual also includes information on quasi-official agencies; international organizations in which the United States participates and boards, commissions and committees of the federal government. For example, independent establishments and corporations may include the following:

Central Intelligence Agency
Commodity Futures Trading Commission
Consumer Product Safety Commission
Defense Nuclear Facilities Safety Board
Environmental Protection Agency
Export-Import Bank of the United States
Federal Communications Commission

Federal Deposit Insurance Corporation
Federal Election Commission
Federal Emergency Management Agency
Federal Reserve System
Federal Trade Commission
Federal Trade Commission's Consumer Line
General Services Administration
National Aeronautics and Space Administration
National Archives and Records Administration
National Credit Union Administration
National Foundation on the Arts and the Humanities
National Endowment for the Arts
National Endowment for the Humanities
National Railroad Passenger Corporation (Amtrak)
National Science Foundation
Nuclear Regulatory Commission
Peace Corps
Pension Benefit Guaranty Corporation
Railroad Retirement Board
Securities and Exchange Commission
Selective Service System
Small Business Administration
Social Security Administration
Tennessee Valley Authority
United States Arms Control and Disarmament Agency
United States Information Agency
United States International Development Cooperation Agency
United States International Trade Commission
United States Postal Service
United States Trade Representative

"Internet access" means access to the Internet and its successors.

"Internet service provider" means a private for-profit or a not-for-profit service provider who acts as a gateway to the Internet and its successors.

"Library" means a city library, a regional library as provided in Iowa Code chapter 256, or a county library as provided in Iowa Code chapter 336, or a library that is part of an authorized user facility and which may be a center for lifelong learning within a community, provides equity of access to information and publications in all formats whether actually stored at the library or off site, to enhance the lives of its customers regardless of age, color, creed, national origin, race, religion, marital status, gender, physical disability or familial status, economic or social status, or location, and is a place for people to gather for meetings, classes and discussion groups.

"Network" means the Iowa communications network, the fiberoptic network owned and leased by the state of Iowa and operated by the commission.

"Part I" means the communications connections between the central switching hub of the network located at joint forces headquarters (JFHQ) armory and the 15 community colleges, the universities governed by the board of regents and Iowa public television and the other regional switching centers for the remainder of the network. These are state-owned facilities.

"Part II" means the communications connections between the Part I regional switching centers and each of the 99 counties located in the state. These are state-owned facilities.

"Part III" means the communication connections between the secondary switching centers and the school districts and libraries and any other private or public agency authorized by the general assembly to connect to the network. Part III consists of primarily leased equipment and

telecommunications facilities except that some sites are owned by the state as designated by the general assembly.

"Person" means an individual, corporation, limited liability company, or any other legal entity.

"Private agency" means an accredited nonpublic school, a nonprofit institution of higher education eligible for tuition grants, a hospital licensed pursuant to Iowa Code chapter 135B or a physician clinic to the extent provided in Iowa Code section 8D.13, subsection 16, or the Iowa Hospital Association.

"Public agency" means a state agency, an institution under the control of the board of regents, the judicial department as provided in Iowa Code section 8D.13, subsection 17, a school corporation, a city library, a regional library as provided in Iowa Code chapter 256, a county library as provided in Iowa Code chapter 336, or a judicial district department of correctional services established in Iowa Code section 905.2 to the extent provided in Iowa Code section 8D.13, subsection 15, an agency of the federal government, or a U.S. Post Office which receives a federal grant for pilot and demonstration projects. "Public agency" also includes any homeland security or defense facility or disaster response agency established by the administrator of the homeland security and emergency management division of the department of public defense or the governor, or any facility connected with a security or defense system or disaster response as required by the administrator of the homeland security and emergency management division of the department of public defense or the governor.

"Requesting authorized user" means an authorized user initiating a network video scheduling request regardless of the specific site from which the event originates.

"School" means an accredited nonpublic school, a nonprofit institution of higher education eligible for tuition grants, an institution under the control of the board of regents, or a school corporation.

"State agency" means each board, commission, or department of the executive, legislative, or judicial branches of the state of Iowa and other entities created or authorized by the general assembly.

"State communications" refers to the transmission of voice, data, video, the written word or other visual signals by electronic means but does not include radio and television facilities and other educational telecommunications systems and services including narrowcast and broadcast systems under the public broadcasting division of the department of education, or the department of transportation distributed data processing and mobile radio network.

"Telecommunications facility" means a collection of fibers which originates at an access point and ends at the fiberoptic termination connector attached to other electronic and optronic equipment necessary to transmit voice, video or data transmissions across the fiberoptic network.

"Telemedicine" means use of a telecommunications system for diagnostic, clinical, consultative, data, and educational services for the delivery of health care services or related health care activities by licensed health care professionals, licensed medical professionals, and staff who function under the direction of a physician, a licensed health care professional, or hospital for the purpose of developing a comprehensive, statewide telemedicine network or education.

[**ARC 3959C**, IAB 8/15/18, effective 9/19/18]

751—7.2(8D) Internet access provided by the network. The commission may offer Internet access to authorized users as permitted by these rules as one of the services of the network.

751—7.3 Reserved.

751—7.4(8D) Authorized facility connectivity. The following facilities used by authorized users shall be permitted to connect directly to the network.

7.4(1) *Educational facilities.* The following educational facilities may have a direct connection to the network for voice, video and data transmissions including Internet access.

a. Public or private K-12 schools;

b. Public or private school administration facilities;

c. Area education agencies;
d. Local school board offices;
e. Accredited private nonprofit colleges or universities eligible for tuition grants;
f. Regents facilities;
g. Community colleges;
h. Off-site, dedicated classrooms, wherever located;
i. Iowa law enforcement academy;
j. University-affiliated research facilities.

7.4(2) *State agency facilities.* The following state agency facilities may have a direct connection to the network for voice, video and data transmissions including Internet access.

a. State departments, agencies, and field offices;
b. Iowa National Guard facilities;
c. Judicial branch facilities;
d. Community-based correction facilities;
e. Buildings owned or leased by the state;
f. Iowa state fairgrounds;
g. Legislative branch facilities.

7.4(3) *Federal government facilities.* The following federal agency facilities may have a direct connection to the network for voice, video and data transmissions including Internet access.

a. Federal departments and agencies including regional, territorial, zone and state offices;
b. Federal judicial branch facilities;
c. Federal legislative branch facilities;
d. Buildings owned or leased by the federal government.

7.4(4) *U.S. Post Office.* A U.S. Post Office may have a direct connection to the network for voice, video and data transmissions if it receives a federal grant for a pilot or demonstration project.

7.4(5) *Telemedicine connectivity.*

a. The following telemedicine facilities may connect directly to the network for video and data transmissions including Internet access.

(1) Hospitals licensed pursuant to Iowa Code chapter 135B;
(2) Physician clinics to the extent provided in Iowa Code section 8D.13(16).

b. Access is offered to the Iowa Hospital Association for the purposes of collection, maintenance, and dissemination of health and financial data for hospitals and for hospital education services.

7.4(6) *Library connectivity.* The following libraries may connect to the network for voice, video and data transmissions including Internet access.

a. City public libraries;
b. Regional public libraries as provided in Iowa Code chapter 256;
c. County libraries as provided in Iowa Code chapter 336.

7.4(7) *County and local government facilities.* The following county and local government facilities may have a direct connection to the network for voice, video and data transmissions including Internet access.

a. County courthouses or other state judicial facilities to the extent the courthouse or other state judicial facilities are used by state judicial branch employees or its vendors or service providers;
b. The city of Des Moines governmental facilities.

7.4(8) *Emergency services for county and local government facilities.* The following facilities may be connected to the network for data transmissions only:

a. Emergency management facilities;
b. Federal, state and local enforcement agency facilities as provided in Iowa Code section 80.9;
c. Disaster services sites or facilities;
d. Emergency warning sites, facilities, or telecommunications facilities;

e. Other emergency information dissemination service sites, facilities, or telecommunications facilities;

f. Local emergency management offices established under the authority of Iowa Code sections 29C.9 and 29C.10.

751—7.5(8D) Use or access to all services. The following persons may use or access the network for voice, video and data transmissions including Internet access that exist or may be available in the future at the facility of an authorized user if the use is consistent with the written mission of the authorized user allowing access to the network at its site:

1. All students;
2. Faculty and educational staff;
3. Educational board members and staff;
4. School foundation members;
5. Alumni organization members;
6. State and federal employees;
7. State and federal members of boards, commissions, councils, advisory groups and committees;
8. State and federal elected officials;
9. State and federal appointed officials;
10. State and federal judges, judiciary employees, administrative law judges, associate judges, magistrates, referees, mediators and participants;
11. State and federal judicial board or commission members;
12. Employees of the city of Des Moines;
13. Community-based corrections employees;
14. Library employees or volunteer staff members;
15. Library board and staff members;
16. Library users.
17. Persons under the care, control or custody of the department of corrections, judicial district department correctional services, the department of human services, or their agents serving persons under the care, control or custody of the agent.

751—7.6(8D) Use or access to voice and data services. The following persons may use or access the network for voice and data transmissions including Internet access that exists or may be available in the future at the facility of an authorized user if the use is consistent with the written mission of the authorized user and the person or persons are acting on behalf of the authorized user:

1. Alumni of educational institutions;
2. Educational member associations;
3. Parent-teacher organizations, for example, parent-teacher associations, home and school associations;
4. Professional boards where educational employees serve, for example, a university professor serves on the board of the Iowa Association of Economists;
5. State and federal government-sponsored entity employees, for example, Federal Home Loan Bank Board employees, Federal Deposit Insurance Corporation employees;
6. Vendors and service providers;
7. State or federal governmental association members;
8. State or federal governmental employee union members;
9. Other state governmental employees;
10. Professional boards where state or federal employees serve, for example, state employees serving on the Association of Business and Industry;
11. City and county employees;
12. Local elected officials;

13. Local boards, commissions, advisory councils or committees;
14. Fire department employees and staff whether paid or volunteer;
15. Local government associations, for example, League of Cities, ISAC.

751—7.7(8D) Use or access to full motion interactive video services—prerequisites. The full motion interactive video services may be used by certain persons and entities if the use meets the following conditions:

1. The use is within the requesting authorized user's written mission; and
2. A representative of the authorized user is present and participating in the session; or
3. The authorized user has a written contract with the person accessing the network; and
4. The use does not facilitate or enable a private person or entity to use the network for direct pecuniary gain.

7.7(1) *Use or access to full motion interactive video services.* The following persons may access the network for video transmissions at the facility of an authorized user if the use satisfies the conditions outlined above:

a. Alumni of educational institutions;
b. Educational member associations;
c. Parent-teacher organizations, for example, parent-teacher associations, home and school associations;
d. Professional boards where educational employees serve, for example, a university professor serves on the board of the Iowa Association of Economists;
e. State and federal government-sponsored entity employees, for example, Federal Home Loan Bank Board employees, Federal Deposit Insurance Corporation employees;
f. Vendors and service providers;
g. State or federal governmental association members;
h. State or federal governmental employee union members;
i. Other state governmental employees;
j. Professional boards where state or federal employees serve, for example, state employees serving on the Association of Business and Industry;
k. City and county employees;
l. Local elected officials;
m. Local boards, commissions, advisory councils or committees;
n. Fire department employees and staff whether paid or volunteer;
o. Federal, state and local law enforcement employees and staff;
p. Emergency management employees and staff;
q. County sheriff's office employees and staff;
r. Local government associations, for example, League of Cities, ISAC;
s. Patients acting under the direction of a licensed health care professional;
t. Health care employees of facilities that have a contractual agreement with a hospital or physician clinic;
u. Health care employees of facilities that do not have a contractual agreement with a hospital or physician clinic;
v. Medical association members, for example, members of the Association of Iowa Hospitals and Health Systems, members of Iowa Medical Society, members of the Iowa Osteopathic Medical Association, members of the Iowa Chiropractic Society, members of the Iowa Nurses Association;
w. Professional boards on which health professionals serve, for example, a physician serving on the board of the American Cancer Society.

7.7(2) Reserved.

751—7.8(8D) Use or access for home-schooled students with dual enrollment. A home-schooled student with dual enrollment may use the ICN at the school district at which the student is enrolled

subject to a written local school district policy for serving home-schooled students with dual enrollment.

751—7.9(8D) Use or access for U.S. Post Office employees. U.S. Post Office employees acting under a contractual pilot or demonstration project may use or access the voice, data, and video services of the network including Internet access if the use or access is part of an authorized or contractual pilot or demonstration project.

751—7.10(8D) Use or access by shared data network users. The following persons may use or access the shared data network described in Iowa Code section 8D.13(19) if the use is for the purpose of establishing and operating a shared data only network providing law enforcement, emergency management, disaster service, emergency warning, and other emergency information dissemination services to federal, state, and local law enforcement agencies as provided in Iowa Code section 80.9, and local emergency management offices established under the authority of Iowa Code sections 29C.9 and 29C.10:

1. Federal, state or local law enforcement personnel;
2. Emergency management personnel;
3. Disaster management site and facility personnel;
4. Other emergency information dissemination personnel;
5. Local emergency management personnel.

751—7.11(8D) Use or access to telemedicine users. The following persons and entities may use or access the network for data and video services including access to the Internet if the use is for telemedicine or educational purposes:

1. Licensed health care professionals or licensed health care professionals who function under the direction of or in collaboration with a physician or a hospital, or both, for example, other doctors, students, nurses, physician's assistants, therapists, clinical social workers, psychologists;
2. Hospital or physician clinic staff members;
3. Professional boards on which health professionals serve, for example, a nurse serving on the board of the American Cancer Society;
4. Patients acting under the direction of a licensed health care professional;
5. Health care employees of facilities that have a contractual agreement with the hospital or physician;
6. Health care employees of facilities that do not have a contractual agreement with the hospital or physician clinic;
7. Employees of health care associations for various health care employees, for example, Association of Iowa Hospitals and Health Systems, Iowa Medical Society, Iowa Osteopathic Medical Association, Iowa Chiropractic Society, Iowa Nurses Association;
8. Professional board members where a health care professional serves as a member of a board, for example, a physician serving on the board of the American Cancer Society.

This chapter is intended to implement Iowa Code sections 8D.2, 8D.3(1), 8D.3(3)*"b,"* and 8D.13(14) to 8D.13(17).

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CHAPTER 8
SCHEDULING DISPUTES

Rescinded **ARC 4983C**, IAB 3/11/20, effective 4/15/20
[Editorial change: IAC Supplement 7/23/25]

CHAPTER 9
REQUESTS FOR WAIVER OF NETWORK USE BY CERTIFIED USERS

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

751—9.1(8D) Request for waiver. A certified user is entitled to file a request for a waiver pursuant to Iowa Code section 8D.9(2). For the purposes of this chapter, "certified user" means an area education agency or community college that has certified with the commission that it is or will be a part of the network.

9.1(1) *Conditions.*

a. One of the following conditions shall be satisfied in the request:

(1) The costs to the certified user for services provided by the network are not competitive with the same services available from another provider.

(2) The certified user is under contract with another provider for such services, provided the contract was entered into prior to April 1, 1994. The certified user shall use the network for video, data, and voice requirements that are not provided pursuant to such contract.

b. A certified user shall have the burden of proof regarding the question of whether the services provided by the network are not competitive with the same services available from another provider.

9.1(2) *Waiver submission.* A request for waiver must be received at the ICN main office location as listed in 751—subrule 1.6(1) not less than 15 days prior to the next regularly scheduled commission meeting. A request for waiver renewal must be submitted not less than 15 days prior to the next scheduled commission meeting preceding the expiration of the current waiver. A listing of certified users not meeting this submission requirement shall be included in the commission's annual report related to the network.

[**ARC 0409C**, IAB 10/17/12, effective 11/21/12; **ARC 5828C**, IAB 8/11/21, effective 9/15/21]

751—9.2(8D) Request for proposal, direct negotiation. A certified user may issue a request for proposals (RFP) or a request for information (RFI) or negotiate directly with public and private vendors for the provision of telecommunication services.

If a certified user seeks a waiver and is unable to supply the information necessary for the commission to make a determination as to the competitiveness of its services and the services provided by the certified user's proposed vendor, for whatever reason, including but not limited to restrictions imposed by a nondisclosure agreement, the commission may deny the request for a waiver. An affidavit from the certified user indicating that the commission's services are not competitive will not be sufficient to support a grant of waiver under these rules or Iowa Code section 8D.9.

751—9.3(8D) Contents for waiver petition. Upon receipt of a request for a waiver pursuant to Iowa Code section 8D.9(2), commission staff members will forward a copy of the request to the commission members along with any supplemental information filed by the petitioner. The petitioner shall specifically address each reason for which it is seeking a waiver, and recite any facts supporting its response. The petitioner shall enclose copies of all related letters, records, or other documents in support of its request. Filing a request for a waiver shall not commence a contested case proceeding.

751—9.4(8D) Waiver investigation, limited discovery. The commission staff shall commence a waiver investigation upon receipt of the petition for a waiver. The commission staff may make requests for supporting data from the petitioner or propound interrogatories to the petitioner or conduct depositions of relevant persons regarding information possessed by the petitioner relative to the waiver petition. Data requests or interrogatories served by commission staff shall either be responded to or objected to, with a concisely stated ground for relief, within seven days of receipt. The

commission chair shall rule on all objections. Depositions of relevant persons must be conducted within 30 days after the petition for waiver is filed unless the parties agree otherwise.

751—9.5(8D) Notice of hearing and discovery. Within 20 days after the petition for a waiver has been filed with the commission, the staff will notify the petitioner of the time and place for a hearing before the commission. Any information the staff has assembled for the commission to consider shall be made available to the petitioner at least 30 days before a meeting of the commission where the petitioner's request for waiver will be considered. The petitioner shall have the right to pose interrogatories or depose staff members involved in the development of any information for the commission to consider. The hearing to consider the waiver shall be held within 90 days after receipt of the request for the waiver unless the parties agree otherwise.

751—9.6(8D) Hearing. At the commission meeting where the petition is considered, the petitioner and the commission staff will have an opportunity to present any relevant evidence to the commission bearing on the appropriateness of the petition. The hearing will be informal. The hearing will be mechanically recorded. The recording shall constitute the official record of the hearing. Either party may at its own expense have a certified court reporter present to record the hearing. In the event of an appeal, the appealing party shall, at its cost, be responsible for transcribing the record of the meeting for judicial review.

9.6(1) *Official record and in camera requests.* All of the information received by the commission from the staff and the petitioner including the petition and attachments will be included in the record of the hearing. The petitioner may ask the commission to examine any proprietary information in camera and in conformance with Iowa Code chapter 22. The tape recording for the hearing and the evidence presented to the commission will constitute the record of the proceeding.

9.6(2) *Decision.* The commission members, the petitioner and the staff will be afforded an opportunity to ask questions regarding the information presented at the time of the meeting. At the close of the meeting, the commission will issue a decision that is dictated into the record or the matter will be taken under advisement to be discussed and decided at a subsequent public meeting. The commission's decision shall be reduced to writing and shall constitute final agency action.

[**ARC 5828C**, IAB 8/11/21, effective 9/15/21]

751—9.7(8D) Evaluation criteria. In considering the evidence regarding competitive service, the commission may consider any of the following:

9.7(1) The type of third-party service being offered to the petitioner versus the type of service the commission can offer.

9.7(2) The direct costs of service being offered to the petitioner versus the direct cost of the service offered by the commission, including but not limited to the following:

a. The unit cost of individual services;

b. The cost for bundled services;

c. The costs of leased lines to access an individual service;

d. The cost of installation charges;

e. The cost of coordination fees;

f. The costs of equipment necessary to access a service;

g. The costs of setup fees;

h. Any other direct cost related to the service sought by the certified user and identified in the evidence presented to the commission.

9.7(3) The indirect costs of service being offered to the petitioner versus the indirect cost of service offered by the commission, including but not limited to the following:

a. Service availability;

b. Protection from fraudulent use of the service;

c. Availability of advanced billing services;

d. Response time to service outages;

e. Redundancy to ensure continuous service;

f. Disaster recovery plan;

g. Any other indirect cost related to the service sought by the certified user and identified in the evidence presented to the commission.

9.7(4) Any discounts the petitioner has been offered versus the discounts the commission can offer.

9.7(5) Any other enhanced value items included in the offer of service by a service provider selected by the petitioner versus the enhanced value items the commission can offer including but not limited to the entire range of services the commission offers to an authorized user.

9.7(6) Any other relevant information included in the evidence before the commission regarding the petition for waiver.

751—9.8(8D) Voluntary decertification. A certified user may voluntarily withdraw its certification to use the services of the commission. The certified user must give the commission 60 days' prior written notice before the withdrawal will take effect. In the event the commission has property located on the property of the certified user, the commission and the certified user may enter into an agreement allowing the property to remain in place to serve the network. In the event the certified user decides to apply for certification after a voluntary withdrawal, the certified user will have to seek permission of the general assembly to recertify or as otherwise provided by law.

This chapter is intended to implement Iowa Code sections 8D.3(3)*"b"* and 8D.9(2)*"b."*

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CHAPTER 10
USE OF THE NETWORK—NOT A VESTED RIGHT AND WRITTEN WARNING, SUSPENSION, PROBATION, DECERTIFICATION, AND REVOCATION OF USE OF THE NETWORK

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

751—10.1(8D) Authorized use not a vested right. The ability to use the fiberoptic network is a privilege conferred by law to any person who qualifies as an authorized user.

751—10.2(8D) Written warning, suspension, probation or revocation of authorization to use the network. The commission may provide a written warning, suspend, place on probation, or revoke the authorization of any authorized user to use the network or a requesting authorized user sponsoring an event on the network or disconnect any authorized facility or disconnect an originating authorized facility for one or more of the following reasons:

1. In the case of a video transmission, a requesting authorized user allows a use of the network by an unauthorized user;
2. In the case of a data or voice transmission, an authorized user allows use of the network by an unauthorized user;
3. Selling or reselling network time to an authorized user or an unauthorized user;
4. Failure to pay the appropriate rate for services rendered by the commission;
5. Failure to adhere to any terms or conditions contained in any agreement between the commission and the authorized user;
6. Failure to be present or participate in or have a contract authorizing originating use for a full motion interactive video session;
7. Any fraud, deceit, misrepresentation or other conduct prejudicial to the commission in the operation of network;
8. Any violation of federal, state or local law or allowing the violation of any of these laws on premises occupied by or controlled by any person over whom the authorized user has substantial control;
9. Obtaining use of the network by fraud, misrepresentation, or concealment;
10. Making a knowing misrepresentation of fact to the commission or its staff on any report, application form or questionnaire required to be submitted to the commission or its staff;
11. Denying the commission or its authorized representatives access to a fiberoptic termination site or any other access to fiberoptic cable or optronics equipment deemed necessary for the operation of the network;
12. Failure to promptly produce for inspection or audit within a reasonable time any book, record, document or other item required to be produced by law, these rules, or the terms of any agreement between the commission and the authorized user related to the use of the network;
13. Failure to follow the instructions of the commission for the operation of the equipment in the commission's portion of a shared fiberoptic termination site room;
14. Failure to notify the commission of a material change of circumstances regarding the organizational structure of an authorized user that would change the status of an authorized user or authorized user of the network;
15. Any other activity or action related to the use of the fiberoptic network by an authorized user or by an authorized facility that the commission determines is in violation of state or federal law or these rules.

751—10.3(17A,8D) Notice of the violation. In the event the commission determines that an authorized user has violated any of the provisions of these rules, the commission will provide a written

notice by certified mail, return receipt requested, to the authorized user describing the violation and the penalty for the violation.

751—10.4(17A,8D) Effective date and length of suspension, probation or revocation. The effective date of the suspension, probation or revocation of the use or access to the network shall be 20 days following service of the notice of suspension, probation or revocation. An aggrieved authorized user may request a stay of the commission's action regarding use and ask the commission to reconsider its decision. The commission at its discretion may reconsider its decision based upon any further information or evidence the aggrieved party may offer to the commission. The commission may take oral testimony to supplement the evidence presented. The commission's decision shall be reduced to writing and shall constitute final agency action. The decision shall be mailed to the aggrieved parties. In the event the authorized user is a state agency or an institution governed by the board of regents, the provisions of Iowa Code section 679A.19 shall govern any appeal. In the case of a suspension or probation, the commission has the discretion to fix the length of the suspension or probation relative to the severity of the violation by the authorized user.

751—10.5(17A,8D) Methods of service. The notice shall be served upon the authorized user by certified mail, return receipt requested, or personal service in accordance with Rules of Civil Procedure 56.1. Alternatively, the authorized user may accept service personally or through authorized counsel. The notice shall set forth the reasons for the suspension, probation, or revocation and provide for an opportunity for a hearing.

751—10.6(17A,8D) Decertification. In the event a certified user violates the provisions of Iowa Code section 8D.9(2) and fails to obtain a waiver from the commission to use another service provider, and uses services from another provider, the commission after notice and hearing in conformance with these rules, may decertify the user. In the event decertification becomes final, the commission will remove all of its equipment from the fiberoptic termination site located at the user's site and terminate all services to the user.

This chapter is intended to implement Iowa Code sections 8D.2, 8D.3(3)*"b,"*8D.9 and 8D.13(14) to 8D.13(17).

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CHAPTER 11
ASSET ALLOCATION AND OWNERSHIP

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751—11.1(8D) Ownership of the Part I and Part II equipment. All of the facilities, cable, optronics and other equipment and replacements thereof installed to operate and maintain as Part I and Part II sites are property of the state of Iowa unless the equipment was purchased by a regents institution or a state agency. The commission and the state of Iowa do not own the interconnect from the fiberoptic termination site to the classroom nor any of the equipment or furnishings located within the video classroom. The commission has the duty to maintain all aspects of the telecommunication facilities, cable, optronics and other equipment and replacements thereof if these items are attached to Part I and Part II sites. The equipment purchased by the regents is subject to separate agreements between the commission and regents and those agreements will govern ownership and maintenance of the equipment purchased by the regents, this rule notwithstanding.

751—11.2(8D) Access defined. For the purpose of this chapter, access means those persons or entities allowed to enter the fiberoptic termination site room and place equipment or other items in the fiberoptic termination site room.

751—11.3(8D) Access to fiberoptic termination site room. For Part I and Part II fiberoptic termination sites, the commission shall determine which entities shall have access to the fiberoptic termination site room and shall notify each authorized facility in writing as to the extent and nature of equipment placement in the fiberoptic termination site room or as otherwise allowed by written agreements in existence prior to December 1, 1996, or by state or federal law. Unauthorized equipment will be disconnected from any connections contained in the fiberoptic termination site room after 30 days' written notice to the owner sent by certified mail return receipt requested from the commission advising the owner that the presence of its equipment in the fiberoptic termination site room is unauthorized. Unauthorized equipment must be removed by the equipment owner within 90 days of written notice sent by the commission to the owner. If the equipment is not removed within this time period, the commission will remove the equipment and charge the owner the cost of the removal. When a commission fiberoptic termination site room is co-located in shared use facilities, the commission will negotiate an agreement with the authorized user that determines which entities have access and the procedures for access. Preexisting agreements (before December 1, 1996) for commission equipment placement between authorized users and the commission (or the department of general services) will be honored. The commission and authorized users may negotiate new agreements for equipment placement.

751—11.4(8D) Access to fiberoptic termination site room for Part III. For Part III sites, the commission shall determine which entities may have access to the fiberoptic termination site room at the site in a manner consistent with written agreements in existence prior to December 1, 1996, or state or federal law.

751—11.5(8D) Authorized connections to the network. The commission shall have the sole and exclusive authority to determine whether any person or entity may use the commission's point of presence sites to connect in any location in the state where the commission has established a network connection as otherwise permitted by state or federal law. In the event the commission determines that some other person or entity has attempted to connect to a network location, the commission may demand removal of the unauthorized equipment within 90 days upon written notice to the owner of the equipment. In the event the equipment is not removed within 90 days, the commission may disconnect the equipment at the owner's expense and prevent any further connectivity pending a

hearing in conformance with 751—Chapter 4 to determine whether the use of the network's site is appropriate.

751—11.6(8D) Power source to the fiberoptic termination site room. The authorized facility shall maintain a constant source of power and adequate heating and cooling for the fiberoptic termination site room and for the equipment contained therein.

This chapter is intended to implement Iowa Code section 8D.3.

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CHAPTER 12
RATES AND RATE DISPUTES

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

751—12.1(8D) Purpose. The commission shall establish rates to be charged to all authorized users for the use of the network.

751—12.2(8D) Definitions. For the purposes of interpreting these rules, the following definitions are applicable.

"Educational or training event" on the network means any event designed to have an instructional outcome.

"Meeting event" means any event on the network that is designed to achieve a decisional outcome including but not limited to meetings, hearings, mediations, discussion groups, public meetings or other adjudicatory proceedings.

751—12.3(8D) Notice of rates. Upon approval of rates to be charged to authorized users for use of any network services offered by the commission, the commission shall provide written notice to the affected users.

12.3(1) A rate increase for voice and data transmissions shall become effective upon the date established by the commission.

12.3(2) Video rates shall be established in September of each fiscal year with an effective date of July 1 of the next following fiscal year.

751—12.4(8D) Rates for educational users. Rates for educational access shall among other things ensure that rural communities have access to comparable services to the services provided in urban areas resulting from any plans to construct, install, repair, or maintain any part of the network. Educational rates for K-12 and area education agencies shall include meeting events for authorized users. All other meeting events for other educational users shall be charged at the administrative rate established for state agencies for meeting events. Educational use for state agencies shall be charged at the higher educational rate. The purpose of the meeting event shall determine the charge for the session not the originating or receiving sites for the meeting event itself. If the training or meeting event is for federal authorized users or telemedicine authorized users, the rate applicable to these users shall apply. An educational user and area education agency users other than K-12 users must certify the type of use it intends at the time an event is scheduled on the network.

751—12.5(8D) Rates for telemedicine and the federal government. A fee established by the commission to be charged to a hospital licensed pursuant to Iowa Code chapter 135B, a physician clinic, or the federal government shall be at an appropriate rate so that, at a minimum, there is no state subsidy related to the costs of the connection to or use of the network related to such user. The fees charged for use of the network shall be based on the ongoing expenses of the network.

751—12.6(8D) Rate dispute resolution.

12.6(1) *Definitions.* A rate dispute shall exist when the payor disagrees with the rate charged by the commission for the service used by the user. A rate dispute shall not be a contested case proceeding.

12.6(2) *Factors in rate dispute.* In the event of a rate dispute, the executive director, or the commission's designee (decision maker) shall decide which rate is applicable for the network service used. In making such a decision, the executive director or the commission's designee shall consider all relevant factors known to the decision maker supplied by the commission staff or the user including, but not limited to, the following:

a. Nature, frequency or duration of the use requested;

b. The purpose of the use;
c. The audience for the use;
d. Whether the use is for training, testing, a meeting or other use;
e. Whether the use is an educational use;
f. Any other factor deemed relevant by the decision maker based upon the evidence presented.

12.6(3) *Written decision.* In the event that the decision maker makes a decision regarding the rate dispute, the decision maker shall prepare a memorandum regarding the conflict and its resolution. No oral testimony shall be taken regarding the rate dispute. The memorandum shall identify the authorized user or users involved, the nature of the rate dispute, the decision maker's decision, the factors considered by the decision maker and the reasons for the decision. The memorandum shall be created within 24 hours after the decision is made and shall be maintained by the decision maker for at least 12 months after the decision is made. A copy of the memorandum shall be faxed and mailed to each authorized user affected by the decision. The memorandum shall include a notice regarding the time within which an aggrieved party may appeal with filing instructions included in the notice.

12.6(4) *Notice of appeal.* Any authorized user affected by the decision regarding a rate dispute may appeal that decision to the commission by filing written notice of appeal thereof either by fax, hand delivery or by regular or overnight mail with the decision maker within five days after the authorized user receives a copy of the decision. The notice of appeal shall identify the decision in question and the authorized user making the appeal.

12.6(5) *Filing supporting documents for appeal.* Within seven days following filing of the notice of appeal, the aggrieved party shall file with the executive director or the commission's designee, a written statement of evidence identifying all reasons or evidence upon which the aggrieved party relies in support of its appeal. The appealing user may attach to the statement of evidence any documents or information which the user wishes to submit, provided that no more than 25 pages of attachments shall be submitted unless the aggrieved party obtains permission of the commission to attach additional documentation for good cause shown. The commission may allow oral arguments.

12.6(6) *Time for appeal decision.* Within seven days after the statement of evidence is filed, the commission or the commission's designee shall file a written appeal decision affirming, reversing or modifying the decision of the decision maker regarding the rate dispute.

12.6(7) *Final agency action for appeal.* The appeal decision shall state the factors considered by the commission and the reasons for the decision. The decision shall be delivered to each authorized user affected by the decision. The appeal decision shall constitute final agency action for the purposes of Iowa Code chapter 17A.

This chapter is intended to implement Iowa Code section 8D.3.

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CHAPTER 13
SITE CHARGES AND OTHER FEES

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

751—13.1(8D) Site charges. The commission, on its own or as recommended by an advisory committee of the commission and approved by the commission, shall permit a fee to be charged by a receiving site to the requesting authorized user for a video transmission provided on the network. The fee charged shall be for the purpose of recovering the operating costs of a receiving site. The fee charged shall be reduced by an amount received by the receiving site pursuant to a state appropriation for such costs, or federal assistance received for such costs. Fees established under this chapter shall be paid by the originating site directly to the receiving site. For purposes of this rule, "operating costs" include the costs associated with the management or coordination, operations, utilities, classroom, equipment, maintenance, and other costs directly related to providing the receiving site.

13.1(1) Site fee. The hourly charge for a site may be up to $12.50 per hour for use of a classroom for interactive video transmission.

13.1(2) Notwithstanding the provisions of the introductory paragraph of rule 13.1(8D), if an entity requests a receiving site location in a video classroom facility which is authorized by, but not funded by the originator of the session, the video classroom facility shall bill the requesting entity directly for the operating costs relating to the site.

751—13.2(8D) Other fees. The commission shall charge the following fees based on the ongoing operational costs of the network:

13.2(1) *Staff time devoted to a cable cut.* An administrative fee shall be added to the cost of repair for a cable cut. The fee shall be charged to the person or entity who caused the cable cut. The fee shall be a minimum of $150. In the event commission staff members must devote more than ten hours to the cable cut repair, the actual hourly rate of a telecommunications technician shall be added to the cost of the cable cut for the total time all staff members are required to devote to the cable cut and repair.

13.2(2) *Informal resolution of cable cuts.* Commission staff members are authorized to resolve cable cut repair costs informally including making adjustments to the administrative fees attributable to the cable cut and repair or the revenue lost from the cable cut. Any settlement of a disputed claim must be reduced to writing.

13.2(3) *Estimate for cable relocation cost.* An administrative fee equaling the commission's cost to provide an estimate for a cable move for a property owner shall be charged to the property owner. Notwithstanding the foregoing, if the commission has preexisting agreements in effect prior to December 1, 1996, that refer specifically to the cost of a cable relocation, those agreements will be honored. The commission and authorized users may enter into new agreements for construction and maintenance of the fiberoptic network.

This chapter is intended to implement Iowa Code sections 8D.3(3)*"b"* and 8D.13.

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CHAPTER 14
ACCESS TO FACILITIES

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

751—14.1(8D) Access policy. An authorized user shall develop written policies or rules governing the use of the network by authorized users as identified by 751—Chapter 7. These policies must be consistent with the Iowa Code and these rules. These policies shall be filed with the commission and reviewed by the commission upon written request.

14.1(1) *Contents of the written policy.* Each authorized user facility shall develop at a minimum use and access policies that address the following:

a. The network is a limited access network and cannot be used for a profit-making venture.

b. The use of the network must be consistent with the written mission of the authorized user.

c. The user may not resell time on the network. However, consistent with Iowa Code section 8D.13, the user may charge a site or usage fee to cover operational costs of the facility or as established by the commission. A usage fee shall include the fees charged by a university or college for services offered by the university or college, for example, student housing or a computer lab fee.

d. The user may not enable for-profit persons or entities to use the network for the pecuniary advantage of the for-profit entity. This provision is intended to apply to video use of the network only. This rule is not intended to limit the ability of the board of regents to fully support various research programs and other initiatives performed under the written mission statements of the regents institutions. The rule is not intended to limit other authorized users from performing their missions when the use of the network is otherwise authorized by these rules.

14.1(2) Reserved.

751—14.2(8D) Use of a video classroom. The primary use of an interactive video classroom is to accomplish the written mission of the authorized user. The commission, through its various advisory councils, shall establish request for usage procedures that address the use and availability of video classrooms, including hours of operation, availability for other authorized users, discretion of authorized facilities to deny or cancel requested use, and other non-network related usage of classrooms connected to the network. The intent of such request for usage procedures will be to encourage the greatest allowable use of interactive video classrooms while preserving appropriate local authority and control over authorized facilities. The procedures shall be forwarded to the commission upon completion. The procedures shall be completed by January 1, 1998.

751—14.3(8D) Hours of operation. A video classroom shall be open during the normal hours of operation for an authorized user unless other hours of operation are arranged by the user and the site. Sites shall, at a minimum, support access and facilities use Monday through Friday, 7 a.m. to 10:30 p.m., and Saturday, 8 a.m. to 4 p.m. For sites where the institution has used its own funding for the fiberoptic connection and the fiberoptic termination site equipment, the institution may permit or deny accessibility to other authorized users.

751—14.4(8D) Charges and financial responsibility. Except as provided for by subrule 13.1(2), the requesting authorized user is financially responsible for all commission-established site and site usage charges incurred for the use of the classroom.

751—14.5(8D) Accommodations for the disabled. Each authorized user site shall comply with the Americans With Disabilities Act and the Iowa Civil Rights Act regarding access to and use of the video classroom or video conference room. The requesting authorized user of any service offered by the commission shall comply with the Americans With Disabilities Act and the Iowa Civil Rights Act. The requesting authorized user is responsible for providing qualified interpreters or auxiliary aids if requested. The cost of reasonable accommodation is assumed by the requesting authorized user.

751—14.6(8D) No smoking policy. The fiberoptic termination site room is a smoke-free area. No smoking is permitted.

751—14.7(8D) No endorsement. Use of the network does not imply endorsement of, or agreement with, the purpose(s) or the expression of any person or entity by the commission or the state of Iowa or its employees or staff.

751—14.8(8D) Copyrighted material. Use of copyrighted materials shall be consistent with current U.S. copyright laws and definitions of fair use. Appropriate use of copyrighted material is the responsibility of the user, and not the commission.

This chapter is intended to implement Iowa Code section 8D.3.

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CHAPTER 15
ADVISORY COUNCILS, COMMITTEES AND GROUPS

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

751—15.1(8D) Meetings for advisory councils, committees and groups. Any advisory councils, committees or groups established by Iowa Code chapter 8D or at the direction of the commission must meet at least twice annually. If any of these groups fail to meet and advise or provide recommendations to the commission, the commission may appoint new members to the advisory councils, committees or groups or as otherwise provided by law.

751—15.2(8D) Attendance by members. Each advisory council shall establish attendance policies for its members subject to approval by the commission. In the event the commission, through the recommendations of an advisory council, a committee or group, removes a member from an advisory council, a committee or group, the commission may replace that member immediately.

751—15.3(8D) Duties of advisory councils, committees and groups. The advisory councils, committees and groups at a minimum shall have the following duties:

15.3(1) *Develop rules.* Develop proposed rules for commission consideration regarding use of and access to the network. The commission may refuse to approve and adopt a proposed rule, and upon such refusal, shall return the proposed rule to the advisory group proposing the rule with a statement indicating the commission's reason for refusing to approve and adopt the rule.

15.3(2) *Prepare reports.* As requested from time to time by the commission, provide information, reports and perform special projects to assist the commission in completing its mission.

15.3(3) *Provide notices of meetings and minutes of meetings.*

a. Each advisory council, committee or group shall prepare minutes of its meetings and submit the minutes to the commission within 60 days of the date of the meeting for posting on the Iowa communications network Web site.

b. Each advisory council, committee or group shall provide notice of its meetings to interested parties identified by the commission or the advisory council, committee or group. An advisory council, committee or group shall submit an electronic agenda and notice to the ICN one week prior to a scheduled meeting for posting on the Iowa communications network Web site.

15.3(4) *Develop mission statement.* Each advisory council, committee or group shall prepare a written mission statement. The mission statements shall be filed with the commission.

15.3(5) *Scheduling and site usage policies.* Subject to approval by the commission, the advisory councils, committees and groups shall establish site and usage policies for authorized users of the network.

[**ARC 0409C**, IAB 10/17/12, effective 11/21/12]

751—15.4(8D) Additional duties of education telecommunications council. Rescinded **ARC 4983C**, IAB 3/11/20, effective 4/15/20.

751—15.5(8D) Additional duties of regional educational telecommunications council. Rescinded **ARC 4983C**, IAB 3/11/20, effective 4/15/20.

This chapter is intended to implement Iowa Code sections 8D.3, 8D.5, 8D.6, and 8D.7.

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CHAPTER 16
UNIFORM WAIVER RULES

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

751—16.1(17A,ExecOrd11) Applicability. This chapter outlines a uniform process for the granting of waivers from rules adopted by the commission. The intent of this chapter is to allow persons to seek exceptions to the application of rules issued by the commission. This chapter shall not apply to rules that merely define the meaning of a statute or other provision of law or precedent if the commission does not possess delegated authority to bind the courts to any extent with its definition. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

16.1(1) *Definitions.*

"Commission" or *"Iowa telecommunications and technology commission"* means the Iowa telecommunications and technology commission established by Iowa Code chapter 8D operating the Iowa Communications Network.

"Person" means an individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any legal entity.

"Waiver" means an agency action which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person.

16.1(2) *Authority.*

a. A waiver from rules adopted by the commission may be granted in accordance with this chapter if (1) the commission has authority to promulgate the rule from which waiver is requested or has final decision-making authority over a contested case in which a waiver is requested; and (2) no statute or rule otherwise controls the granting of a waiver from the rule from which a waiver is requested.

b. No waiver may be granted from a requirement which is imposed by statute. Any waiver must be consistent with statute.

[**ARC 5828C**, IAB 8/11/21, effective 9/15/21]

751—16.2(17A,ExecOrd11) Commission discretion. The decision on whether the circumstances justify the granting of a waiver shall be made at the discretion of the commission upon consideration of all relevant factors.

16.2(1) *Criteria for waiver.* The commission may, in response to a completed petition, grant a waiver from a rule, in whole or in part, as applied to the circumstances of a specified situation if the commission finds each of the following:

a. Application of the rule to the person at issue would result in hardship or injustice to that person; and

b. Waiver on the basis of the particular circumstances relative to that specified person would be consistent with the public interest; and

c. Waiver in the specific case would not prejudice the substantial legal rights of any person; and

d. Where applicable, substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

In determining whether a waiver should be granted, the commission shall consider the public interest, policies and legislative intent of the statute on which the rule is based. When the rule from which a waiver is sought establishes administrative deadlines, the commission shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all affected persons.

16.2(2) *Special waiver rules not precluded.* These uniform waiver rules shall not preclude the commission from granting waivers in other contexts including those described in Iowa Code section 8D.9 or on the basis of other standards if a statute or other commission rule authorizes the commission to do so and the commission deems it appropriate to do so.
[**ARC 5828C**, IAB 8/11/21, effective 9/15/21]

751—16.3(17A,ExecOrd11) Requester's responsibilities in filing a waiver petition.

16.3(1) *Application.* All petitions for waiver must be submitted in writing to the ICN main office location as listed in 751—subrule 1.6(1). If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

16.3(2) *Content of petition.* A petition for waiver shall include the following information where applicable and known to the requester (for an example of a petition for waiver, see Exhibit A at the end of this chapter):

a. A description and citation of the specific rule from which a waiver is requested.

b. The specific waiver requested, including the precise scope and operative period that the waiver will extend.

c. The relevant facts that the petitioner believes would justify a waiver.

d. A signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.

e. A history of any prior contacts between the commission and the petitioner relating to the use of the network, other regulated activity, license, grant, loan or other financial assistance affected by the proposed waiver, including a description of each use of the network, license, grant, loan or other financial assistance held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the affected use of the network, regulated activity, license, grant or loan within the last five years.

f. Any information known to the requester regarding the commission's treatment of similar cases.

g. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver.

h. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.

i. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the commission with information relevant to the waiver.

16.3(3) *Burden of persuasion.* When a petition is filed for a waiver from a commission rule, the burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the commission should exercise its discretion to grant the petitioner a waiver.
[**ARC 5828C**, IAB 8/11/21, effective 9/15/21]

751—16.4(17A,ExecOrd11) Notice. The commission shall acknowledge a petition upon receipt. The commission shall ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the commission may give notice to other persons. To accomplish this notice provision, the commission may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the commission attesting that notice has been provided.

751—16.5(17A,ExecOrd11) Commission responsibilities regarding petition for waiver.

16.5(1) *Additional information.* Prior to issuing an order granting or denying a waiver, the commission may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the commission may, on

its own motion or at the petitioner's request, schedule a telephonic or in-person meeting or a meeting over the network operated by the commission, between the petitioner and the commission's designee, a committee of the commission, or a quorum of the commission.

16.5(2) *Hearing procedures.* The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply in three situations: (a) to any petition for a waiver of rule filed within a contested case; (b) when the commission so provides by rule or order; or (c) when a statute so requires.

16.5(3) *Ruling.* An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

16.5(4) *Conditions.* The commission may condition the granting of the waiver on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

16.5(5) *Narrowly tailored exception.* A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

16.5(6) *Time period of waiver.* A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the commission, a waiver may be renewed if the commission finds that grounds for a waiver continue to exist.

16.5(7) *Time for ruling.* The commission shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the commission shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

16.5(8) *When deemed denied.* Failure of the commission to grant or deny a petition within the required time period shall be deemed a denial of that petition by the commission.

16.5(9) *Service of order.* Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

[**ARC 5828C**, IAB 8/11/21, effective 9/15/21]

751—16.6(17A,ExecOrd11) Public availability. Subject to the provisions of Iowa Code section 17A.3(1)*"e,"* the commission shall maintain a record of all orders granting or denying waivers under this chapter. All final rulings in response to requests for waivers shall be indexed and available to members of the public at the ICN main office location as listed in 751—subrule 1.6(1).

[**ARC 5828C**, IAB 8/11/21, effective 9/15/21]

751—16.7(17A,ExecOrd11) Voiding or cancellation. A waiver issued by the commission pursuant to this chapter may be withdrawn, canceled, modified, declared void or revoked if, after appropriate notice and hearing, the commission issues an order finding any of the following:

1. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of granting the waiver; or
2. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
3. The subject of the waiver order has failed to comply with all conditions contained in the order; or
4. The waiver is contrary to the public health, safety and welfare in light of newly discovered evidence or changed circumstances.

[**ARC 5828C**, IAB 8/11/21, effective 9/15/21]

751—16.8(17A,ExecOrd11) Violations. Violation of conditions in the waiver approval is the equivalent of violation of the particular rule for which the waiver is granted and is subject to the same remedies or penalties.
[**ARC 5828C**, IAB 8/11/21, effective 9/15/21]

751—16.9(17A,ExecOrd11) Defense. After the commission issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.
[**ARC 5828C**, IAB 8/11/21, effective 9/15/21]

751—16.10(17A,ExecOrd11) Appeals. Granting or denying a request for waiver is final agency action under Iowa Code chapter 17A. An appeal to district court shall be taken within 30 days of the issuance of the ruling in response to the request unless a contrary time is provided by rule or statute.
[**ARC 5828C**, IAB 8/11/21, effective 9/15/21]

751—16.11(17A,ExecOrd11) Submission of waiver information. Within 60 days of granting or denying a waiver, the commission shall make a submission on the Internet site established pursuant to Iowa Code section 17A.9A for the submission of waiver information. The submission shall identify the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the commission's actions on waiver requests. If practicable, the report shall detail the extent to which granting a waiver has established a precedent for additional waivers and the extent to which the granting of a waiver has affected the general applicability of the rule itself.
[**ARC 5828C**, IAB 8/11/21, effective 9/15/21]

Exhibit A

Sample Petition (Request) for Waiver

BEFORE THE IOWA TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION

Petition by (insert name of petitioner) for the waiver of (insert rule citation) relating to (insert the subject matter).	}	PETITION FOR WAIVER

Requests for waiver from a commission rule shall include the following information in the petition for waiver where applicable and known to the petitioner:

a. Provide the petitioner's (person asking for a waiver) name, address, and telephone number.

b. Describe and cite the specific rule from which a waiver is requested.

c. Describe the specific waiver requested; include the exact scope and time period that the waiver will extend.

d. Explain the important facts that the petitioner believes justify a waiver. Include in your answer why (1) applying the rule will result in hardship or injustice to the petitioner; and (2) granting the waiver to the petitioner is consistent with the public interest; and (3) granting the waiver will not prejudice the substantial legal rights of any person; and (4) where applicable, how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

e. Provide a history of prior contacts between the commission and petitioner relating to the use of the network, regulated activity, license, grant, loan or other financial assistance that would be affected by the waiver; include a description of each affected use of the network, license, grant, loan or other financial assistance held by the petitioner, any notices of violation, contested case hearings, or investigative reports relating to the affected use, regulated activity, license, grant or loan within the past five years.

f. Provide information known to the petitioner regarding the commission's treatment of similar cases.

g. Provide the name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver.

h. Provide the name, address, and telephone number of any person or entity that would be adversely affected or disadvantaged by the granting of the waiver.

i. Provide the name, address, and telephone number of any person with knowledge of the relevant or important facts relating to the requested waiver.

j. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the commission with information relevant to the waiver.

I hereby attest to the accuracy and truthfulness of the above information.

Petitioner's signature Date

Petitioner should note the following when requesting or petitioning for a waiver:

1. The petitioner has the burden of proving to the commission, by clear and convincing evidence, the following: (a) application of the rule to the petitioner would result in hardship or injustice to the petitioner; and (b) waiver on the basis of the particular circumstances relative to the petitioner would be consistent with the public interest; and (c) waiver in the specific case would not prejudice the substantial legal rights of any person; and (d) where applicable, how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

2. The commission may request additional information from or request an informal meeting with the petitioner prior to issuing a ruling granting or denying a request for waiver.

3. All petitions for waiver must be submitted in writing to the ICN main office location as listed in 751—subrule 1.6(1). If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

[**ARC 5828C**, IAB 8/11/21, effective 9/15/21]

These rules are intended to implement Executive Order Number 11 and Iowa Code section 17A.9A.

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CHAPTER 17
MISCELLANEOUS

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

751—17.1(8D) Content of transmissions. The commission and the commission's staff shall not monitor the content of transmissions on the network. From time to time, it may be necessary to monitor transmissions on the network to effect trouble isolation and correction. This type of monitoring will be kept to an absolute minimum and used only to efficiently and effectively manage the network. Each authorized user shall have responsibility that the use of the network is consistent with the mission of the authorized user and consistent with the law and these rules. Discovery of an unauthorized monitoring must be reported back to the authorized user.

751—17.2(8D) Areas of responsibility for the commission. Consistent with and in addition to the duties and obligations imposed upon the commission by Iowa Code sections 8D.1, 8D.2(6), 8D.3 and 8D.13, the commission's areas of responsibility include but are not necessarily limited to the following:

17.2(1) Management of the network for state communications;

17.2(2) Telephone service for state-owned buildings located on the capitol complex ending at the intermediate distribution frame located on each floor of the buildings;

17.2(3) Access devices for the distribution of state communications.

751—17.3(8D) Transfer and disposal of assets.

17.3(1) The commission may dispose of its property under its ownership or control when it becomes unnecessary or unfit for further use by the commission. The commission may dispose of unnecessary or unfit property under its control by sale, auction, broker, trade, consignment or any manner which the commission determines will fairly dispose of the property. Proceeds from the disposition of the property will be retained by the commission.

17.3(2) Notice of the disposition of unnecessary or unfit property will be noticed in a newspaper of general circulation, trade journals or on the commission's home page on the Internet. The commission will attempt to advertise its unnecessary or unfit property on other home pages maintained by other state agencies.

17.3(3) In the event of a purchase of unnecessary or unfit property, payment for the unnecessary or unfit property shall be by certified check, electronic funds transfer, or an irrevocable letter of credit and must be in U.S. dollars. Any sale to an entity in a foreign country shall be in conformance with the policies and procedures of the U.S. State Department, the U.S. Department of Commerce and the U.S. Department of Defense. Before title is transferred or the property is delivered, the commission must receive good funds for the purchase of the property. Upon receipt of good funds, the commission shall issue a bill of sale for the property and the item or items of property will be removed from the commission's inventory. In the event of a trade of property, the commission will issue a bill of sale relinquishing ownership of its property upon receipt of the property exchanged. The commission shall require the trader to provide a document transferring ownership to the commission and the state of Iowa.

17.3(4) Notwithstanding any contrary provision in this chapter or these rules, and consistent with Iowa Code section 8D.12, the commission may dispose of unnecessary or unfit property under its ownership or control by sale, auction, broker, trade, consignment, gift, transfer, or any manner in which the commission determines will fairly dispose of the property to any branch of the government of the state of Iowa, any Iowa state agency, or any institution under the control of the Iowa board of regents. Contrary provisions of subrules 17.3(1) to 17.3(3) do not apply to the disposition of property pursuant to this subrule. Dispositions pursuant to this subrule are valid so long as the executive

director of the Iowa communications network determines that the transfer is in the best interests of the state of Iowa.

17.3(5) Notwithstanding any contrary provision in this chapter or these rules, upon request by an authorized user, the commission may procure, in accordance with all applicable administrative rules and provisions of Iowa Code chapter 8D, any telecommunications equipment, devices or services requested by or on behalf of an authorized user. The commission may further transfer the title to, or benefit of, the telecommunications equipment, devices or services to the authorized user. The commission may accordingly bill the authorized user through the commission's regular process for the telecommunications equipment, devices or services or for the use of such telecommunications equipment, devices or services. Nothing in this subrule shall permit the commission to purchase or transfer title to Part III fiber as defined in Iowa Code section 8D.13(2)*"c"* unless such purchase or transfer is authorized by Iowa Code chapter 8D or an Act of the legislature approved by the governor.

751—17.4(8D) Partnerships with private or public entities. The commission may enter into partnership or other arrangements in order to maximize income for the network. The following agreements are specifically permitted by this rule:

17.4(1) Agreements to use space in the fiberoptic termination site rooms in a manner consistent with law.

17.4(2) Agreement to use the rights-of-way obtained by the commission for the construction and maintenance of the network in a manner consistent with law.

17.4(3) Agreements to share equipment, any telecommunications facilities, or any other real or personal property used to operate a telecommunications network or single communication site in a manner consistent with law.

751—17.5(8D) Circuit testing. Circuit testing is authorized on the network by the commission's maintenance contractor or Iowa public television personnel or network staff. Any other request for a test of the network must be made through commission staff.

751—17.6(8D) Billing services on behalf of authorized user.

17.6(1) Pursuant to an agreement between the commission and an authorized user, the commission may provide billing services on behalf of the authorized user and charge another entity that receives services from the authorized user pursuant to the network if all of the following conditions are satisfied:

a. The services provided by the authorized user to the other entity must be consistent with the mission of the authorized user.

b. The services provided by the authorized user to the other entity must be consistent with the following requirements and limitations:

(1) The services provided by the authorized user are the services of the authorized user and are not communications services that the commission is authorized to provide only to its authorized users.

(2) The services provided by the authorized user to the other entity are being delivered to the other entity through the network.

(3) The services provided by the authorized user to the other entity are not being provided in a manner that is contrary to any other restrictions contained in Iowa Code chapter 8D.

17.6(2) This rule is not intended to limit the ability of the commission to recover damages from another entity on behalf of an authorized user for damage to the authorized user's network that is being managed or maintained by the commission on behalf of the authorized user.

This rule is intended to implement Iowa Code section 8D.11.

[**ARC 6246C**, IAB 3/23/22, effective 4/27/22]

These rules are intended to implement Iowa Code sections 23A.2, 8D.3 and 8D.11.

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CHAPTER 18
PROCEDURE FOR RULEMAKING

Chapter rescission date pursuant to Iowa Code section 17A.7: 3/26/30

The executive director adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure relating to agency procedure for rulemaking, which are published at www.legis.iowa.gov/docs/Rules/Current/UniformRules.pdf on the general assembly's website.
[**ARC 8924C**, IAB 2/19/25, effective 3/26/25]

751—18.3(17A) Public rulemaking docket.

18.3(2) *Anticipated rulemaking.* In lieu of the words "(commission, board, council, director)", insert "executive director".
[**ARC 8924C**, IAB 2/19/25, effective 3/26/25]

751—18.4(17A) Notice of proposed rulemaking.

18.4(3) *Copies of notices.* In lieu of the words "(specify time period)", insert "six months".
[**ARC 8924C**, IAB 2/19/25, effective 3/26/25]

751—18.5(17A) Public participation.

18.5(1) *Written comments.* In lieu of the words "(identify office and address)", insert "ICN Executive Director, 400 East 14th Street, Des Moines, Iowa 50319-9000".

18.5(5) *Accessibility.* In lieu of the words "(designate office and telephone number)", insert "ICN executive director at 515.725.4692".
[**ARC 8924C**, IAB 2/19/25, effective 3/26/25]

751—18.6(17A) Regulatory analysis.

18.6(2) *Mailing list.* In lieu of the words "(designate office)", insert "ICN executive director".
[**ARC 8924C**, IAB 2/19/25, effective 3/26/25]

751—18.10(17A) Exemptions from public rulemaking procedures.

18.10(2) This subrule is not adopted.
[**ARC 8924C**, IAB 2/19/25, effective 3/26/25]

751—18.11(17A) Concise statement of reasons.

18.11(1) *General.* In lieu of the words "(specify the office and address)", insert "ICN Executive Director, 400 East 14th Street, Des Moines, Iowa 50319-9000".
[**ARC 8924C**, IAB 2/19/25, effective 3/26/25]

751—18.13(17A) Agency rulemaking record.

18.13(2) *Contents.* In lieu of the words "(agency head)", insert "executive director".
[**ARC 8924C**, IAB 2/19/25, effective 3/26/25]

These rules are intended to implement Iowa Code chapters 8D and 17A.

[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]
[Filed 12/1/04, Notice 10/13/04—published 12/22/04, effective 1/26/05]
[Filed 9/20/07, Notice 6/20/07—published 10/10/07, effective 11/14/07]
[Filed ARC 8924C (Notice ARC 8661C, IAB 12/25/24), IAB 2/19/25, effective 3/26/25]

TRANSPORTATION DEPARTMENT[761]

Rules transferred from agency number [820] to [761] to conform with the reorganization numbering scheme in general IAC Supp. 6/3/87.

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CHAPTER 10
PROCEDURE FOR RULEMAKING AND PETITIONS FOR RULEMAKING

[Prior to 6/3/87, Transportation Department[820]—(01,B) Ch 1]

Chapter rescission date pursuant to Iowa Code section 17A.7: 8/27/30

761—10.1(17A) General.

10.1(1) *Definitions.*

"Commission" means the state transportation commission.

"Director" means the director of transportation or the director's designee.

10.1(2) *Contact information for rules administrator.* The mailing address of the department's rules administrator is: Rules Administrator, Office of the Director, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010. The email address of the rules administrator may be found on the department's website at iowadot.gov/administrativerules.

[**ARC 9444C**, IAB 7/23/25, effective 8/27/25]

761—10.2(17A) Procedure for rulemaking.

10.2(1) *Incorporation by reference.* The department incorporates by this reference all such matters in Iowa Code chapter 17A that relate to procedures for rulemaking.

10.2(2) *Information.*

a. Inquiries about rules and the rulemaking process may be directed to the rules administrator at the address in subrule 10.1(2).

b. Any public comment on a Notice of Intended Action or similar document relating to rules may be directed to the rules administrator or as directed in the Notice of Intended Action or similar document.

[**ARC 9444C**, IAB 7/23/25, effective 8/27/25]

761—10.3(17A) Petitions for rulemaking.

10.3(1) The department will accept and consider, from any person or agency, petitions for rulemaking when submitted to the department's rules administrator by mail or email and prepared in conformance with the following:

a. Format:

IOWA DEPARTMENT OF TRANSPORTATION
800 Lincoln Way, Ames, Iowa 50010

PETITION BY (insert petitioner's name) FOR THE (insert one: adoption, amendment or repeal) OF (insert current rule number, if applicable, and brief description of subject matter)	DOCKET NO. _____ PETITION FOR RULEMAKING

(In separate numbered paragraphs, the petition shall include the following.)

1. The petitioner's name, address and telephone number.
2. The nature of the petitioner's interest in the matter.
3. The text or the essential terms and conditions of a proposed new rule, or the rule number and text of a rule proposed for amendment or a repeal. In addition, proposed amendments are to be illustrated to portray the changes in wording requested: Deletions are to be indicated by strikethroughs, and additions by underscoring.
4. The reasons for seeking the requested action, including any facts, views, data or arguments relevant to the request. Copies of statutes, rules or other supporting documents referenced in the

petition are to be submitted as appendices to the petition or made available to the department upon request.

5. If desired, a request to meet informally with the department to discuss the petition.

(Signature of petitioner)

b. A petition for amendment or repeal of a rule is to pertain to a rule currently in effect at the time the petition is received by the department.

c. Petitions should be typewritten, although petitions legibly hand-printed in ink will be accepted.

10.3(2) The date of receipt of a petition is the day it reaches the department's rules administrator. The administrator will within five days of receipt notify the petitioner of the date of receipt and the assigned docket number.

10.3(3) If requested in the petition, the department will schedule an informal meeting with the petitioner to discuss the petition.

10.3(4) The department will notify the petitioner of the director's or commission's determination to grant or deny the petition. If the petition is denied, the notification will include the reasons for denial.

[**ARC 9444C**, IAB 7/23/25, effective 8/27/25]

These rules are intended to implement Iowa Code chapter 17A and sections 307.12(1)*"j,"* 307A.2, 312.3 and 312A.3.

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[1] Effective date of amendments to 761—10.2(17A) and 10.3(17A) delayed until adjournment of the 1991 General Assembly by the Administrative Rules Review Committee at its meeting held August 15, 1990.

CHAPTER 11
WAIVER OF RULES

Chapter rescission date pursuant to Iowa Code section 17A.7: 8/27/30

761—11.1(17A) General.

11.1(1) *Purpose.* The purpose of this chapter is to establish a general process for granting waivers from the requirements of department rules in accordance with Iowa Code section 17A.9A.

11.1(2) *Scope.* This chapter does not:

a. Preclude the granting of waivers using another process if a statute or another department rule so provides. If the rule for which a waiver is sought has a specific waiver process of its own, this chapter is applicable only when it is specifically cited.

b. Apply to contested case proceedings.

c. Apply to rules that merely define the meaning of a statute or other provision of law if the department does not possess the delegated authority to bind the courts to any extent with its definition.

11.1(3) *Definition.*

"Director" means the director of transportation or the director's designee.

[**ARC 9445C**, IAB 7/23/25, effective 8/27/25]

761—11.2(17A) Petition for waiver.

11.2(1) *Petitioner.* Any person with a real and direct interest in the matter may petition the department for a waiver from the requirements of a rule.

11.2(2) *Form of petition.* A petition for a waiver from the requirements of a rule must be in writing and state clearly at the top of the petition that it is a "petition for waiver of a rule." The petition shall contain the following information where applicable and known to the petitioner:

a. The name, address and telephone number of the petitioner, and any license, permit or case number applicable to the requested waiver.

b. A description of and citation to the specific rule from which a waiver is requested.

c. The specific waiver requested, including its scope and duration.

d. The relevant facts and reasons the petitioner believes would justify the requested waiver and address each of the following:

(1) Why applying the rule will result in an undue hardship to the petitioner.

(2) Why waiving the rule will not prejudice the substantial legal rights of any other person.

(3) Whether the provisions of the rule are specifically mandated by statute or another law other than the rule.

(4) How substantially equal protection of the public health, safety and welfare will be afforded by means other than those prescribed by the rule.

e. A history of any prior contacts between the petitioner and the department that are related to the requested waiver.

f. Whether the petitioner is currently a party to a rulemaking, declaratory order, contested case, judicial proceeding or any other proceeding related to the requested waiver.

g. Information regarding the department's treatment of similar situations.

h. The name, address and telephone number of any public agency or political subdivision that also regulates the activity in question or that may be affected if the waiver were granted.

i. The name, address and telephone number of any person or entity that may be adversely affected if the waiver were granted.

j. The name, address and telephone number of any person who has knowledge of facts relevant to the requested waiver.

k. Releases authorizing persons with knowledge of relevant facts to furnish that information to the department.

l. The signature of the petitioner and the date signed.

11.2(3) *Submission of petition.* A petition for waiver from the requirements of a rule shall be submitted to the rules administrator either by mail to Rules Administrator, Office of the Director, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; or by email to the rules administrator's email address listed on the department's website at iowadot.gov/administrativerules.
[**ARC 9445C**, IAB 7/23/25, effective 8/27/25]

761—11.3(17A) Action on petition and decision on waiver.

11.3(1) The director may, in response to a written petition submitted in accordance with rule 761—11.2(17A), grant a waiver from the requirements of a rule. The decision to grant a waiver is made at the sole discretion of the director and is final agency action.

11.3(2) The following is the procedure for responding to a petition for a waiver from the requirements of a rule:

a. The department will acknowledge receipt of a petition within five days of receipt.

b. Before a waiver is granted or denied, the department may request a petitioner to furnish additional information related to the petition.

c. The director will issue a written decision to grant or deny a waiver within 120 days after the department acknowledges receipt of the petition unless the petitioner agrees to a later time. However, if the matter is also the subject of a contested case proceeding, the decision to grant or deny a waiver need not be issued until after the final decision in the contested case is issued.

d. The director's decision to grant or deny a waiver in response to a written petition will be in writing and contain:

(1) The name of the person to whom the decision pertains.

(2) A citation to the rule or portion thereof to which the decision pertains and a brief summary of the rule's requirements that are pertinent to the requested waiver.

(3) The relevant facts and reasons upon which the decision is based. If a waiver is granted, the decision needs to include the findings set out in Iowa Code section 17A.9A(2).

(4) The scope and duration of a waiver if one is granted.

(5) Any other conditions placed on a waiver if one is granted.

e. Within seven days after the decision is issued, the department will transmit it to the petitioner.

f. Failure to grant a waiver within the time specified in paragraph 11.3(2)*"c"* is deemed a denial.

g. A petition for a waiver from the requirements of a rule is independent of a contested case proceeding. Submission of a petition does not delay the time to request a contested case hearing, to appeal a proposed decision in a contested case, or to file a petition for judicial review of a final decision in a contested case.

h. A petition for a waiver from the requirements of a rule is not needed to exhaust administrative remedies before judicial review of a department action under Iowa Code section 17A.19.
[**ARC 9445C**, IAB 7/23/25, effective 8/27/25]

761—11.4(17A) Modification or cancellation of waiver. The department may, after notice and opportunity for hearing, modify or cancel a waiver granted pursuant to this chapter if the director finds any of the following:

1. A material fact upon which the waiver is based is not true or has changed.

2. The petitioner withheld or knowingly misrepresented a material fact relevant to the propriety or desirability of the waiver.

3. The petitioner has failed to comply with the conditions set forth in the decision granting the waiver.

4. The alternate means for ensuring that the public health, safety and welfare will be adequately protected after the waiver is granted are insufficient.
[**ARC 9445C**, IAB 7/23/25, effective 8/27/25]

761—11.5(17A) Records.

11.5(1) All records relating to waivers granted or denied under this chapter are open records. However, if a record contains personal information that is confidential, only the portion of the record that is nonconfidential will be made available for public inspection.

11.5(2) The department's rules administrator will, at a minimum, retain for five years records relating to waivers granted or denied under this chapter.

[**ARC 9445C**, IAB 7/23/25, effective 8/27/25]

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

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CHAPTER 12
DECLARATORY ORDERS

[Prior to 11/8/06, see rule 761—10.4(17A)]

Chapter rescission date pursuant to Iowa Code section 17A.7: 8/27/30

761—12.1(17A) Definitions.

"Declaratory order" means the department's interpretation of a statute, rule or order as applied to specified circumstances. A declaratory order is issued in response to a petition for declaratory order.

"Director" means the director of transportation or the director's designee.

"Petition for declaratory order" means a formal request from a person or agency to the department asking how the department will apply a statute, rule or order based on a specific set of facts contained in the petition. The purpose of the petition is to seek binding advice from the department, not to challenge a decision that the department has already made.

[**ARC 9446C**, IAB 7/23/25, effective 8/27/25]

761—12.2(17A) Petition for declaratory order.

12.2(1) Any person or agency may file with the department a petition for declaratory order.

12.2(2) The petition is to be submitted to the rules administrator either by mail to Rules Administrator, Office of the Director, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; or by email to the rules administrator's email address listed on the department's website at iowadot.gov/administrativerules.

12.2(3) The petition is to be typewritten or legibly handwritten in ink and is to substantially conform to the following form:

IOWA DEPARTMENT OF TRANSPORTATION
800 Lincoln Way, Ames, Iowa 50010

PETITION BY (insert petitioner's name) FOR DECLARATORY ORDER ON (insert number of statute, rule, etc. and brief description of subject matter)	DOCKET NO. _____ PETITION FOR DECLARATORY ORDER

(In separate numbered paragraphs, the petition shall include the following.)

1. The petitioner's name, address and telephone number.
2. The exact words, passages, sentences or paragraphs of statutes, rules, etc. that are the subject of the inquiry.
3. A clear, concise and complete statement of all relevant facts for which the order is requested.
4. The uncertainties or conflicting interpretations that arise when the cited statutes, rules, etc. are applied to the facts.
5. (Optional) The interpretation urged based upon the facts set forth.
6. The reasons for the petition and a full disclosure of the petitioner's interest.
7. Whether the petitioner is currently a party to a rulemaking, contested case or judicial proceeding involving the controversy or uncertainty.
8. The names and addresses, when known, of other persons who may be affected by the declaratory order.

12.2(4) The petition is to be dated and signed by the petitioner or, if applicable, petitioner's representative.

12.2(5) If applicable, the petition is also to include the name, address and telephone number of the petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

12.2(6) The date of receipt of the petition is the day it reaches the department's rules administrator. The administrator will within five days of receipt send an acknowledgment of receipt with the assigned docket number to the petitioner or, if applicable, petitioner's representative.
[**ARC 9446C**, IAB 7/23/25, effective 8/27/25]

761—12.3(17A) Action on petition.

12.3(1) A declaratory order or an order declining to issue a declaratory order is issued by the director.

12.3(2) The director may issue an order declining to issue a declaratory order on some or all of the questions raised in the petition for any of the following reasons:

a. The petition does not substantially comply with the required form.

b. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the department to issue a declaratory order.

c. The department does not have jurisdiction over the questions presented in the petition.

d. The questions presented in the petition are also presented in a current rulemaking, contested case, or other agency or judicial proceeding that may definitively resolve them.

e. The questions presented in the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

f. The questions posed or facts presented in the petition are unclear, vague, incomplete, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue a declaratory order.

g. There is no need to issue a declaratory order because the questions raised in the petition have been settled due to a change in circumstances.

h. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a department decision already made.

i. The petition requests a declaratory order that would necessarily determine the legal rights, duties or responsibilities of other persons who have not joined in the petition or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of the petitioner.

j. The petitioner requests the department to determine whether a statute is unconstitutional on its face.

12.3(3) If the director issues an order declining to issue a declaratory order, the order needs to indicate the specific grounds for declining to issue a declaratory order and constitutes final agency action on the petition.
[**ARC 9446C**, IAB 7/23/25, effective 8/27/25]

761—12.4(17A) Effect of a declaratory order. A declaratory order is binding on the department and the petitioner and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the department. The issuance of a declaratory order constitutes final agency action on the petition.
[**ARC 9446C**, IAB 7/23/25, effective 8/27/25]

These rules are intended to implement Iowa Code sections 17A.9 and 17A.19.

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CHAPTER 424
TRANSPORTER PLATES

[Prior to 6/3/87, Transportation Department[820]—(07,D) Ch 5]

Chapter rescission date pursuant to Iowa Code section 17A.7: 8/27/30

761—424.1(307,321) Definitions.

"Operating authority" means the authority issued by the department or the Federal Motor Carrier Safety Administration under Iowa Code chapter 325A or 327B that is required for the delivery of a vehicle for compensation.

"Transporter" means a person who is engaged in the business of delivering vehicles owned by the person or delivering vehicles owned by other persons for compensation and who has an established place of business for such purpose in this state. An authorized vehicle recycler under Iowa Code chapter 321H who delivers vehicles in the course of the recycler's business meets this definition.

"Transporter plate" means a special plate for transporters as authorized by Iowa Code sections 307.12(1)*"j"* and 321.57 through 321.63.

[**ARC 9447C**, IAB 7/23/25, effective 8/27/25]

761—424.2(307,321) Application and requirements for transporter plates.

424.2(1) *Application.* A transporter may obtain transporter plates from the department by submitting an application on Form 417003 to the department with the applicable statutory fees under Iowa Code sections 321.58 through 321.60. Applications are to be submitted by mail to Motor Vehicle Division, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278. Form 417003 may be obtained by contacting the motor vehicle division by phone at 515.237.3156, by email to dealer.programs@iowadot.us or on the department's website at iowadot.gov/mvd/buyingselling/buyingselling/misc.

424.2(2) *Required information.* Each application shall include the following information:

a. The transporter's business name, bona fide address and telephone number.

b. The legal name, bona fide address and phone number of an owner when the owner of the business is an individual, or the name, bona fide address and phone number of at least two partners or officers if the business is a partnership or corporation.

c. 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 is to include the individual's social security number, Iowa nonoperator's identification number or Iowa driver's license number.

d. Certification on the application that the applicant possesses all necessary operating authority to conduct business as a transporter in the state.

424.2(3) *Permitted uses of a transporter plate.* The person delivering the vehicle must carry evidence issued by the owner of the vehicle authorizing the delivery. The evidence shall include the origin and destination of the vehicle delivery, the vehicle owner's name and address and a description of the vehicle being delivered. Subject to these stipulations, a transporter plate may be displayed on a vehicle being operated or moved on the highway for the purpose of delivery to a place designated by the owner of the vehicle.

424.2(4) *Prohibited uses of a transporter plate.* A transporter plate shall not be displayed on a vehicle being delivered or displayed in any manner not specifically permitted under Iowa Code section 321.57 or subrule 424.2(3).

[**ARC 9447C**, IAB 7/23/25, effective 8/27/25]

These rules are intended to implement Iowa Code sections 307.12(1)*"j,"* 321.1 and 321.57 through 321.63.

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CHAPTER 430
MOTOR VEHICLE LEASING LICENSES

[Prior to 6/3/87, Transportation Department[820]—(07,D) Ch 9]

Chapter rescission date pursuant to Iowa Code section 17A.7: 8/27/30

761—430.1(321F) General.

430.1(1) *Information.* Information and forms relating to this chapter may be obtained from the Motor Vehicle Division, Iowa Department of Transportation, by mail at P.O. Box 9278, Des Moines, Iowa 50306-9278; by telephone at 515.237.3156; by email at dealer.programs@iowadot.us; or from the department's website at www.iowadot.gov/mvd/buyingselling.

430.1(2) *Definition.*

"Engage in the business" means leasing two or more motor vehicles that are subject to registration in a 12-month period if the lessee is a resident of this state and first takes possession of the vehicle in this state, or if the lessor's business address is located in this state. A person is not considered to be engaged in the business if the business address is located outside of this state and the lessee first takes possession of the motor vehicle outside of this state.

[**ARC 9448C**, IAB 7/23/25, effective 8/27/25]

761—430.2(321F) Application.

430.2(1) *Form and submission.* Application for a motor vehicle leasing license shall be made on Form 417034 and submitted to the address provided in subrule 430.1(1).

430.2(2) *Required information.* Each application is to include the following information:

a. The applicant's business name, bona fide address and telephone number under which the applicant will engage in the business and where an individual, partner or corporate officer can be reached during normal business hours.

b. The legal name, bona fide address and phone number of the owner when the owner of the business is an individual, or the name, bona fide address and phone number of at least two partners or officers if the business is a partnership or corporation.

c. The federal employer identification number of the business, or, if the business is owned by an individual who is not required to have a federal employer identification number, the individual's social security number, Iowa nonoperator's identification number or Iowa driver's license number.

430.2(3) *Supplemental statements.* The licensee shall notify the department, in writing, within ten days, at the address shown in subrule 430.1(1), of any change in the information required on the original application.

[**ARC 9448C**, IAB 7/23/25, effective 8/27/25]

761—430.3(321F) Separate licenses required. A separate license is required for:

430.3(1) Each address under which a single business entity will conduct business under Iowa Code chapter 321F and these rules.

430.3(2) Each address that will be used for titling or registering vehicles subject to registration in Iowa.

[**ARC 9448C**, IAB 7/23/25, effective 8/27/25]

These rules are intended to implement Iowa Code chapter 321F.

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CHAPTER 431
VEHICLE RECYCLERS

[Prior to 6/3/87, Transportation Department[820]—(07,D) Ch 6]

Chapter rescission date pursuant to Iowa Code section 17A.7: 8/27/30

761—431.1(307,321H) Definitions.

"NMVTIS" means the National Motor Vehicle Title Information System.

"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. The principal place of business must be located in this state.

"Regular business hours" means to be consistently open to the public on a weekly basis at hours reported to the motor vehicle division. Regular business hours shall include a minimum of 32 posted hours between 7 a.m. and 9 p.m., Monday through Friday.

This rule is intended to implement Iowa Code sections 307.12(1)*"j,"* 321H.2 and 321H.4.

[**ARC 9449C**, IAB 7/23/25, effective 8/27/25]

761—431.2(307,321,321H) Authorized vehicle recycler.

431.2(1) *General requirements.* Every authorized vehicle recycler shall:

a. Maintain a principal place of business that includes separate and adequate office space for the recycler's business records and a working telephone service provided specifically for business use, which will allow the public, the department and law enforcement to contact the licensee during business hours.

b. Maintain regular business hours at the principal place of business.

c. Comply with local zoning laws.

d. Comply with the provisions of Iowa Code chapter 306C, relating to the Iowa junkyard control law, when applicable.

e. If subject to the requirements of 28 CFR Section 25.56, effective July 1, 2023, as adopted in Iowa Code section 321H.4A(2)*"a,"* do all of the following:

(1) Obtain and maintain a registered account with the NMVTIS.

(2) Report, or verify reporting of, inventory to the NMVTIS.

(3) If applicable, verify the seller of a vehicle purchased by the recycler has complied with 28 CFR Section 25.56, effective July 1, 2023, and document such verification on a form prescribed by the department if third-party electronic records are insufficient to verify compliance with 28 CFR Section 25.56, effective July 1, 2023, because the vehicle has been crushed or flattened by mechanical means as stated in Iowa Code section 321H.4A.

(4) Retain records of compliance, including verification forms completed under subparagraph 431.2(1)*"e"*(3), at the vehicle recycler's principal place of business for at least three years after the purchase of the vehicle. Records may be stored either in hard copy or electronically.

f. Only represent or advertise the business under the name or style that appears on the recycler's license.

g. Allow any peace officer to inspect vehicles or component parts of vehicles and the records and documents required to be kept under Iowa Code chapter 321H and this chapter.

431.2(2) *Vehicle rebuilder qualifications.* For every licensed location, a vehicle rebuilder must have:

a. An unobstructed area inside a building for rebuilding and restoring vehicles. The inside measurement of the unobstructed area must be at least 14 feet by 24 feet.

b. Sufficient storage for all vehicles in the rebuilder's inventory.

c. Equipment necessary to perform rebuilding and restoring of vehicles in the inventory, such as frame-straightening equipment, a hydraulic jack, alignment and calibration equipment, and tools.

431.2(3) *Used vehicle parts dealer qualifications.* For every licensed location, a used vehicle parts dealer must have sufficient storage for the vehicle parts in the dealer's inventory.

431.2(4) *Vehicle salvager qualifications.* For every licensed location, a vehicle salvager must have:

a. Sufficient storage for vehicles, vehicle parts and vehicle bodies included in the salvager's inventory.

b. Sufficient equipment necessary to perform dismantling, scrapping or storing of vehicles and vehicle parts in the inventory.

This rule is intended to implement Iowa Code sections 307.12(1)*"j,"* 321.95, 321H.4 and 321H.4A.

[**ARC 9449C**, IAB 7/23/25, effective 8/27/25]

761—431.3(307,321H) Application and requirements for license.

431.3(1) *Application submission.* Application for an authorized vehicle recycler's license shall be made on Form 411117 and submitted to the department with the applicable statutory fee by mail to Motor Vehicle Division, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278. Form 411117 may be obtained by contacting the motor vehicle division, by phone at 515.237.3156, by email to dealer.programs@iowadot.us or on the department's website at www.iowadot.gov/mvd/buyingselling/buyingselling/recycler.

431.3(2) *Required information.* Each application shall include all information required by Iowa Code section 321H.4 and the following information:

a. The business's name, bona fide address and telephone number.

b. The legal name, bona fide address and telephone number of an owner when the owner of the business is an individual, or the name, bona fide address and phone number of at least two partners or officers if the business is a partnership or corporation.

c. The federal employer identification number of the business. 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.

d. The address of any extension of the applicant's place of business.

e. Certification the applicant complies with the requirements for the type of business the applicant engages in as specified under Iowa Code section 321H.4(2)*"b."*

f. A letter from the appropriate city or county zoning official stating that the business, or any extension of the applicant's business, complies with all applicable zoning provisions or is a legal nonconforming use. The letter must include acknowledgment by the zoning official of the type, or types, of business the applicant is engaged in.

g. A statement of the previous criminal history of the applicant. If the applicant is a corporation, the statement is required from each officer. If the applicant is a partnership, the statement is required from each partner.

h. The unique NMVTIS identification number as proof of compliance with registration requirements.

This rule is intended to implement Iowa Code sections 307.12(1)*"j,"* 321H.4 and 321H.4A.

[**ARC 9449C**, IAB 7/23/25, effective 8/27/25]

761—431.4(17A,307,321H) Denial, suspension or revocation.

431.4(1) *Denial.* The department shall deny an application if the applicant fails to meet the criteria for issuance of a license under this chapter and is authorized to deny the application for any of the reasons stated in Iowa Code section 321H.6.

431.4(2) *Suspension or revocation.* The department may suspend or revoke the recycler's license for failure to comply with the provisions of this chapter or for any of the reasons stated in Iowa Code section 321H.6.

431.4(3) *Appeal.* A person aggrieved by a decision of the department may contest the decision pursuant to 761—Chapter 13 by submitting an appeal request in writing to the director of the motor vehicle division.

This rule is intended to implement Iowa Code chapter 17A and sections 307.12(1)*"j"* and 321H.6.

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CHAPTERS 541 to 599
Reserved
DRIVER LICENSES

CHAPTER 600
GENERAL INFORMATION
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Rescinded **ARC 9450C**, IAB 7/23/25, effective 8/27/25