

SOIL CONSERVATION AND WATER QUALITY DIVISION[27]

[Renamed Soil Conservation Division[27] under the Agriculture and Land Stewardship Department[21] “umbrella”]
[Renamed Soil Conservation and Water Quality Division[27] pursuant to 2015 Iowa Acts, House File 634]

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DIVISION I
SOIL CONSERVATION DIVISION

CHAPTER 1

REGIONS OF REPRESENTATION FOR STATE SOIL CONSERVATION
AND WATER QUALITY COMMITTEE FARMER MEMBERS

27—1.1(161A) Scope. This chapter delineates the regional boundaries from which the six farmer members of the state soil conservation and water quality committee shall be appointed. The three members representing the mining industry, cities and towns, and tree farming shall be selected from the state at large.

[ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—1.2(161A) Regions of representation. The farmer members of the state soil conservation and water quality committee shall be selected from the northwest, north central, northeast, southwest, south central, and southeast regions of the state.

1.2(1) Northwest region. The northwest region shall contain the counties of Buena Vista, Calhoun, Cherokee, Clay, Dickinson, Emmet, Ida, Lyon, O'Brien, Osceola, Palo Alto, Plymouth, Pocahontas, Sac, Sioux, and Woodbury.

1.2(2) North central region. The north central region shall contain the counties of Boone, Butler, Cerro Gordo, Floyd, Franklin, Grundy, Hamilton, Hancock, Hardin, Humboldt, Kossuth, Marshall, Mitchell, Story, Tama, Webster, Winnebago, Worth, and Wright.

1.2(3) Northeast region. The northeast region shall contain the counties of Allamakee, Benton, Black Hawk, Bremer, Buchanan, Chickasaw, Clayton, Delaware, Dubuque, Fayette, Howard, Jackson, Jones, Linn, and Winneshiek.

1.2(4) Southwest region. The southwest region shall contain the counties of Adair, Adams, Audubon, Carroll, Cass, Crawford, Fremont, Greene, Guthrie, Harrison, Mills, Monona, Montgomery, Page, Pottawattamie, Shelby, and Taylor.

1.2(5) South central region. The south central region shall contain the counties of Appanoose, Clarke, Dallas, Decatur, Jasper, Lucas, Madison, Mahaska, Marion, Monroe, Polk, Poweshiek, Ringgold, Union, Warren, and Wayne.

1.2(6) Southeast region. The southeast region shall contain the counties of Cedar, Clinton, Davis, Des Moines, Henry, Iowa, Jefferson, Johnson, Keokuk, Lee, Louisa, Muscatine, Scott, Van Buren, Wapello, and Washington.

[ARC 3243C, IAB 8/2/17, effective 9/6/17]

These rules are intended to implement Iowa Code chapter 161A.

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[Filed ARC 3243C (Notice ARC 3086C, IAB 6/7/17), IAB 8/2/17, effective 9/6/17]

CHAPTER 2
OPERATION OF STATE SOIL CONSERVATION AND WATER QUALITY COMMITTEE

27—2.1(161A) Scope. This chapter governs the conduct of business by the state soil conservation and water quality committee. Rule-making proceedings held as part of committee meetings and contested case proceedings involving the committee are consistent with Iowa Code chapter 17A.

[ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—2.2(161A) Time of meetings. The committee meets monthly, generally the first Thursday of each month. The chairperson or a majority of the committee may establish meetings at more frequent intervals.

27—2.3(161A) Place of meetings. Meetings are held in the Henry A. Wallace Building, 900 East Grand Avenue, Des Moines, Iowa, or at other locations as appropriate. The meeting place will be specified in the agenda.

27—2.4(161A) Notification of meetings. The director of the soil conservation division shall provide public notice of all meeting dates, locations, and tentative agenda.

2.4(1) Form of notice. Notice of meetings is given by posting the tentative agenda and by distribution upon request. The agenda lists the time, date, place, and topics to be discussed at the meeting. The agenda shall include an opportunity for the public to address the committee on any issue related to the duties and responsibilities of the committee, except as otherwise provided in these rules.

2.4(2) Posting of agenda. The tentative agenda for each meeting will be posted at the division's offices on the second floor, Henry A. Wallace Building, normally at least five days prior to the meeting. The agenda will be posted at least 24 hours prior to the meeting, unless, for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible will be given.

2.4(3) Distribution of agenda. Agenda will be mailed to anyone who files a request with the director. The request should state whether the agenda for a particular meeting is desired, or whether the requester desires to be on the division's mailing list to receive the agenda for all meetings of the state soil conservation and water quality committee.

2.4(4) Amendment to agenda. Any amendments to the agenda after posting and distribution under subrules 2.4(2) and 2.4(3) will be posted, but will not be mailed. The amended agenda will be posted at least 24 hours prior to the meeting, unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible will be given. The committee may adopt amendments to the agenda at the meeting only if good cause exists requiring expeditious discussion or action on such matters. The reasons and circumstances necessitating such agenda amendments, or those given less than 24 hours' notice by posting, shall be stated in the minutes of the meeting.

2.4(5) Supporting material. Written materials provided to the committee with the agenda may be examined and copied as provided in the public information rules of the department. The director may require a fee to cover the reasonable cost to the division to provide the copies, in accordance with rules of the department.

[ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—2.5(161A) Attendance and participation by the public.

2.5(1) Attendance. All meetings are open to the public. The committee may exclude the public from portions of the meeting only in accordance with Iowa Code section 21.5.

2.5(2) Participation.

a. Items on agenda. Presentations to the committee may be made at the discretion of the chairperson.

b. Items not on agenda. Iowa Code section 21.4 requires the committee to give notice of its agenda. The committee will not take action on a matter not on the agenda, except in accordance with subrule 2.4(4). Presentations to the committee on subjects not on the agenda may be made at the discretion of the chairperson. Persons who wish the committee to take action on a matter not on the agenda should file a request with the director to place that matter on the agenda of a subsequent meeting.

c. Meeting decorum. The chairperson may limit participation as necessary for the orderly conduct of agency business.

2.5(3) Use of cameras and recording devices. Cameras and recording devices may be used during meetings provided they do not interfere with the orderly conduct of the meeting. The chairperson may order the use of these devices be discontinued if they cause interference and may exclude those persons who fail to comply with that order.

27—2.6(161A) Quorum and voting requirements.

2.6(1) Quorum. Two-thirds of the members of the committee constitutes a quorum.

2.6(2) Voting. The concurrence of a majority of the committee members is required to determine any matter before the committee for action, except for a vote to close a meeting which requires the concurrence of two-thirds of the members of the committee present.

27—2.7(161A) Conduct of meeting.

2.7(1) General. Meetings will be conducted in accordance with Robert's Rules of Order unless otherwise provided in these rules. Voting shall be by voice or by roll call. Voting shall be by voice unless a voice vote is inconclusive, a member of the committee requests a roll call, or the vote is on a motion to close a portion of a meeting. The chairpersons shall announce the result of the vote.

2.7(2) Voice votes. All committee members present should respond when a voice vote is taken. The response shall be aye, nay, or abstain.

a. All members present shall be recorded as voting aye on any motions when there are no nay votes or abstentions heard.

b. Any member who abstains shall state at the time of the vote the reason for abstaining. The abstention and the reason for it shall be recorded in the minutes.

2.7(3) Provisions of information. The chairperson may recognize any agency staff member for the provision of information relative to an agenda item.

27—2.8(161A) Minutes, transcripts, and recordings of meetings.

2.8(1) Recordings. The director shall record by mechanized means each meeting and shall retain the recording for at least one month. Recordings of closed sessions shall be sealed and retained at least one year.

2.8(2) Transcripts. The division does not routinely prepare transcripts of meetings. The division will have transcripts of meetings, except for closed sessions, prepared upon receipt of a request for a transcript and payment of a fee to cover the cost to the division of preparing the transcript.

2.8(3) Minutes. The director shall keep minutes of each meeting. Minutes shall be reviewed and approved by the committee and retained permanently by the director. The approved minutes shall be signed by the director and the committee chairperson.

27—2.9(161A) Officers and duties.

2.9(1) Officers. The officers of the committee are the chairperson and the vice chairperson.

2.9(2) Duties. The chairperson shall preside at the meetings and shall exercise the powers conferred upon the chairperson. The vice chairperson shall perform the duties of the chairperson when the chairperson is absent or when directed by the chairperson.

27—2.10(161A) Election and succession of officers.

2.10(1) Elections. Officers shall be elected annually during June and shall assume office effective July 1.

2.10(2) Succession.

a. If the chairperson does not serve out the elected term, the vice chairperson shall succeed the chairperson for the remainder of the term. A special election shall be held to elect a new vice chairperson to serve the remainder of the term.

b. If the vice chairperson does not serve out the elected term, a special election shall be held to elect a new vice chairperson to serve the remainder of the term.

These rules are intended to implement Iowa Code chapter 161A.

[Filed 12/8/89, Notice 10/4/89—published 12/27/89, effective 1/31/90]

[Filed ARC 3243C (Notice ARC 3086C, IAB 6/7/17), IAB 8/2/17, effective 9/6/17]

CHAPTER 3
CONTESTED CASE PROCEEDINGS AND PRACTICE

The uniform rules on contested case proceedings published in the first volume of the Iowa Administrative Code are adopted by reference with the following amendments:

27—3.1(17A,161A) Scope and applicability. In lieu of the words “(agency name)” insert “the Division of Soil Conservation and Water Quality, Department of Agriculture and Land Stewardship”.
[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—3.2(17A,161A) Definitions. Insert the following definitions in alphabetical order:

“*Committee*” means the state soil conservation and water quality committee established at Iowa Code section 161A.4.

“*Department*” means the department of agriculture and land stewardship.

“*Director*” means the director of the division of soil conservation and water quality, department of agriculture and land stewardship.

“*Division*” means the division of soil conservation and water quality, department of agriculture and land stewardship.

“*Secretary*” means the Iowa secretary of agriculture.

In lieu of the words “(designate official)” insert “person designated by the director to preside over a contested case including, but not limited to, an administrative law judge with the department of inspections and appeals”. In lieu of the words “(agency name)” insert “the division of soil conservation and water quality, department of agriculture and land stewardship”.

[ARC 2192C, IAB 10/14/15, effective 11/18/15; ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—3.3(17A,161A) Time requirements.

3.3(2) Delete the words “or by (specify rule number)”.

27—3.4(17A,161A) Requests for contested case proceeding. In lieu of the first paragraph, insert “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 agency action in question. If no time is specified in the agency action and there is no applicable rule or statute, then the written request for a contested case proceeding shall be filed in writing within 30 calendar days of the action or notice of the intended action the person wishes to contest.”

27—3.5(17A,161A) Notice of hearing.

3.5(1) Delete paragraph “e. (other options).”

27—3.6(17A,161A) Presiding officer.

3.6(1) Delete the words “(or such other time period the agency designates)”.

3.6(2) Delete the words “(or its designee)”. Delete paragraphs “c” and “i” and reletter the subsequent paragraphs.

3.6(3) Delete the subrule and insert “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.”

3.6(4) Delete the subrule and renumber the subsequent subrules.

27—3.12(17A,161A) Service and filing of pleadings and other papers.

3.12(3) In lieu of the words “(specify office and address)” insert “Director’s Office, Division of Soil Conservation and Water Quality, Department of Agriculture and Land Stewardship, Wallace State Office Building, East Ninth and Grand, Des Moines, Iowa 50319”. In lieu of the words “(agency name)” insert “division”.

3.12(4) In lieu of the words “(designate office)” insert “director’s office”.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—3.15(17A,161A) Motions.

3.15(4) Delete the words “(or other time period designated by the agency)”.

3.15(5) In lieu of the words “(45 days)” insert “45 days”. In lieu of the words “(15 days)” insert “15 days”. In lieu of the words “(20 days)” insert “20 days”.

27—3.16(17A,161A) Prehearing conference.

3.16(1) Delete the words “(or other time period designated by the agency)”. In lieu of the words “(designate office)” insert “presiding officer”.

27—3.17(17A,161A) Continuances.

3.17(1) Delete the words “(or other time period designated by the agency)”.

27—3.22(17A,161A) Default.

3.22(5) Delete the words “(or other time specified by the agency)”.

27—3.23(17A,161A) Ex parte communication.

3.23(8) In lieu of the words “(or disclosed)” insert “or disclosed”.

3.23(10) In lieu of the words “(agency to designate person to whom violations should be reported)” insert “the division director or the director’s designee”.

27—3.24(17A,161A) Recording costs. In lieu of the words “(agency name)” insert “division”.

27—3.25(17A,161A) Interlocutory appeals. In lieu of the words “(board, commission, director)” insert “director or the director’s designee”. In lieu of the words “(of the presiding officer)” insert “of the presiding officer”. Delete the words “(or other time period designated by the agency)”.

27—3.26(17A,161A) Final decision.

3.26(1) In lieu of the words “(the agency) (or a quorum of the agency)” insert “the division”.

3.26(2) In lieu of the words “(agency name)” insert “division”.

27—3.27(17A,161A) Appeals and review.

3.27(1) In lieu of the words “(board, commission, director)” insert “director or the director’s designee”. Delete the words “(or other time period designated by the agency)”.

3.27(2) In lieu of the words “(board, commission, director)” insert “director or the director’s designee”. Delete the words “(or other time period designated by the agency)”.

3.27(3) In lieu of the words “(agency name)” insert “division”.

3.27(4) Delete the words “(or other time period designated by the agency)”. In lieu of the words “(board, commission, director)” insert “director or the director’s designee”.

3.27(5) In lieu of the words “(agency name)” insert “division”.

3.27(6) Delete the words “(or other time period designated by the agency)”. In lieu of the words “(board, commission, director)” insert “director or the director’s designee”.

27—3.28(17A,161A) Applications for rehearing.

3.28(3) In lieu of the words “(agency name)” insert “division”.

3.28(4) In lieu of the words “(agency name)” insert “division”.

27—3.29(17A,161A) Stays of agency action.

3.29(1) In lieu of the words “(agency name)” insert “division”. In lieu of the words “(board, commission, director)” insert “director or the director’s designee”.

3.29(2) In lieu of the words “(board, commission, director, as appropriate)” insert “director or the director’s designee”.

3.29(3) In lieu of the words “(agency name)” insert “division”.

These rules are intended to implement Iowa Code chapters 17A and 161A.

[Filed 5/12/99, Notice 3/24/99—published 6/2/99, effective 7/7/99]

[Filed ARC 2192C (Notice ARC 2102C, IAB 8/19/15), IAB 10/14/15, effective 11/18/15]

[Filed ARC 3243C (Notice ARC 3086C, IAB 6/7/17), IAB 8/2/17, effective 9/6/17]

CHAPTER 4
DECLARATORY ORDERS

The uniform rules on declaratory orders published in the first volume of the Iowa Administrative Code are adopted by reference with the following amendments:

27—4.1(17A,161A) Petition for declaratory order. In lieu of the words “(designate agency)” the first time the words are used, insert “division of soil conservation and water quality, department of agriculture and land stewardship (hereinafter referred to as “the division”)”. In lieu of the words “(designate agency)” the subsequent times the words are used, insert “division”. In lieu of the words “(designate office)” insert “Wallace State Office Building, East Ninth and Grand, Des Moines, Iowa 50319.” In lieu of the words “(AGENCY NAME)” insert “DIVISION OF SOIL CONSERVATION AND WATER QUALITY, DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP”.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—4.2(17A,161A) Notice of petition. In lieu of the words “_____ days (15 or less)” insert “15 days”. In lieu of the words “(designate agency)” insert “division”.

27—4.3(17A,161A) Intervention.

4.3(1) In lieu of the words “_____ days” insert “20 days”.

4.3(2) In lieu of the words “(designate agency)” insert “the division”.

4.3(3) In lieu of the words “(designate office)” insert “the division director’s office”. In lieu of the words “(designate agency)” insert “the division”. In lieu of the words “(AGENCY NAME)” insert “DIVISION OF SOIL CONSERVATION AND WATER QUALITY, DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP”. Delete paragraph “6” and insert in lieu thereof “6. A statement that the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.”

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—4.4(17A,161A) Briefs. In lieu of the words “(designate agency)” insert “division”.

27—4.5(17A,161A) Inquiries. In lieu of the words “(designate official by full title and address)” insert “the Director of the Division of Soil Conservation and Water Quality, Department of Agriculture and Land Stewardship, Wallace State Office Building, East Ninth and Grand, Des Moines, Iowa 50319”.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—4.6(17A,161A) Service and filing of petitions and other papers.

4.6(2) In lieu of the words “(specify office and address)” insert “the Director of the Division of Soil Conservation and Water Quality, Department of Agriculture and Land Stewardship, Wallace State Office Building, East Ninth and Grand, Des Moines, Iowa 50319”. In lieu of the words “(agency name)” insert “division”.

4.6(3) In lieu of the words “(uniform rule on contested cases X.12(17A))” insert “rule 27—3.12(17A,161A)”.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—4.7(17A,161A) Consideration. In lieu of the words “(designate agency)” insert “division”.

27—4.8(17A,161A) Action on petition.

4.8(1) In lieu of the words “(designate agency head)” insert “the director of the division of soil conservation and water quality”.

4.8(2) In lieu of the words and numbers “(contested case uniform rule X.2(17A))” insert “rule 27—3.2(17A,161A)”.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—4.9(17A,161A) Refusal to issue order.

4.9(1) In lieu of the words “(designate agency)” insert “division”.

27—4.12(17A,161A) Effect of a declaratory order. In lieu of the words “(designate agency)” insert “division”. Delete the words “(who consent to be bound)”.

These rules are intended to implement Iowa Code chapters 17A and 161A.

[Filed 5/12/99, Notice 3/24/99—published 6/2/99, effective 7/7/99]

[Filed ARC 2192C (Notice ARC 2102C, IAB 8/19/15), IAB 10/14/15, effective 11/18/15]

CHAPTER 5
AGENCY PROCEDURE FOR RULE MAKING

The uniform rules on agency procedure for rule making published in the first volume of the Iowa Administrative Code are adopted by reference with the following amendments:

27—5.1(17A,161A) Applicability. In lieu of the word “agency” insert “the division of soil conservation and water quality, department of agriculture and land stewardship (hereinafter referred to as “the division”)”.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—5.3(17A,161A) Public rule-making docket.

5.3(2) In lieu of the words “(commission, board, council, director)” insert “director of the division of soil conservation and water quality”.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—5.4(17A,161A) Notice of proposed rule making.

5.4(3) In lieu of the words “(specify time period)” insert “one year”.

27—5.5(17A,161A) Public participation.

5.5(1) In lieu of the words “(identify office and address)” insert “the Director of the Division of Soil Conservation and Water Quality, Department of Agriculture and Land Stewardship, Wallace State Office Building, East Ninth and Grand, Des Moines, Iowa 50319”.

5.5(5) In lieu of the words “(designate office and telephone number)” insert “the division director’s office at (515)281-6146”.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—5.6(17A,161A) Regulatory analysis.

5.6(2) In lieu of the words “(designate office)” insert “the division director’s office”.

27—5.10(17A,161A) Exemptions from public rule-making procedures.

Subrule 5.10(2) is deleted and subsequent subrules are renumbered.

27—5.11(17A,161A) Concise statement of reasons.

5.11(1) In lieu of the words “(specify the office and address)” insert “the Director of the Division of Soil Conservation and Water Quality, Department of Agriculture and Land Stewardship, Wallace State Office Building, East Ninth and Grand, Des Moines, Iowa 50319”.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—5.13(17A,161A) Agency rule-making record.

5.13(2) In lieu of the words “(agency head)” insert “director of the division of soil conservation and water quality”.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

These rules are intended to implement Iowa Code chapters 17A and 161A.

[Filed 5/12/99, Notice 3/24/99—published 6/2/99, effective 7/7/99]

[Filed ARC 2192C (Notice ARC 2102C, IAB 8/19/15), IAB 10/14/15, effective 11/18/15]

CHAPTER 6
CONTRACTS FOR PUBLIC IMPROVEMENTS
AND PROFESSIONAL SERVICES

27—6.1(17A,161A,159,207,208) Contract policy.

6.1(1) All public improvements and professional services contracts with the division shall be awarded on a competitive basis to the maximum practical extent. All contracts shall be in written form and signed by the administrator.

6.1(2) Exceptions for compliance with federal rules and guidelines. Whenever adherence to these contracting procedures would result in the loss of federal aid for any public improvement project or professional services project, the applicable rules or guidelines shall be followed to the extent necessary to qualify for the federal funds.

PUBLIC IMPROVEMENTS

27—6.2(17A,26,161A,159,207,208) Contracts for public improvements.

6.2(1) Definition. As used in these rules, “public improvement” means any building or construction work, including abandoned mined land reclamation and maintenance, to be paid for in whole or in part by the use of state funds. Iowa Code section 73A.21, relating to reciprocal resident bidder preference, shall apply to division contracts for public improvements.

6.2(2) Invitation for bids. When the total estimated cost of a public improvement project exceeds the sum of \$100,000, the division shall advertise for sealed bids by posting a notice of “Invitation for Bids” on the department’s Web site, a relevant contractor plan room service with statewide circulation and a relevant construction lead generating service with statewide circulation not less than 13 days prior to the date set for receiving bids. Plans, specifications and the contract form shall be provided to all prospective bidders as provided in the invitation for bids.

6.2(3) Invitation for bids. The invitation for bids must state the following items:

- a. The time and place for filing sealed proposals.
- b. The time and place sealed proposals will be opened and considered on behalf of the division.
- c. The location and general nature of the public improvement on which bids are requested.
- d. The general terms when the work must be commenced and when it must be completed.
- e. Any further information or requirements which the division deems pertinent or advisable.

All sealed bids shall be publicly opened as specified in the invitation to bidders. The bids shall be tabulated and made available in a written form to any interested party.

6.2(4) Solicitation of quotations. Competitive quotations may be solicited on public improvement projects estimated by the division to cost less than \$100,000. At least three quotations shall be solicited unless there are an insufficient number of local, qualified contractors interested in the project.

6.2(5) Failure to receive a qualified bid or quotation. In the event that no qualified sealed bids or quotations are received, the division may negotiate a contract with a qualified contractor.

6.2(6) Exceptions to the requirement for bids or quotations. The administrator may authorize the negotiation of a contract for a public improvement project without first soliciting quotations or advertising for bids under the following circumstances.

- a. If the contemplated project involves the provision of utility services or the construction of a utility system and it would not be practicable to allow someone other than the utility company to perform the work.
- b. Where competition is precluded because of patent rights, secret processes, or control of basic raw materials.
- c. Where the project involves work of such a specialized nature that only one firm or person can reasonably be expected to accomplish it.
- d. Where the service or product is provided by a nonprofit private corporation, a government body or an educational institution.

e. When emergency repair of a public improvement is necessary and delay for advertising or solicitation of quotations might cause serious loss or injury to the state.
[ARC 2953C, IAB 2/15/17, effective 3/22/17]

PROFESSIONAL SERVICES

27—6.3(17A,161A,159,207,208) Contracts for professional services.

6.3(1) Professional services defined. The term “professional services” shall include planning, design, architectural, engineering, landscape architecture, land surveying, land appraising, consulting, legal and management review services.

6.3(2) Notification of professional firms or individuals.

a. List of professionals. The division shall keep a file of professional firms and individuals that have submitted a statement of qualifications and have indicated an interest in providing services. When the division determines professional services are needed, the division shall notify those professional firms or individuals which appear to be qualified to perform the particular services needed. The division shall periodically poll the list of firms and individuals regarding their continued interest and update the statements of qualifications as appropriate.

b. Solicitation of professionals. Firms or individuals may be invited to notify the division of their interest in and capabilities for providing needed professional services if the division determines a new type of professional services is needed. Such firms or individuals shall be informed by advertisement in at least one newspaper of statewide circulation and such other means as may be appropriate. The firms or individuals shall be requested to provide information relative to the number, qualifications, and experience of their professional and technical staff; their performance record for timeliness, quality, and project management; their geographical location; and any specialized expertise which may be appropriate.

6.3(3) Selection of firm or individual.

a. For any contract for professional services estimated to cost less than \$10,000, the division may select a firm or individual and negotiate a professional services contract. The bureau chief or division administrator shall prepare a memorandum for the project file stating the reasons why that particular firm or individual was selected. However, quotations may be solicited if it is in the best interest of the state.

b. For contracts estimated to exceed \$10,000, at least five firms or individuals who have submitted statements of qualifications shall be invited to submit proposals for the performance of the needed services unless fewer than that number have indicated the availability, capability or willingness to perform the desired service. The proposals submitted shall be reviewed, and members of the firms or individuals may be interviewed by a division selection committee established by the administrator. At least two-thirds of the selection committee shall be composed of individuals not responsible for the contract administration. This committee shall evaluate each proposal relative to the following criteria:

(1) Sufficiency of professional and technical staff to meet the project schedule and work requirements.

(2) Performance records for timeliness, quality and project management.

(3) Geographical location.

(4) Specialized expertise.

(5) Proposed method of accomplishing the desired service.

(6) Total estimated cost.

After evaluating the proposals, the committee shall submit a written recommendation to the administrator.

c. Upon the acceptance of a proposal by the administrator, the total estimated cost shall become the maximum contract cost which shall not be increased, except to the extent that a contract amendment increases the objectives and scope of services. Such increase in scope shall be limited to the type of services for which the contract was initially established.

d. When a project requiring professional services is divided into several phases, the selection of a professional firm or individual for the first project phase may be accomplished in the manner prescribed above. The contract cost for subsequent phases may be established later by negotiation.

The proposals shall also contain a schedule of hourly rates for professional services. These fee schedules and associated costs shall be submitted as directed by the division.

e. The administrator may authorize the negotiation of a contract without solicitation of quotations or advertising for proposals if the service is to be provided by another governmental entity or educational institution or nonprofit corporation, or if the service is of a specialized nature where only one firm or individual can reasonably provide the service, or where delay for solicitation of quotations or advertisements for proposals might reasonably be expected to result in serious loss or injury to the state.

27—6.4(17A,159,161A,207,208) Approval and award of contracts.

6.4(1) *Contract approval.* All contracts for public improvement or professional services shall be signed by the administrator.

6.4(2) *Contract award.* The contract shall be awarded to the firm or individual whose bid or proposal is believed to be the most advantageous to the state. Bids or proposals may be rejected if they do not appear to be reasonable or if there is reason to believe that the firm or individual is not sufficiently qualified to accomplish the desired work or service.

6.4(3) *Change orders and extra work orders.* All change orders and extra work orders shall be signed by the administrator before the work or service is performed, except in emergency situations, or where such approval would result in unreasonable delay.

These rules are intended to implement Iowa Code chapters 17A, 159, 161A, 207 and 208 and Iowa Code section 26.3.

[Filed 4/12/91, Notice 3/6/91—published 5/1/91, effective 6/5/91]

[Filed ARC 2953C (Notice ARC 2868C, IAB 12/21/16), IAB 2/15/17, effective 3/22/17]

CHAPTER 7
INTEREST ON RETAINED FUNDS

27—7.1(573) Interest on retained funds.

7.1(1) Scope. This rule implements Iowa Code section 573.12 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.

7.1(2) General requirements.

a. Interest shall be paid pursuant to Iowa Code section 573.12 only on state contracts awarded on or after July 1, 1990.

b. 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 division of processing an interest payment on retained funds.

c. Interest shall not be paid on retained funds of a contract declared in default.

d. The provisions of this rule shall not apply if the division has entered into a contract with the federal government or accepted a federal grant which is governed by federal law or rules that are contrary to the provisions of this rule.

7.1(3) Procedures.

a. 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.

b. In general, interest shall continue to accrue on retained funds until the date final payment is issued.

(1) Final payment is payment of retained funds less assessed liquidated damages, if applicable.

(2) The final payment and the interest payment shall be by separate warrants. The interest payment shall be issued within two weeks after issuance of final payment.

c. Notwithstanding paragraph “*b*,” interest shall cease to accrue on retained funds:

(1) Upon the expiration of 90 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 provisions.

(2) Upon payment of retained funds via a retention release voucher. A retention release voucher releases the retained funds and the interest accrued on those funds less assessed liquidated damages, twice the amount of claims on file, and the amount of possible overpayments of adjustments to contract items and change orders. A retention release voucher may be paid at any time after 30 days have expired following completion and final acceptance of the project if the contractor has submitted the required documentation.

(3) Upon the court’s 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.

This rule is intended to implement Iowa Code section 573.12.

[Filed 4/12/91, Notice 3/6/91—published 5/1/91, effective 6/5/91]

CHAPTER 8
WAIVER OR VARIANCE OF RULES

27—8.1(17A,161A) Definition. For purposes of this chapter, a “waiver or variance” means action by the division 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. For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”

27—8.2(17A,161A) Scope of chapter. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the division in situations where no other more specifically applicable law provides for waivers. 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.

27—8.3(17A,161A) Applicability. The division may grant a waiver from a rule only if the division has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The division may not waive requirements created or duties imposed by statute.

27—8.4(17A,161A) Criteria for waiver or variance. In response to a petition completed pursuant to rule 27—8.6(17A,161A), the division may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the division finds, based on clear and convincing evidence, all of the following:

1. The application of the rule would impose an undue hardship on the person for whom the waiver is requested.
2. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person.
3. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law.
4. 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.

27—8.5(17A,161A) Filing of petition. A petition for a waiver must be submitted in writing to the division as follows:

8.5(1) License application. If the petition relates to a license application, the petition shall be made in accordance with the filing requirements for the license in question.

8.5(2) Contested cases. If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.

8.5(3) Other. If the petition does not relate to a license application or a pending contested case, the petition may be submitted to the bureau chief of the bureau administering the rule from which the waiver is sought.

27—8.6(17A,161A) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the entity or person for whom a waiver is being requested and the case number of any related contested case.
2. A description and citation of the specific rule from which a waiver is requested.
3. The specific waiver requested, including the precise scope and duration.
4. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in rule 27—8.4(17A,161A). 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.

5. A history of any prior contacts between the division and the petitioner relating to the regulated activity or license affected by the proposed waiver, including a description of each affected license held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity or license within the last five years.

6. Any information known to the requester regarding the division's treatment of similar cases.

7. 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.

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

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

10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the division with information relevant to the waiver.

27—8.7(17A,161A) Additional information. Prior to issuing an order granting or denying a waiver, the division 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 division may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the division.

27—8.8(17A,161A) Notice. The division shall acknowledge a petition upon receipt. The division 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 division may give notice to other persons. To accomplish this notice provision, the division 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 division attesting that notice has been provided.

27—8.9(17A,161A) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case and shall otherwise apply to agency proceedings for a waiver only when the division so provides by rule or order or is required to do so by statute.

27—8.10(17A,161A) 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 duration of the waiver if one is issued.

8.10(1) Division discretion. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the division, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the division based on the unique, individual circumstances set out in the petition.

8.10(2) Burden of persuasion. The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the division should exercise its discretion to grant a waiver from a division rule.

8.10(3) Narrowly tailored. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

8.10(4) Administrative deadlines. When the rule from which a waiver is sought establishes administrative deadlines, the division shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

8.10(5) Conditions. The division may place any condition on a waiver that the division finds desirable to protect the public health, safety, and welfare.

8.10(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 division, a waiver may be renewed if the division finds that grounds for a waiver continue to exist.

8.10(7) *Time for ruling.* The division 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 division shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

8.10(8) *When deemed denied.* Failure of the division to grant or deny a petition within the required time period shall be deemed a denial of that petition by the division. However, the division shall remain responsible for issuing an order denying a waiver.

8.10(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.

27—8.11(17A,161A) Public availability. All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information the division is authorized or required to keep confidential. The division may accordingly redact confidential information from petitions or orders prior to public inspection.

27—8.12(17A,161A) Summary reports. Semiannually, the division shall prepare a summary report identifying 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 division's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

27—8.13(17A,161A) Cancellation of a waiver. A waiver issued by the division pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the division 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 the waiver;
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.

27—8.14(17A,161A) Violations. Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

27—8.15(17A,161A) Defense. After the division 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.

27—8.16(17A,161A) Judicial review. Judicial review of the division's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

These rules are intended to implement Iowa Code section 17A.9A and chapter 161A.

[Filed 5/10/01, Notice 4/4/01—published 5/30/01, effective 7/6/01]

CHAPTER 9
Reserved

CHAPTER 10
IOWA FINANCIAL INCENTIVE PROGRAM FOR SOIL EROSION CONTROL
[Prior to 12/28/88, see Soil Conservation Department, 780—Ch 5]

27—10.1 to 10.9 Reserved.

PART 1

27—10.10(161A) Authority and scope. This chapter establishes procedures and standards to be followed by the division of soil conservation and water quality, Iowa department of agriculture and land stewardship, in accordance with the policies of the state soil conservation and water quality committee in implementing the state's financial incentive program for soil erosion control. It also establishes standards and guidelines to which the soil conservation districts shall conform in fulfilling their responsibilities under this program.

[ARC 2192C, IAB 10/14/15, effective 11/18/15; ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—10.11(161A) Rules or subrules are severable. If any provision of a rule or subrule or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rule or subrule which can be given effect without invalid provision or application, and to this end the provisions of these rules or subrules are severable.

27—10.12 to 10.19 Reserved.

PART 2

27—10.20(161A) Definitions.

“Administrative order” means a written notice from the commissioners to the landowner or landowners of record and to the occupants of land informing them they are violating the district's soil loss limit regulations or maintenance agreement and advising them of action required to conform to the regulations.

“Allocation” means those funds that are identified as a district's share of the state's appropriated funds that have been distributed to a particular program.

“Applicant” means a person or persons requesting assistance for implementing soil and water conservation practices.

“Appropriations” means those funds appropriated from the general fund of the state and provided the division of soil conservation and water quality for funding the various incentive programs for soil erosion control.

“Case file” means a record that is assembled and maintained for each application approved for state cost sharing.

“Certification of practice form” means a signature page used to attest that a practice was installed, performed or maintained in accordance with applicable standards.

“Certifying technician” means the district conservationist of the Natural Resources Conservation Service (NRCS) or the district forester of the department of natural resources.

“Commissioner” means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of Iowa Code chapter 161A.

“Committee” or *“state soil conservation and water quality committee”* means the committee established by Iowa Code section 161A.4 as the policymaking body of the division of soil conservation and water quality.

“Complaint” means a written and signed document received by the commissioners from a landowner or occupant of land stating that said property in the district is being damaged by sediment resulting from soil erosion on the property of another named landowner.

“*Conservation cover*” means that if a tract of agricultural land has not been plowed or used for growing row crops at any time within the prior 15 years, it shall be classified as agricultural land under conservation cover.

“*Department*” means the department of agriculture and land stewardship as established in Iowa Code chapter 159.

“*District*” or “*soil and water conservation district(s)*” means a governmental subdivision of this state organized for the purposes, with the powers, and subject to the restrictions set forth in Iowa Code chapter 161A.

“*District cooperator*” means an individual or business that has entered into a cooperator’s agreement with a district for the purpose of planning, applying, and maintaining the necessary soil and water conservation practices on land under control of the individual or business.

“*Division*” means the division of soil conservation and water quality as established and maintained by the department pursuant to Iowa Code section 159.5(15) and administered pursuant to Iowa Code chapter 161A.

“*Edge-of-field practice*” means a wetland, bioreactor, or saturated buffer.

“*Excessive erosion*” means soil erosion that is occurring at a rate exceeding the established soil loss limit.

“*Fiscal year*” means the state fiscal year for which program funds were appropriated.

“*Landowner*” includes any person, firm or corporation, partnerships, estates, trusts, or any federal agency, this state or any of its political subdivisions, who shall hold title to or have legal control over land lying within a district.

“*Maintenance/performance agreement*” means an agreement between the recipient, the landowner, and the district. The recipient and landowner agree to maintain the soil conservation practices for which financial incentives from the division through the district have been received. The agreement states that the recipient and landowner will maintain, repair, or reconstruct the practices if they are not maintained according to the terms specified in the agreement. The terms of the agreement shall be specified by the division.

“*Obligated funds*” means those moneys that are set aside out of the district’s allocation or by the division for payment to a landowner after the commissioners have approved an application for financial incentives.

“*Power of attorney*” means a legal document that grants a person the right to act on behalf of the landowner.

“*Recipient*” means a landowner or district cooperator who has qualified for and received financial incentive payments for implementing soil and water conservation practices.

“*Road*” means the entire width between property lines of the publicly owned right-of-way.

“*Row cropped lands*” means land that is in an established rotation sequence that includes row crops and the sequence is actively being followed or is in consecutive row crop sequence.

“*Soil conservation practices*” means any of the practices which serve to reduce erosion of soil by wind and water on land used for agricultural or horticultural purposes and approved by the state soil conservation and water quality committee.

“*Soil loss limit*” means the maximum amount of soil loss due to erosion by water or wind, expressed in terms of tons per acre per year, which the commissioners of the respective soil and water conservation districts have established by rule as acceptable.

“*State soil survey data base for Iowa*” means a listing of the soil map units for each county and the properties and interpretation for each of the map units.

“*Supplemental allocation*” means additional funds provided beyond the original allocation.

“*Supplementary administrative order*” means a written notice sent to those receiving an administrative order for violation of the district’s soil loss limit regulations advising that cost-share funds are being committed to the landowner or landowners and establishing time limits for correcting the soil erosion problems.

“*Technician*” means a person qualified to design, lay out and inspect construction of soil conservation practices, and who is assigned to or employed by a soil and water conservation district.

“*Unobligated funds*” means those cost-share moneys the districts have been allocated and those the division administers that have not been obligated.

[ARC 8766B, IAB 5/19/10, effective 7/1/10; ARC 0224C, IAB 7/25/12, effective 8/29/12; ARC 2192C, IAB 10/14/15, effective 11/18/15; ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—10.21 to 10.29 Reserved.

PART 3

27—10.30(161A) Compliance, refunds, reviews and appeals. This division establishes rules for determining landowner or farm operator compliance with performance or maintenance agreements that have been entered into as a result of receiving financial incentive payments for implementing soil conservation practices. This division also defines the responsibilities of the districts and the division for obtaining refunds from landowners or farm operators, and procedures to be followed, when it is found that temporary practices are not being performed in accordance with funding agreements.

This division also defines the responsibilities of the districts and the division for requiring maintenance, repair or reconstruction of permanent soil and water conservation practices when it is found that permanent practices are not being maintained in accordance with funding agreements.

27—10.31(161A) Compliance with maintenance/performance agreements.

10.31(1) *Performance agreement.* Rescinded IAB 7/18/07, effective 6/27/07.

10.31(2) *Maintenance/performance agreement.* As a condition for receipt of any financial incentives funds for implementing soil and water conservation practices, the owner of the land on which the practices have been installed shall agree to maintain those practices for the term specified in the maintenance/performance agreement. Specific conditions of the agreement are detailed on the form.

a. Determination of practice implementation and continued compliance with maintenance/performance agreements.

(1) The certifying technician or the technician of the district will determine if the completed practice is in compliance with applicable standards and specifications in Part 8 of these rules. The certifying technician shall attest to completion and compliance with the standards by completing and signing a certification of practice form. The completed certification will be retained in the district case file for the appropriate landowner.

(2) The certifying technician or district technician shall inspect the practice at any time the district commissioners have reason to believe it is not being satisfactorily maintained. The division will evaluate the situation to determine that proper procedures were followed. “Satisfactorily maintained” means being maintained in such a state of repair so that the practice is successfully performing the function for which it was originally installed. Following the inspection, the certifying technician shall complete a certification of practice form. The completed certification shall be filed in the district’s case file for the landowner.

(3) The district shall inspect a practice whenever requested to do so by the landowner. The person requesting the inspection shall be provided a copy of the completed certification of practice form, used to document the results of this inspection.

b. Determination of noncompliance with maintenance/performance agreement. If the certifying technician determines that the practice is not being satisfactorily maintained, it shall be so noted on the certification of practice form. The district shall notify the division in writing of the noncompliance finding. The notification to the division shall contain a complete explanation of why the practice is considered not to be in compliance with the maintenance/performance agreement. The division will evaluate the situation to determine that proper procedures were followed. “Satisfactorily maintained” means the practice has been maintained in such a state of repair that it is successfully performing the function for which it was originally installed.

c. In the event that properly maintained practices that were installed with the assistance of Iowa financial incentive program funds are damaged due to natural disasters, completing the maintenance/performance agreement shall not constitute an action or intent on the part of the division

to prevent the owner of the land on which the practices were installed from receiving federal emergency conservation program assistance to repair or replace the practices.

27—10.32(161A) Noncompliance.

10.32(1) *Noncompliance with performance agreements.* Rescinded IAB 7/18/07, effective 6/27/07.

10.32(2) *Refunds for noncompliance with maintenance agreements to cost-share agreements entered prior to July 1, 1981.* Rescinded IAB 7/18/07, effective 6/27/07.

10.32(3) *Refunds for noncompliance with maintenance agreements entered between January 1, 1981, and July 1, 1982.* Rescinded IAB 7/18/07, effective 6/27/07.

10.32(4) *Noncompliance with maintenance/performance agreements.* Upon determination by the district and the division that a landowner is not in compliance with a maintenance/performance agreement, the division shall assist the district in the issuance of an administrative order to the landowner requiring appropriate maintenance, repair or reconstruction of the practice, provided voluntary means have been exhausted. The district, in its sole discretion, may allow the landowner or the landowner's successors to refund to the division the entire amount of the financial incentive payment received by the landowner in lieu of maintaining, repairing or reconstructing a practice.

a. Within 60 days from the date of issue of the administrative order, the landowner shall submit to the district a written and signed statement of intent to maintain, repair or reconstruct the practice.

b. The maintenance, repair or reconstruction work shall be initiated within 180 days from the date of issue of the administrative order and shall be satisfactorily completed within one year of the date of issue of the administrative order.

10.32(5) *Agricultural land converted to nonagricultural land.* If land subject to a maintenance/performance agreement is converted to a nonagricultural use that does not require a permanent soil and water conservation practice which has been established with financial incentives, the practice shall not be removed until the owner refunds the appropriate amount of the payment received.

a. Amount of refund. The amount of refund will be the amount of the financial incentive payment received less 5 percent for each year the practice was in place.

b. Districts will notify the division when such refunds are collected.

c. Refunds will be made to the division. The division will deposit refunds to the appropriate district account. Use of the refunds will be limited to providing financial incentives under this chapter.

27—10.33(161A) Appeals and reviews. A landowner or farm operator who has been ordered to maintain, repair or reconstruct a temporary or permanent practice subject to a maintenance/performance agreement may, as appropriate, review the order with the district commissioners or the division of soil conservation and water quality. Appeals to the state soil conservation and water quality committee may be made by the district, a landowner or a farm operator following a review by the division director or the director's designee.

10.33(1) Review with soil and water conservation district commissioners. When a landowner or farm operator wishes to appeal an order to maintain, repair or reconstruct a temporary or permanent practice subject to a maintenance/performance agreement, the landowner or farm operator may request a review of the order with the district commissioners. The commissioners shall schedule a meeting to review the issue with the landowner or farm operator. This proceeding shall be informal. A landowner or farm operator shall request a review with the district commissioners in writing and within 30 days following receipt of their order.

10.33(2) Review with the division of soil conservation and water quality. After having unsuccessfully met with the district commissioners, a landowner or farm operator who has been ordered to maintain, repair or reconstruct a temporary or permanent practice subject to a maintenance/performance agreement may file a written request for review with the division. The division review shall be conducted by the division director or the director's designee. This proceeding shall be informal. A landowner or farm operator shall request the review with the division in writing within 30 days following the review with the district.

10.33(3) Appeal to the state soil conservation and water quality committee. In those cases where the district, landowner, or farm operator is not satisfied with the decision rendered as a conclusion of a division review concerning an order to maintain, repair or reconstruct a temporary or permanent practice covered by a maintenance/performance agreement, the district, landowner, or farm operator may appeal the division's decision to the state soil conservation and water quality committee. This proceeding shall be a formal, contested case hearing. The district, landowner, or farm operator shall make the appeal to the state committee in writing within 30 days following completion of the division's review.

10.33(4) The committee will either affirm, modify, or vacate the administrative order following the completion of the contested case hearing.

[ARC 2192C, IAB 10/14/15, effective 11/18/15; ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—10.34 to 10.39 Reserved.

PART 4

27—10.40 Reserved.

27—10.41(161A) Appropriations. The department of agriculture and land stewardship, division of soil conservation and water quality, has received appropriations for conservation cost sharing since 1973 and appropriations to fund certain incentive programs for soil erosion control since 1979. Funds are appropriated each year by the general assembly.

The division has four years to encumber or obligate these funds before they revert to the state's general fund. This rule addresses the distribution of these appropriations among the incentive programs for soil erosion control established by the division in accordance with the authorities extended in Iowa Code chapter 161A. The rule is also consistent with the restrictions imposed by language of the appropriations bills.

10.41(1) Voluntary program. Ninety percent of the appropriation is to be used for cost sharing to provide state funding of not more than 50 percent of the approved cost of permanent soil and water conservation practices or for incentive payments to encourage management practices to control soil erosion on land that is now row-cropped.

The first \$15,000 allocated to each district and up to 30 percent of the amount remaining in a district's original and supplemental allocation may be used for the establishment of practices listed in subrules 10.82(1) and 10.82(2).

The commissioners of a district may allocate voluntary program funds for the restoration of permanent soil and water conservation practices which are damaged or destroyed because of a disaster emergency. Funds may be used for construction, reconstruction, installation, or repair of projects. The commissioners must determine that funds are necessary to restore permanent practices to prevent erosion in excess of applicable soil loss limits caused by the disaster emergency. Funds cannot be used unless a state of disaster emergency pursuant to a proclamation as provided in Iowa Code section 29C.6 has been declared. Funds can be used only if federal or state disaster emergency funds are not adequate. Funds do not have to be allocated on a cost-share basis. Districts are required to report to the division regarding restoration projects and funds allocated for projects.

10.41(2) Publicly owned lakes. For the approved cost of permanent soil conservation practices on watersheds above publicly owned lakes, a minimum of 5 percent of the amount appropriated is to be set aside for cost sharing at a rate not to exceed 75 percent.

10.41(3) Mandatory program. A maximum of 5 percent of the appropriation shall be set aside for cost sharing with landowners or farm operators who are required to install soil erosion control practices as a result of an administrative order from the district to abate complaints filed under Iowa Code section 161A.47.

10.41(4) Special watershed projects. Iowa Code section 161A.7 permits cost sharing up to 60 percent of the cost of a project including five or more contiguous farm units which have at least 500 or more acres of farmland and which constitute at least 75 percent of the agricultural land lying within a watershed or

subwatershed, where the owners jointly agree to a watershed conservation plan in conjunction with their respective farm unit soil conservation plan.

10.41(5) Summer construction incentives. Funds are available for the planting of a conservation cover crop in place of cropland during the growing season to extend the construction season for the purpose of the installation of conservation practices. This practice shall be applied using the conservation crop rotation standard. Summer construction incentives are only available in conjunction with state-funded conservation practices.

This rule is intended to implement Iowa Code chapter 161A.
[ARC 7722B, IAB 4/22/09, effective 4/1/09; ARC 8766B, IAB 5/19/10, effective 7/1/10; ARC 0737C, IAB 5/15/13, effective 7/1/13; ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—10.42 to 10.49 Reserved.

PART 5

27—10.50(161A) Allocations to soil and water conservation districts. This division identifies those program funds that are allocated to the districts and explains how the allocations are made.

27—10.51(161A) Voluntary program. The division will allocate program funds to the districts in steps identified as original allocations and supplemental allocations.

10.51(1) Original allocation. Sixty percent of the fiscal year funds distributed to this program will be allocated to the districts at the beginning of the fiscal year in accordance with a formula based on the state soil survey database for Iowa. The formula is $A = wzf$, where:

- a. A = allocation to the district.
- b. w = the percentage factor for the district, determined by $(x/y) (100)$, where:
 - (1) x = district acres, determined by totaling the district's land capability class acres from the state soil survey database for Iowa using the formula: $(\frac{1}{4})2e + 3e + 4e$.
 - (2) y = state acres, determined by totaling the state's land capability class acres from the state soil survey database for Iowa using the formula: $(\frac{1}{4})2E + 3E + 4E$.
- c. z = sixty percent of fiscal year funds distributed to the voluntary program.
- d. f = an adjustment factor of 0.980 applied to each district's allocation to adjust the original allocation to compensate for establishing a minimum of four-tenths of 1 percent of "z" to ensure that each district has a workable program.
- e. The following table provides the value of "w" for each district:

Individual Soil and Water Conservation District

Percentage Allocation Factors

<u>W(%) District</u>	<u>W(%) District</u>	<u>W(%) District</u>	<u>W(%) District</u>
1.7 Adair	1.2 Davis	1.0 Jefferson	0.2 Pocahontas*
1.1 Adams	1.4 Decatur	1.2 Johnson	0.8 Polk
1.5 Allamakee	0.8 Delaware	1.2 Jones	1.4 E. Pottawattamie
1.1 Appanoose	0.5 Des Moines	1.4 Keokuk	1.2 W. Pottawattamie
1.3 Audubon	0.4 Dickinson	0.5 Kossuth	1.6 Poweshiek
1.2 Benton	1.8 Dubuque	1.0 Lee	1.6 Ringgold
0.3 Black Hawk*	0.4 Emmet	1.0 Linn	0.7 Sac
0.6 Boone	1.1 Fayette	0.5 Louisa	0.8 Scott
0.3 Bremer*	0.3 Floyd*	1.1 Lucas	1.8 Shelby
0.3 Buchanan*	0.6 Franklin	0.9 Lyon	1.0 Sioux
0.5 Buena Vista	1.0 Fremont	1.2 Madison	0.6 Story
0.6 Butler	0.5 Greene	1.2 Mahaska	1.5 Tama

<u>W(%) District</u>	<u>W(%) District</u>	<u>W(%) District</u>	<u>W(%) District</u>
0.3 Calhoun*	0.5 Grundy	1.3 Marion	1.7 Taylor
1.2 Carroll	1.5 Guthrie	1.5 Marshall	1.1 Union
1.5 Cass	0.4 Hamilton	1.1 Mills	1.2 Van Buren
1.2 Cedar	0.4 Hancock	0.2 Mitchell*	1.0 Wapello
0.4 Cerro Gordo	0.7 Hardin	1.3 Monona	1.2 Warren
1.0 Cherokee	1.7 Harrison	1.0 Monroe	1.1 Washington
0.4 Chickasaw	0.9 Henry	1.2 Montgomery	1.4 Wayne
1.2 Clarke	0.4 Howard	0.5 Muscatine	0.3 Webster*
0.4 Clay	0.2 Humboldt*	0.5 O'Brien	0.5 Winnebago
2.0 Clayton	1.3 Ida	0.3 Osceola*	2.0 Winneshiek
1.2 Clinton	1.4 Iowa	1.5 Page	2.2 Woodbury
2.5 Crawford	1.7 Jackson	0.4 Palo Alto	0.2 Worth*
0.8 Dallas	1.8 Jasper	2.4 Plymouth	0.4 Wright

*The minimum value to be used in determining original allocations to districts shall be 0.4.

10.51(2) Supplemental allocation. The remaining balance of the fiscal year funds plus recalled funds will be provided to the districts in a supplemental allocation. The districts shall identify valid applications and cost estimates, if any, for supplemental allocations to the division by September 1 and by December 31. Factors to be considered in making a supplemental allocation to a district include:

a. The sum of cost estimates (for pending applications) in each district, divided by the total cost estimates (for pending applications) for all 100 districts, multiplied by the remaining available program funds; and

b. Whether or not the proposed supplemental allocation exceeds three times the original allocation to the district.

10.51(3) Recall of funds. The division shall recall unobligated funds from district accounts on December 31 and on June 30. Recalled funds will be made available to qualifying districts as supplements to their initial allocation.

10.51(4) Reallocation of recalled funds. Rescinded IAB 7/18/07, effective 6/27/07.

10.51(5) Eligibility for supplemental allocations. In order to be considered as a pending application for the purpose of calculating supplemental need, an application must be immediately ready to proceed to layout, design and construction upon approval by the district.

a. Fall supplemental funding shall only be available to those districts that have 75 percent of their funds obligated and have demonstrated an ability to use available funds.

b. Spring supplemental funding shall be made available to practices that will be completed by June 30 of the current year.

10.51(6) Recall and reallocation of funds by division director. If districts are not demonstrating an ability to use available funding, the division director may recall these funds and reallocate the funds to a district that has an immediate need for additional funding.

[ARC 8766B, IAB 5/19/10, effective 7/1/10; ARC 0737C, IAB 5/15/13, effective 7/1/13; ARC 1448C, IAB 4/30/14, effective 7/1/14]

27—10.52(161A) Publicly owned lakes. The division of soil conservation and water quality maintains the funds that are distributed to the publicly owned lakes program. These funds may be used to provide cost sharing not to exceed 75 percent of the approved cost of soil conservation practices on watersheds above publicly owned lakes and reservoirs. The division will allocate these program funds to eligible districts in steps identified as original allocation, recall of unobligated funds, and reallocation.

10.52(1) Original allocation. Funding needs will be identified and funds will be set aside for watershed projects which have cost-share funds in addition to state and district cooperator funds (e.g., federal, county, or other). The remaining funds will be allocated equally between the other watersheds identified on the publicly owned lakes priority list.

10.52(2) Recall of unobligated funds. Funds that are allocated to districts under this program and are not obligated by September 1 shall be recalled by the division and reallocated.

10.52(3) Recall of obligated, but unspent funds. Rescinded IAB 7/18/07, effective 6/27/07.

10.52(4) Reallocation of recalled funds. The reallocation of recalled funds will be based on need and demonstrated ability to use the funds. The districts shall submit their requests identifying valid applications and cost estimates, if any, to the division. The division shall allocate funds for these requests on a first-come, first-served basis to other eligible watersheds above publicly owned lakes.

10.52(5) Eligible watersheds. For a landowner to qualify for 75 percent cost sharing under this program, the watershed in which the land is located must be on a list of priority watersheds above publicly owned lakes or reservoirs that is established by the department of natural resources.

10.52(6) Applications and agreements. Applications and agreements for 75 percent cost sharing under this program will be handled by the districts as described in Part 7 of these rules except that the division will allocate funds to districts on an as-needed and first-come, first-served basis.

[ARC 0737C, IAB 5/15/13, effective 7/1/13; ARC 1448C, IAB 4/30/14, effective 7/1/14; ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—10.53 Reserved.

27—10.54(161A) Mandatory program. The division of soil conservation and water quality maintains the funds that are distributed to the mandatory cost-share program. These funds are used to provide cost sharing to landowners who are required to establish permanent soil and water conservation practices as the result of a district's administrative order or a court order.

10.54(1) Applications and agreements. Applications and maintenance/performance agreements for 50 percent cost sharing under this program will be handled by the districts as described in Part 7 of these rules except as follows:

a. When the district commissioners have decided that cost-share assistance is to be approved for a landowner, a copy of the application and a copy of the cost estimate proposed by the technician will be sent to the division with a request for funding obligation. The division will review the application, allocate funds for the specific application to the district and notify the district of the approval. If funds are not available, the division will not allocate funds to the specific application, but will write a letter of explanation to the district. The district will notify the landowner of the status by issuing a supplementary administrative order.

b. Prior approval of the amendment must be obtained from the division should the commissioners desire to amend the application to change the amount of work or the cost.

10.54(2) Redistribution of program funds. Any unobligated program funds remaining at the end of the fiscal year will be redistributed to the voluntary cost-share program. These funds may be included with the supplemental allocation to districts or may be disbursed with the original allocation.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—10.55 Reserved.

27—10.56(161A) Special watershed projects. District commissioners will satisfy the following conditions with regard to special watershed projects:

10.56(1) Prior to approving a project application for 60 percent cost-share, the district must obtain a project number from the division.

10.56(2) All participating landowners in a particular project will be required to show progress towards completion during the first year of the project. Progress will be evaluated by the district. Failure of all participating landowners to show progress during the first year will result in loss of authorization of the project and 60 percent cost-share funding eligibility.

10.56(3) Authorization for each project shall not exceed five years.

27—10.57(161A) Reserve fund.

10.57(1) Purpose and use of the reserve fund. The reserve fund will be set aside and used only to meet contingencies that occur in the districts or within the division. The reserve fund shall not exceed \$150,000.

10.57(2) Replenishing the reserve fund. On June 30 of each year, the division may recall any unspent allocations and replenish the fund in accordance with subrule 10.57(1). If needed, the reserve fund may also be replenished at any time with recalled funds to return the balance to \$150,000.

27—10.58 and 10.59 Reserved.

PART 6

27—10.60(161A) Funding rates. The purpose of this division is to establish the funding rates at which the state will fund or share the cost for approved soil conservation practices under the various incentive programs. In all cases, except for the mandatory program, the state's share will be computed using the percentages specified below and the estimated cost, the amended estimated cost, or the actual cost of implementing the practice, whichever is less. Payments under the mandatory program will be based on actual costs. Funds distributed to annual programs for permanent practices may be used in combination with other public funds as long as the maximum cost-share rate realized by the district cooperator does not exceed 75 percent of the total eligible costs.

10.60(1) Voluntary.

a. The state will cost-share 50 percent of the cost certified by the certifying technician as being reasonable, proper, and incurred by the applicant in voluntarily installing approved, permanent soil conservation practices, except for tree planting. Eligible costs include machine hire or use of the applicant's equipment, needed materials delivered to and used at the site, and labor required to install the practice.

b. For tree and shrub establishment, the following criteria shall apply:

(1) Fifty percent of the actual cost, not to exceed \$450 per acre, including the following:

1. Establishing ground cover;
2. Trees and tree planting operations;
3. Weed and pest control; and
4. Mowing, disking, and spraying.

(2) Fifty percent of actual cost, not to exceed \$150 per acre, for wood plant control.

(3) Actual cost, not to exceed the lesser of \$14 per rod or \$45 per acre protected, for permanent fences that protect planted acres from grazing, excluding boundary and road fencing.

c. For currently funded fiscal years, the division will make one-time payments of up to \$10 per acre for no-tillage, ridge-till and strip-till; \$6 per acre for contour farming; \$25 per acre for establishing a cover crop; and 50 percent of the cost up to \$25 per acre for strip-cropping, field borders and filter strips. The one-time only payment may apply to management practices lasting up to four consecutive years. The one-time only payment for multiple years is calculated based on the listed annual amounts. A performance agreement is required for incentive payments covering a time period of one year or longer.

d. Funding for the restoration of permanent practices damaged or destroyed because of a disaster (see 10.41(1)) does not have to be allocated on a cost-share basis.

e. Where a livestock watering system is installed in a grade stabilization structure, cost share is limited to 50 percent of the estimated or eligible cost, whichever is less, not to exceed \$500 for the watering tank or holding facility, pipe and valves. Payment will be made only if the structure is fenced.

10.60(2) Summer construction incentives. In addition to cost share for the establishment of a permanent conservation practice, up to \$200 per acre is available to offset income lost from cropland acres taken out of production during the growing season. Payment will be made upon completion of the permanent conservation practice. To qualify:

a. The field being treated shall be in row cropland during the growing season in which the permanent conservation practice is being constructed.

b. The construction area shall be planted with a conservation cover for erosion control purposes on the construction site.

c. The construction of the permanent conservation practice shall take place between June 15 and October 15. Work must be started and completed between these dates and verified by the technician prior to payment of the incentive.

d. Only the land necessary for the construction is eligible for this incentive. The construction work area shall be determined by the technician.

e. The construction work area shall not be used to grow a row crop except for the required conservation cover crop.

10.60(3) *Special watershed projects.* Commissioners may enter into agreements providing for cost sharing up to 60 percent of the cost of a project that includes five or more contiguous farm units which collectively have at least 500 or more acres of farmland and which constitute at least 75 percent of the agricultural land lying within a watershed or a subwatershed. The owners must jointly agree to a watershed conservation plan in conjunction with their respective farm unit soil conservation plans.

10.60(4) *Mandatory.* The rate of cost share for permanent soil and water conservation practices required as a result of an administrative order shall be 50 percent of the total cost to the landowner of installing the approved practice. The cost must be certified by the technician as being reasonable, proper and incurred by the landowner. The rate of cost share for temporary soil and water conservation practices is set by the state soil conservation and water quality committee.

10.60(5) *Watersheds above publicly owned lakes.* The state will cost-share 75 percent of the approved cost of permanent soil and water conservation practices on watersheds above certain publicly owned lakes. Watersheds above publicly owned lakes that qualify for 75 percent cost sharing must be identified on a priority list established by the department of natural resources.

10.60(6) *Conservation cover.* Cost share for certain lands is restricted by Iowa Code chapter 161A. Each tract of agricultural land which has not been plowed or used for growing row crops at any time within the prior 15 years shall be considered classified as agricultural land under conservation cover. "Agricultural land" has the meaning assigned that term by Iowa Code section 9H.1. If any tract of land so classified is thereafter plowed or used for growing row crops, the district commissioners shall not approve use of state cost-share funds for establishing permanent or temporary soil and water conservation practices on that tract of land in an amount greater than one-half the amount of cost-share funds which would be available for that land if it were not classified as agricultural land under conservation cover. This restriction shall apply even if an administrative order or court order has been issued requiring establishment of conservation practice.

[ARC 7722B, IAB 4/22/09, effective 4/1/09; ARC 8766B, IAB 5/19/10, effective 7/1/10; ARC 0224C, IAB 7/25/12, effective 8/29/12; ARC 0331C, IAB 9/19/12, effective 8/24/12; ARC 0477C, IAB 11/28/12, effective 1/2/13; ARC 0737C, IAB 5/15/13, effective 7/1/13; ARC 1448C, IAB 4/30/14, effective 7/1/14; ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—10.61 to 10.69 Reserved.

PART 7

27—10.70(161A) Applications and agreements. The purpose of this part is to identify and define procedures to be followed in applying for and entering agreements for receiving financial incentives for implementing approved temporary or permanent soil and water conservation practices.

27—10.71(161A) Applications submitted to soil and water conservation district. District cooperators desiring to be considered for financial incentives for implementing soil and water conservation practices shall complete necessary applications as specified by the division. If an applicant's land is in more than one district, the respective district commissioners will review the application and agree to obligate all funds from one district or prorate the funding between districts.

27—10.72(161A) Application signup.

10.72(1) Signatures by landowner and applicant. All applications and agreements shall be signed by the landowner except as noted in subrule 10.72(3) below. For an applicant to qualify for payment, both landowner and applicant must sign the application.

10.72(2) Land being bought under contract. All applications and agreements concerning land being purchased under contract shall be signed by both the contract seller and the contract buyer. If the operator is applying, the contract buyer, the contract seller, and the operator must sign.

10.72(3) Power of attorney. Applications and agreements may be signed by any person designated to represent the landowner or applicant, provided the appropriate power of attorney has been filed with the district office. The power of attorney requirement can be met by submitting a notarized full power of attorney statement to the district office. In the case of estates and trusts, court documents designating the responsible person or administrator may be submitted to the district in lieu of the power of attorney.

27—10.73(161A) Eligibility for financial incentives.

10.73(1) District cooperator. Rescinded IAB 7/18/07, effective 6/27/07.

10.73(2) Administrative order. Rescinded IAB 7/18/07, effective 6/27/07.

10.73(3) Practices installed on adjoining public lands. Where soil and water conservation practices are installed on public lands, which benefit adjoining private lands, and costs of the installation are to be shared by the parties, state cost-share funds may be used to cost-share the landowner cost of the erosion control portion of the project.

10.73(4) Ineligible lands.

a. Iowa financial incentive funds shall not be used to reimburse other units of government for implementing soil and water conservation practices.

b. Privately owned land not used for agricultural production shall not qualify for financial incentives.

c. Tracts of land used for agricultural production which are less than ten acres in size and from which less than \$2500 of agricultural products are sold annually shall not qualify for financial incentives funds, unless approved by the commissioners as part of a group project or as a continuation of an adjacent system.

d. Tracts of land enrolled in the United States Department of Agriculture's Conservation Reserve Program (CRP) that have more than 90 days left on the contract.

10.73(5) Need for soil and water conservation practices.

a. Financial incentives shall be available only for those soil and water conservation practices determined to be needed by the district to reduce excessive erosion or sedimentation and included in the designated practices identified in Part 8 of these rules. Such determination of need shall be made by a qualified technician.

b. At the discretion of the SWCD commissioners, practice construction may be allowed during the last 90 days of the CRP contract.

10.73(6) District priorities. Each application for financial incentives shall be evaluated under the priority system adopted by the district for disbursement of allocated funds. The district priority system shall be reviewed annually by the district. The priority system shall be sent electronically to the division for the division's record after the annual review. The priority system shall give consideration to the public benefit derived. The priority system adopted by the district shall be made available for review at the district office.

[ARC 8766B, IAB 5/19/10, effective 7/1/10; ARC 0737C, IAB 5/15/13, effective 7/1/13]

27—10.74(161A) Financial incentive application and processing procedures.

10.74(1) Application for financial incentives.

a. Application submitted by landowner and applicant. Applicants for financial incentives for soil and water conservation practices shall complete and submit a request for assistance to the district office where the practice will be implemented.

b. Denial of application by district. Applications which are denied by the district shall be retained in the district until the end of the fiscal year. Application denial as used in this part refers to those applications which cannot be approved for reasons other than lack of available financial incentive funds.

c. Obligation of funds. Following approval of an application, the district may obligate funds for the project or, as appropriate, secure obligation of funds from the division for the amount of the project cost estimate identified on the application. In those cases where funds are not available, the application will be held by the district until funding becomes available or until the end of the fiscal year. Upon obligation of funds, the district shall notify the applicant. The district will maintain a record of funds obligated for approved applications.

d. Application withdrawn by applicant. An application may be withdrawn by the applicant at any time prior to receipt of payment by notifying the district in writing that withdrawal is desired. Applications withdrawn by the applicant shall be retained in the records of the district until the end of the fiscal year.

10.74(2) Project design by district.

a. District personnel responsible for design. The technician of the district shall design and lay out proposed soil and water conservation practices for which financial incentives funds have been obligated. The certifying technician of the district shall be responsible for determining compliance with applicable design standards and specifications.

b. Cost estimate adjustments.

(1) Application amendment. In the event that adjustment to the project cost estimate is necessitated by the final design, the applicant shall either agree to assume the additional cost or complete and submit an amendment request to the district for approval by the commissioners.

(2) Adjustment to obligated funds. The district may adjust the amount of incentive funds obligated for the project or may secure an adjusted obligation from the division for funds obligated by the division. In the event that additional funds are not available, the project may be redesigned, if possible, to a level commensurate with available funds, or the applicant can agree to assume full financial responsibility for the portion of the project cost in excess of the amount obligated.

10.74(3) Practice construction and certification.

a. Construction contracts. The landowner and applicant shall be responsible for securing any contractors needed and for all contractual or other agreements necessary to construct or perform the approved practices.

b. Certification of practice. The certifying technician or the technician of the district will determine that the completed practice is in compliance with applicable standards and specifications and that costs incurred are reasonable and proper. The certifying technician shall make such determination by completing and signing the certification of practice form. A copy of the certification will be retained in the district's case file.

10.74(4) Payment of financial incentives.

a. Submittal of bills and claim or certification of practice form to district. The applicant shall submit to the district a signed claim or certification of practice form and all bills relative to the project. Any materials and labor provided by the applicant must be itemized, and the itemization of any materials and labor provided by the applicant shall accompany the claim.

b. Approval for payment. The commissioners shall verify the technician's certification prior to approving the certification of practice form for submittal to the division for payment.

c. Claim submitted to the division by district. The signed claim or certification of practice form shall be submitted to the division. All original signed documents including itemized bills, claim agreements, maintenance/performance agreements and amendments shall be retained at the district office in the cooperator's case file.

d. Payment. Payment for the reimbursable cost of the project will be returned by the division to the district or directly to the landowner or applicant.

10.74(5) Maintenance/performance agreements.

a. Maintenance/performance agreement required. As a condition for receipt of any financial incentive funds for permanent soil and water conservation practices, the owner of the land on which the

practices have been installed shall agree to maintain those practices for a minimum term as required by the division.

b. Maintenance/performance agreement form. An agreement to maintain practices for which financial incentives are being paid shall be made by completing and signing a maintenance/performance agreement form. Specific conditions of the maintenance/performance agreement are detailed on the form. Completion of the form and signature of the landowner are required prior to transfer of the incentive payment from the district to the recipient(s).

c. Filing of agreements.

(1) Establishment of a file for maintenance/performance agreements. The district shall establish and maintain a separate permanent file containing any documentation related to the maintenance/performance agreement form. The maintenance/performance agreements file shall be accessible for review by the public.

(2) Statement of compliance or noncompliance. A seller of agricultural land with respect to which a maintenance/performance agreement is in effect may request the district to inspect the practices. If the practices have not been removed, altered, or modified, the district shall issue a written statement that the seller has satisfactorily maintained the permanent practice as of the date of the statement.

The buyer of lands covered by a maintenance/performance agreement, where buyer means someone who has completed a contract for sale or deed, may also request that the district inspect the lands to determine whether any practice has been removed, altered, or modified as of the date of the inspection. If a practice has been removed, altered, or modified, the district will provide the buyer with a statement specifying the extent of noncompliance as of the date of the statement.

The seller and the buyer, if known, shall be given notice of the time of inspection so that they may be present during the inspection to express their views as to compliance.

10.74(6) Case files. A case file shall be assembled and maintained for each application approved. The file will contain all documents and correspondence that require signatures from either the district, district cooperater or technician. The case file shall also include all bills and invoices related to an approved application.

[ARC 8766B, IAB 5/19/10, effective 7/1/10]

27—10.75 to 10.79 Reserved.

PART 8

27—10.80(161A) General conditions, eligible practices and specifications. The purpose of this part is to establish the general conditions and limitations concerning practice implementation, the state-approved soil and water conservation practices eligible for state financial incentives and the specifications for which funded practices must conform.

27—10.81(161A) General conditions. The following general conditions shall be met, where applicable, in addition to the specifications in rule 27—10.84(161A). To the extent of any inconsistency between the general conditions and the specifications, the general conditions shall control.

10.81(1) Practice need. The designated soil and water conservation practices shall not be funded unless the technician has inspected the site and has determined that such practice(s) is needed to reduce excessive erosion or sedimentation.

10.81(2) Eligible practices must control erosion and sediment. Only those soil and water conservation practices applied to agricultural crop and pasture land whose primary function is to control soil erosion and prevent sediment damage will be eligible for incentive program funds.

10.81(3) Limitation of reimbursable costs of practices. Overbuilding or other practice modifications which exceed the minimum requirements of the specification shall be permitted, if approved by the technician. Any additional costs resulting from such overbuilding or exceeding of the minimum specifications shall not be cost shared by the state. Examples of overbuilding or exceeding specifications include but are not limited to the following:

- a. Where a district cooperater desires that water be stored for purposes other than grade stabilization to control erosion,
- b. Where additional top width is added to an earthen fill to provide a field crossing or road,
- c. Where additional flow capacity for lowland drainage laterals is added to an underground outlet constructed as a component of a terrace system, and

10.81(4) Materials. Projects funded with Iowa financial incentive funds will utilize only new materials or used materials that meet or exceed design standards and have a life expectancy of 20 years.

10.81(5) Existing practices.

- a. *Repair and maintenance.* Repair and maintenance of existing practices are not eligible for funding.
- b. *Addition of underground outlets.* The addition of underground outlets to existing waterways and terraces is not eligible for funding.

10.81(6) Upland treatment. Seventy-five percent of the upland area shall be adequately treated for erosion control before waterways or grade stabilization structures will be funded.

10.81(7) Seeding.

- a. *Seeding required.* Following practice construction, seeding shall be performed as appropriate in accordance with seeding specifications referenced in rule 10.84(161A), except as waived below.
- b. *Seeding after specified seeding dates.* When the construction of a practice is completed after the seeding date contained in the specifications, seeding may be delayed until the following year. If delayed, the applicant shall be responsible for protecting the practice with temporary vegetative cover or other means until the seeding can be completed. For seeding delayed until the next year, the district may approve payment for the completed practice but such payment shall exclude the seeding cost. The remaining payment for seeding may be made available the following year.

10.81(8) Diversions. Rescinded IAB 5/19/10, effective 7/1/10.

10.81(9) Converting land to permanent vegetative cover. Rescinded IAB 5/19/10, effective 7/1/10.

10.81(10) Underground outlet. Rescinded IAB 5/19/10, effective 7/1/10.

[ARC 8766B, IAB 5/19/10, effective 7/1/10]

27—10.82(161A) State designation of eligible practices. Only those soil and water conservation practices listed in this rule are eligible for the Iowa financial incentives program funds.

10.82(1) Residue and management practices. The division will make one-time payments for residue and tillage management practices.

- a. No-till planting.
- b. Ridge-till planting.
- c. Strip-till planting.
- d. Cover crops.

10.82(2) Temporary practices. The division will make one-time payments for temporary practices.

- a. Critical area planting.
- b. Contour farming.
- c. Strip-cropping.
- d. Field border.
- e. Filter strips.
- f. Pasture and hay planting. Pasture and hay planting will be eligible for funding only when land that has been planted to row crop for three out of the last five years is being converted to permanent vegetative cover.

10.82(3) Permanent practices.

- a. Reserved.
- b. Diversion. Diversions are eligible for funding only when used to prevent downstream erosion.
- c. Windbreak and shelterbelt establishment. A strip or belt of trees or shrubs established within or adjacent to a field to reduce sediment damage and soil depletion caused by wind.
- d. Grade stabilization structure.
- e. Reserved.

- f.* Grassed waterway.
 - g.* Reserved.
 - h.* Terrace.
 - i.* Underground outlet. Underground outlets are eligible for Iowa financial incentive funding only when used as a component of eligible permanent practices contained in subrule 10.82(3).
 - j.* Water and sediment control basin.
 - k.* Reserved.
 - l.* Conservation cover.
 - m.* Tree and shrub planting. The minimum eligible area is three acres.
- [ARC 8766B, IAB 5/19/10, effective 7/1/10; ARC 0331C, IAB 9/19/12, effective 8/24/12; ARC 0477C, IAB 11/28/12, effective 1/2/13]

27—10.83(161A) Designation of eligible practices. District commissioners may designate which soil and water conservation practices will be eligible for Iowa financial incentive payments in their district. The selected practices must be from the state-approved practices contained in rule 27—10.82(161A). [ARC 8766B, IAB 5/19/10, effective 7/1/10]

27—10.84(161A) Practice standards and specifications. Practices shall meet Natural Resources Conservation Service conservation standards and specifications. These standards may be accessed through the electronic field office technical guide at http://efotg.nrcs.usda.gov/efotg_locator.aspx?map=IA. The tree planting standard may be accessed through the department of natural resources' forestry technical guide found at <http://www.iowadnr.com/forestry/pdf/techguide.pdf>. Standards and specifications are available in hard copy in the district office where the practice will be implemented. These specifications and the general conditions, rule 27—10.81(161A), shall be met in all cases. To the extent of any inconsistency between the general conditions and the specifications, the general conditions shall control.

27—10.85 to 10.89 Reserved.

PART 9

27—10.90 Reserved.

27—10.91(161A) Annual report. The district will submit an annual report to the division. The report will reflect accomplishments for the fiscal year ending June 30. The report shall be submitted to the division on or before July 7 each year.

27—10.92(161A) Control of lands. Rescinded IAB 5/19/10, effective 7/1/10.

27—10.93 and 10.94 Reserved.

27—10.95(161A) Forms. Standard forms, applications, and agreements used by the applicant and recipient of financial incentives for soil erosion control as outlined in these rules are provided by the division. Copies of all forms, applications, and agreements are available from the soil conservation district office located in each county. Copies are also available from the division at the following address: Division of Soil Conservation and Water Quality, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319. [ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—10.96 to 10.99 Reserved.

These rules are intended to implement Iowa Code chapter 161A.

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- [Filed ARC 1448C (Notice ARC 1369C, IAB 3/5/14), IAB 4/30/14, effective 7/1/14]
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¹ History transferred from 780—Ch 7

CHAPTER 11
CONSERVATION PRACTICES REVOLVING LOAN FUND
[Prior to 12/28/88, see Soil Conservation Department, 780—Ch 9]

27—11.1 to 11.9 Reserved.

27—11.10(161A) Authority and scope. These rules provide procedures and standards to be followed by the division of soil conservation and water quality, department of agriculture and land stewardship, in accordance with the policies of the state soil conservation and water quality committee in administering the conservation practices revolving loan fund and the standards and guidelines to which the soil and water conservation districts shall conform in all contracts under this program.
[ARC 2192C, IAB 10/14/15, effective 11/18/15; ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—11.11(161A) Rules or subrules are severable. If any provision of a rule or subrule or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the rule or subrule which can be given effect without invalid provision or application, and to this end the provisions of these rules or subrules are severable.

27—11.12 to 11.19 Reserved.

27—11.20(161A) Definition of terms. In addition to terms defined herein, rule 27—10.20(161A) Definitions shall apply.

“*Current legal usury limit*” means the limit on interest rates established by Iowa Code section 535.2, subsection 3, paragraph “a.”

“*Financial partner*” means the division’s designated bank, mortgage company or governmental agency charged with servicing loans described in this chapter.

“*Net worth*” means total assets minus total liabilities as determined in accordance with generally accepted accounting principles with appropriate exceptions and exemptions reasonably related to an equitable determination of the landowner’s net worth.

“*Total assets*” means the sum of cash; crops or feed on hand; livestock held for sale; breeding stock; marketable bonds and securities; securities (not readily marketable); accounts receivable; notes receivable; cash invested in growing crops; net cash value of life insurance; machinery, equipment, cars and trucks; farm and other real estate including life estates and personal residence; value of beneficial interest in a trust; government payments or grants; and any other assets. Total assets shall not include items used for personal, family or household purposes by the applicant; but in no event shall such property be excluded to the extent a deduction for depreciation is allowable for federal income tax purposes. All assets shall be valued at fair market value by the participating lender. Such value shall be what a willing buyer would pay a willing seller in the locality. A deduction of 10 percent may be made from fair market value of farm and other real estate.

“*Total liabilities*” means the sum of accounts payable; notes or other indebtedness owed to any source; taxes; rent; amount owed on real estate contract or real estate mortgages; judgments; accrued interest payable; and any other liabilities. Liabilities shall be determined on the basis of generally accepted accounting principles.

27—11.21(161A) Financial partner. The division may designate or enter into an agreement with a financial partner to assist with servicing loans under this program.

11.21(1) Responsibilities. The financial partner may assist with the following responsibilities:

a. Making determinations regarding an applicant’s ability to repay the loan. Making this determination may include evaluating the applicant’s net worth or securing other information as deemed necessary.

b. Securing valid liens on real estate on which the conservation practices are applied.

c. Disbursing loan funds and processing loan payments.

d. Collecting application fees for servicing loans. Maximum application fees assessed to the borrower will be 2 percent of the loan plus filing costs.

e. Pursuing delinquent loan payments and collections.

11.21(2) Reserved.

27—11.22(161A) Allocation of revolving loan funds to soil and water conservation districts. The division shall utilize the following method to allocate program funds to the districts:

11.22(1) District allocations. Districts shall submit requests identifying valid applications and cost estimates, if any, to the division by March 1 of each year. If the requests submitted by districts fail to exhaust funds available, the division may continue to fund district requests on an individual basis until December 1. The allocation to any district will be the lesser amount of either:

a. The amount of available funds divided by the number of districts applying for an allocation; or

b. The amount requested.

11.22(2) Unobligated allocations. Any funds allocated in a fiscal year that the districts have not obligated by March 1 of that fiscal year and any funds that were obligated during the previous year for projects for which construction has not been started by March 1 will be recalled by the division. Recalled funds shall be distributed in accordance with 11.22(1).

11.22(3) Reserve funds. The division shall administer for each program year a reserve fund that shall not exceed \$20,000. The reserve fund will be set aside and used only to meet contingencies that occur in the districts or within the division.

27—11.23(161A) Eligibility for revolving fund loan.

11.23(1) Reserved.

11.23(2) Ability to repay the loan. The applicant must demonstrate the ability to repay the loan to the satisfaction of the division and its financial partner.

11.23(3) Use of the loan. Loan funds shall be used only to pay the total eligible cost of installing permanent soil and water conservation practices listed in 27—subrule 10.82(2) of the Iowa financial incentive program for soil erosion control. District commissioners may designate which soil and water conservation practices will be eligible for loans in their district. The selected practices must be from the state-approved practices contained in rule 27—10.82(161A). The general conditions contained in rule 27—10.81(161A) and the specifications contained in rule 27—10.84(161A) shall apply to the district-designated practices. Revolving loan funds and public cost-sharing funds may be used in combination for funding a particular soil and water conservation practice.

11.23(4) Other requirements. The applicant must also meet the eligibility requirements contained in rule 27—10.73(161A) for the Iowa financial incentive program for soil erosion control.

[ARC 0798C, IAB 6/26/13, effective 7/31/13]

27—11.24(161A) Loan application processing procedures.

11.24(1) Application submitted by landowner. Applicants for loans for soil and water conservation practices shall complete and submit an application for financial incentives to the district office. Application forms shall be available at the district office.

11.24(2) Denial of application by district. Applications for financial incentives which are denied by the district shall be retained in the district to the end of the program year. Written notification of the denial shall be provided to the applicant along with the reason(s) that the application was denied. Application denial as used here refers to those applications which cannot be approved for reasons other than lack of available loan funds.

11.24(3) Initial approval of application by district. Rescinded IAB 12/7/05, effective 11/16/05.

11.24(4) Selection of applications for fiscal evaluations. Applications received by the district shall be evaluated under the priority system adopted by the district for disbursement of allocated funds. The high-priority applications that can possibly be funded by the district's loan fund allocation will be identified, and successful applicants will be requested to provide necessary financial information as required by the division or the division's financial partner.

11.24(5) *Final approval of application and obligation of funds.* Upon receipt of proper financial disclosures on a form prescribed by the division or by the division's financial partner, the district shall give the application final approval and obligate funds for the project in the amount of the project cost estimate identified on the application. Upon obligation of funds, the district shall notify the applicant.

11.24(6) *Application withdrawn by applicant.* An application may be withdrawn by the applicant at any time prior to receipt of loan by notifying the district in writing that withdrawal is desired. Applications withdrawn by the applicant shall be retained in the records of the district until the end of the program year.

27—11.25(161A) Project design and construction. 27—subrules 10.74(2), Project design by district, and 10.74(3), Project construction or practice performance, of the Iowa financial incentive program for soil erosion control shall apply to the revolving loan fund program.

27—11.26(161A) Issuance of loan.

11.26(1) *Loan payment to applicant.* 27—subrule 10.74(4), Payment of financial incentive, of the Iowa financial incentive program for soil erosion control shall apply in its entirety. In addition, upon transfer of payment to the recipient(s), the district shall require the recipient to sign appropriate loan papers.

11.26(2) *Maintenance agreement.* As a condition for receipt of a loan for permanent soil and water conservation practices, the owner of the land on which the practices have been installed shall agree to maintain those practices in accordance with the requirements of 27—subrule 10.74(5), Maintenance and performance agreements.

11.26(3) *Case files.* A case file shall be assembled and maintained for each approved loan application. The file will be assembled and maintained in accordance with the requirements of 27—subrule 10.74(6), Case files.

27—11.27(161A) Amount of loan and number.

11.27(1) *Minimum loan.* The minimum loan that will be granted under this program will be \$2,500.

11.27(2) *Maximum loan.* The maximum loan that a landowner may receive in one year pursuant to this program shall not exceed \$20,000.

11.27(3) *Number of loans.* There will be no limit to the number of loans an applicant can receive, except that an applicant shall be eligible for no more than \$20,000 in loans outstanding at any time under this program. Each approved application will be handled as a new loan.

[ARC 0798C, IAB 6/26/13, effective 7/31/13]

27—11.28(161A) Repayment of loans.

11.28(1) *Loan period.* Each loan made under this chapter shall be for a period not to exceed ten years.

11.28(2) *Repayment schedule.* Loans shall be paid back to the revolving loan fund in equal yearly installments due March 1 of each year the loan is in effect.

11.28(3) *Repayment upon sale of land.* Loans made under this program shall come due for payment upon sale of the land on which those practices are established. If the entire balance of the loan is not paid within ten days of the date of sale, a delinquent loan charge shall be applied as provided in subrule 11.28(5).

11.28(4) *Interest.* The loans shall bear no interest.

11.28(5) *Interest on delinquent loans.* Interest rate upon loans for which payment is delinquent shall accelerate immediately to the current legal usury limit. This is the maximum rate allowed by Iowa Code section 535.2, subsection 3, paragraph "a," and it shall be applied to the entire unpaid principal, prorated for the period for which the installment is delinquent.

[Filed emergency 8/10/83 after Notice 6/22/83—published 8/31/83, effective 8/10/83]

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[Filed ARC 3243C (Notice ARC 3086C, IAB 6/7/17), IAB 8/2/17, effective 9/6/17]

CHAPTER 12
WATER PROTECTION PRACTICES—WATER PROTECTION FUND

27—12.1 to 12.9 Reserved.

PART 1

27—12.10(161C) Authority and scope. This chapter establishes procedures and standards to be followed by soil and water conservation districts and the division of soil conservation and water quality of the department of agriculture and land stewardship, in accordance with the policies of the state soil conservation and water quality committee in implementing water protection practices through the water protection fund created in Iowa Code section 161C.4. This account shall be used to establish water protection practices with individual landowners.

[ARC 2192C, IAB 10/14/15, effective 11/18/15; ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—12.11(161C) Rules are severable. If any provision of a rule or subrule or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rule or subrule which can be given effect without invalid provision or application, and to this end the provisions of these rules or subrules are severable.

27—12.12 to 12.19 Reserved.

PART 2

27—12.20(161C) Definition of terms. In addition to the term defined herein, definitions in rule 27—10.20(161A) shall apply.

“*Agricultural production*” means the commercial production of food or fiber.

27—12.21 to 12.29 Reserved.

PART 3

27—12.30(161C) Compliance, refund, reviews and appeals. Rules 27—10.30(161A) through 27—10.33(161A) shall apply.

[ARC 8755B, IAB 5/19/10, effective 7/1/10]

27—12.31 to 12.39 Reserved.

PART 4

27—12.40(161C) Appropriations. Resource enhancement and protection program, soil and water enhancement account funds are allocated to the water protection fund. Each year’s allocation of water protection funds is divided equally between the water quality protection projects account and the water protection practices account.

[ARC 8755B, IAB 5/19/10, effective 7/1/10]

27—12.41 to 12.49 Reserved.

PART 5

27—12.50(161C) Water protection practices account. This part defines procedures for allocation, recall and reallocation of water protection practices funds to soil and water conservation districts and to the division’s reserve fund.

[ARC 0737C, IAB 5/15/13, effective 7/1/13]

27—12.51(161C) Allocation to soil and water conservation districts.

12.51(1) Original allocation. July 1 of each year, funds appropriated to the water protection practices account will be allocated to districts. Seventy-three and one-half percent of the funds will be divided equally among 100 soil and water conservation districts. Twenty-five percent of the funds plus any additional appropriations for reforestation will be kept in a separate account for woodland establishment and protection, and establishment of native grasses and forbs. One and one-half percent will be held in a reserve fund.

12.51(2) Recall of funds. Any funds allocated in the current fiscal year that the districts have not spent or obligated by June 30 shall be recalled by the division.

12.51(3) Supplemental allocations. The districts shall identify valid applications and cost estimates, if any, for supplemental allocations to the division by September 1. Factors to be considered in making a supplemental allocation to a district include:

a. The sum of cost estimates (for pending applications) in each district, divided by the total cost estimates (for pending applications) for all 100 districts, multiplied by the remaining available program funds; and

b. Whether or not the proposed supplemental allocation exceeds three times the original allocation to the district.

12.51(4) Reallocation of recalled funds. Rescinded IAB 7/18/07, effective 6/27/07.

12.51(5) Woodland, native grass and forbs fund. Twenty-five percent of the funds and any additional appropriations for reforestation will be allocated to districts.

a. Original allocation. The funds distributed to this program will be allocated equally to the 100 soil and water conservation districts at the beginning of each fiscal year.

b. Supplemental allocation. The districts shall identify valid applications and cost estimates, if any, for supplemental allocations to the division by September 1. Factors to be considered in making a supplemental allocation to a district include:

(1) The sum of cost estimates (for pending applications) in each district, divided by the total cost estimates (for pending applications) for all 100 districts, multiplied by the remaining available program funds; and

(2) Whether or not the proposed supplemental allocation exceeds three times the original allocation to the district.

c. Eligibility of soil and water conservation districts for supplemental allocation. For a district to qualify for a supplemental allocation, the district must meet the following requirement: seventy-five percent of the woodland, native grass and forbs funds shall be obligated to landowners.

12.51(6) Reserve funds. The division may administer a reserve fund for the program consisting of not more than 1.5 percent of each year's appropriated funds.

a. Purpose and use of the reserve fund. The reserve fund will be set aside and used only to fund contingencies that occur in the application of practices in the districts.

b. On June 30 each year the division will transfer the unspent reserve fund balance into the water protection practices account to be allocated to districts under subrule 12.51(1).

12.51(7) Recall and reallocation of funds by division director. If districts are not demonstrating an ability to use available funding, the division director may recall these funds and reallocate the funds to a district that has an immediate need for additional funding.

[ARC 8755B, IAB 5/19/10, effective 7/1/10; ARC 0737C, IAB 5/15/13, effective 7/1/13; ARC 3244C, IAB 8/2/17, effective 9/6/17]

27—12.52 to 12.59 Reserved.

PART 6

27—12.60(161C) Applications and agreements. The purpose of this part is to identify and define procedures to be followed in applying for and entering agreements for receiving water protection practices funds.

27—12.61(161C) Applications submitted to soil and water conservation district. Landowners or farm operators desiring to be considered for water protection practices funds shall complete necessary applications as specified by the district. All application forms and agreements for water protection practices funds are available from and shall be submitted to the district office located in the county where such practices are proposed. If an applicant's land is in more than one district, the respective district commissioners will review the application and agree to obligate all funds from one district or prorate the funding between districts.

27—12.62(161C) Application sign-up.

12.62(1) Signatures by landowner and qualified applicant. All applications and agreements shall be signed by the landowner and applicant. For an applicant to qualify for payment, both landowner and applicant must sign the application.

12.62(2) Land being bought under contract. All applications and agreements concerning land being purchased under contract shall be signed by both the contract seller and the contract buyer. If the operator is applying, the contract buyer, the contract seller, and the operator must sign.

12.62(3) Power of attorney. Applications and agreements may be signed by any person designated to represent the landowner or farm operator, provided the appropriate power of attorney has been filed with the district office. The power of attorney requirement can be met by submitting a notarized full power of attorney statement to the district office. In the case of estates and trusts, court documents designating the responsible person or administrator may be submitted to the district in lieu of the power of attorney.

27—12.63(161C) Eligibility for financial incentives.

12.63(1) District cooperator. Rescinded IAB 7/18/07, effective 6/27/07.

12.63(2) Practices installed on adjoining public lands. Where water protection practices which benefit adjoining private lands are installed on public lands and costs of the installation are to be shared by the parties, state water protection practices funds may be used to cost-share only the private landowner cost of the water protection practice.

12.63(3) Ineligible lands.

a. Water protection practices funds shall not be used to reimburse other units of government for implementing soil and water conservation practices.

b. Privately owned land not used for agricultural production shall not qualify for water protection practices funds. Windbreaks, streambank and shoreline protection, and stormwater quality best management practices established on privately owned land are eligible whether or not the land is in agricultural production.

c. Tracts of land enrolled in the United States Department of Agriculture's Conservation Reserve Program (CRP) that have more than 90 days left on the contract, except for woodland establishment, management and protection practices, and native grass and forb establishment practices under rule 27—12.82(161C) shall not qualify.

12.63(4) District priorities. Each application for water protection practices shall be evaluated under the priority system adopted by the district for disbursement of allocated funds. Soil and water conservation district commissioners shall give priority to applications for practices that implement their soil and water resource conservation plan. The priority system adopted by the district shall be made available for review at the district office.

[ARC 8755B, IAB 5/19/10, effective 7/1/10; ARC 0737C, IAB 5/15/13, effective 7/1/13; ARC 3244C, IAB 8/2/17, effective 9/6/17]

27—12.64 to 12.69 Reserved.

PART 7

27—12.70(161C) Water protection practices. The purpose of this part is to establish the general conditions, eligible practices, specifications, and cost-share rates for the installation of water protection practices authorized in Iowa Code chapter 161C.

27—12.71(161C) General conditions. The following general conditions shall be met.

12.71(1) Technician certification. The designated water protection practices shall not be funded unless the technician has inspected the site and has determined that such practice(s) is needed to protect water quality.

12.71(2) Limitation of reimbursable cost of practices. Overbuilding or other practice modifications which exceed the minimum requirements of the specification shall be permitted, if approved by the technician. Any additional costs resulting from such overbuilding or exceeding of the minimum specifications shall not be cost shared by the state.

12.71(3) Materials. Projects funded with water protection funds will utilize only new materials or used materials that meet or exceed design standards and have a life expectancy of 20 years.

12.71(4) Repair or maintenance. Repair or maintenance of existing practices is not eligible for funding.

27—12.72(161C) Eligible practices. Practices listed in this rule are eligible for water protection practices fund reimbursement.

12.72(1) Critical area planting.

12.72(2) Contour buffer strips. The practice includes science-based trials of row crops integrated with prairie strips (STRIPS) planted on contour.

12.72(3) Field border.

12.72(4) Filter strips. The practice includes science-based trials of row crops integrated with prairie strips (STRIPS) planted at the foot slope.

12.72(5) Pasture and hay planting. The practice must include the conversion of land from row crop production to a permanent vegetative cover to control excessive water erosion.

12.72(6) Constructed wetlands. Land enrolled in the Conservation Reserve Program, or other similar programs, is eligible, if this practice is not an allowable practice under that program.

12.72(7) Wetland restoration. Land enrolled in the Conservation Reserve Program, or other similar programs, is eligible, if this practice is not an allowable practice under that program.

12.72(8) Streambank and shoreline protection. The practice must be bioengineered using combinations of stream-side plantings or trees, other vegetation, structural practices such as modification of slopes, and installation of reinforcing materials and in-stream structures. Land enrolled in the Conservation Reserve Program, or other similar programs, is eligible, if this practice is not an allowable practice under that program.

12.72(9) Stormwater quality best management practices (BMPs). A technique, measure, or structural control that is used for a given set of conditions to manage the quantity and improve the quality of stormwater runoff in the most cost-effective manner. BMPs can be either:

a. Nonstructural BMPs, which include a range of pollution prevention, education, or institutional management and development practices designed to limit the conversion of rainfall to runoff and to prevent pollutants from entering runoff at the source of runoff generation; or

b. Structural BMPs, which are engineered and constructed systems that are used to treat the stormwater at either the point of generation or the point of discharge to either the storm sewer system or to receiving waters (e.g., detention ponds or constructed wetlands).

12.72(10) Access control. The practice involves fencing an area to exclude livestock from intermittent streams (defined on U.S. Geological Survey topographic maps as “3 dot” blue-line streams) or larger streams. Eligibility for cost-share assistance extends only to fencing required to implement this practice, but does not extend to fences along roads or land boundaries.

[ARC 8755B, IAB 5/19/10, effective 7/1/10; ARC 0737C, IAB 5/15/13, effective 7/1/13; ARC 3244C, IAB 8/2/17, effective 9/6/17]

27—12.73(161C) Eligible practices for priority water resource protection. Practices listed in this rule are eligible for water protection practice fund reimbursement only in those areas or instances approved in rule 27—12.75(161C).

12.73(1) Grassed waterway.

12.73(2) Grade stabilization structure.

12.73(3) Terrace.

12.73(4) Water and sediment control basin.

12.73(5) Diversion.

12.73(6) Waste storage facility. Cost-sharing under this practice is not authorized for:

- a. Portable pumps and pumping equipment.
- b. Waste disposal equipment.
- c. Building, modification of a building, that portion of the animal waste structure that serves as part of the building, or its foundation.
- d. That portion of the cost of animal waste control structures attributed to expansion of an animal waste management system.

[ARC 8755B, IAB 5/19/10, effective 7/1/10; ARC 0737C, IAB 5/15/13, effective 7/1/13]

27—12.74(161C) Agricultural drainage well closure. Practices listed in this rule are eligible for water protection practice fund reimbursement where installation of the practice is consistent with current drainage law of the state of Iowa. This practice is intended to assist in the voluntary closure of agricultural drainage wells registered with the department of natural resources prior to September 30, 1988. It is not intended to be a substitute for future agricultural drainage well assistance programs authorized in Iowa Code section 159.29 that will be developed in conjunction with the Iowa department of agriculture and land stewardship's agricultural drainage well research and demonstration project.

12.74(1) *Eligible practices.*

- a. Agricultural drainage well plugging and cistern removal.
- b. Tile outlet from plugged agricultural drainage well to a suitable, legal outlet.

12.74(2) *Implementation of practice.* This practice shall not be used to provide outlet(s) for previously undrained wetland(s) as defined and classified under state or federal law.

12.74(3) *Outlets with excess capacity.* Tile outlets which exceed the minimum capacity required to provide one-half inch drainage coefficient to the area originally served by the drainage well shall be permitted, if approved by the technician. Any additional cost resulting from providing such excess capacity shall not be cost-shared by the state.

27—12.75(161C) Priority watersheds and water quality problems. Practices listed in rule 27—12.73(161C) will be eligible for landowner reimbursement from water protection practices funds only for watersheds and water quality problems designated by soil and water conservation district commissioners and approved by the state soil conservation and water quality committee.

12.75(1) *District designation.* Districts shall submit to the division the description of high priority watershed(s) or water quality problems within their district to be designated as eligible for practices listed in rule 27—12.73(161C).

12.75(2) *State soil conservation and water quality committee evaluation.* The state soil conservation and water quality committee shall examine the district submission under 12.75(1) with respect to the following criteria.

- a. The public value and current use of the water resource to be protected.
- b. The nature, extent and severity of the water quality problem to be addressed.
- c. The degree to which the district designation focuses practice application in a manner that will achieve a water quality benefit from the funds available.

12.75(3) *Review time limit.* The state soil conservation and water quality committee shall approve or disapprove the district designation within 90 days of receipt by the division.

12.75(4) *Disapproval of designation.* In the event of disapproval of district designation, the state soil conservation and water quality committee shall inform the district of the reason for disapproval.

[ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—12.76(161C) Practice standards and specifications. In addition to specifications defined herein, rule 27—10.84(161A) specifications shall apply.

12.76(1) *Agricultural drainage well closure.* 567 IAC Chapter 39, Requirements for Properly Plugging Abandoned Wells.

12.76(2) *Agricultural drainage well plugging and cistern removal.* 567 IAC Chapter 39, Requirements for Properly Plugging Abandoned Wells.

12.76(3) *Stormwater quality best management practices.* Iowa Stormwater Management Manual, Chapter 2, Sections D-L.

27—12.77(161C) Cost-share rates. The following cost-share rates shall apply for eligible practices designated in rules 27—12.72(161C) to 27—12.74(161C). These rates represent the maximum allowable cost share provided by state funds. These rates may be used in combination with other public funds to provide a total cost-share rate not to exceed 75 percent of the lesser of the eligible or the estimated cost of installation.

12.77(1) *Cost-share rates.* Cost-share rates for practices designated in rule 27—12.72(161C) shall be 50 percent of the eligible or estimated cost of installation, whichever is less, except for contour buffer strips, field borders, and access control. Cost-share rates for 12.72(2), contour buffer strips, and 12.72(3), field borders, shall be a one-time payment of 50 percent of the eligible or estimated cost of installation, whichever is less, up to \$25 per acre. Cost-share rates for 12.72(10), access control, shall include a one-time payment of up to \$200 per acre. In addition, fencing systems used to implement access control are eligible for 50 percent of the eligible or estimated cost, whichever is less, not to exceed \$14 per rod for permanent fencing. Cost-share assistance for this practice may not be provided on the same acres that already received a cost-share payment through the buffer initiative program.

12.77(2) *Cost-share rates for water protection practices.* Cost-share rates for practices designated in rule 12.73(161C) shall be 50 percent of the eligible or estimated cost, whichever is less.

12.77(3) *Cost-share rates for agricultural drainage well closure.* Cost-share rates for practices designated in rule 27—12.74(161C) shall be the following:

a. 50 percent of the eligible or estimated cost, whichever is less, of agricultural drainage well plugging and cistern removal, not to exceed \$500.

b. 50 percent of the eligible or estimated cost, whichever is less, of establishing a tile outlet from the plugged agricultural drainage well to a suitable, legal outlet, not to exceed \$2000.

[ARC 8755B, IAB 5/19/10, effective 7/1/10; ARC 0737C, IAB 5/15/13, effective 7/1/13; ARC 3244C, IAB 8/2/17, effective 9/6/17]

27—12.78 and 12.79 Reserved.

PART 8

27—12.80(161C) Water protection practices—woodlands, native grasses and forbs. The purpose of this part is to establish the general conditions, eligible practices, specifications and cost-share rates for the installation of woodlands, native grasses and forbs as authorized in Iowa Code chapter 161C.

27—12.81(161C) General conditions. The following general conditions shall be met.

12.81(1) *Practice need.* The designated practices shall not be funded unless the certifying technician has inspected the site and has determined that such practice(s) is needed.

12.81(2) *Forest management plan required.* A forest management plan approved by the forestry bureau of the department of natural resources is required for the practices of forest stand improvement, tree planting, site preparation for natural regeneration, and rescue treatments.

12.81(3) *Eligibility of practices.* Planting or management of trees for nut orchards or Christmas tree production is only eligible as intermediate products in stands being established for other approved purposes. Planting or management of trees for ornamental purposes or fruit orchards is not eligible.

[ARC 8755B, IAB 5/19/10, effective 7/1/10]

27—12.82(161C) Eligible practices. Land enrolled in the Conservation Reserve Program is eligible for woodland establishment, management and protection practices and is also eligible for native grass and forb establishment. All practices listed in this part are available to all other eligible landowners within Iowa soil and water conservation districts. All practices listed below are permanent.

12.82(1) Windbreaks. A belt of trees or shrubs established or restored next to an occupied structure. A windbreak must meet either NRCS Standard 380-Windbreak/shelterbelt establishment or NRCS Standard 650-Windbreak/shelterbelt renovation.

12.82(2) Field windbreak. A belt of trees or shrubs established or restored, within or adjacent to a field. A windbreak must meet either NRCS Standard 380-Windbreak/shelterbelt establishment or NRCS Standard 650-Windbreak/shelterbelt renovation.

12.82(3) Forest stand improvement. Minimum eligible area is five acres.

12.82(4) Tree planting. Minimum eligible area is three acres.

12.82(5) Site preparation for natural regeneration. Minimum eligible area is three acres.

12.82(6) Riparian forest buffer.

12.82(7) Rescue treatments. Minimum eligible area is three acres.

12.82(8) Prescribed grazing. The practice must include a minimum of two paddocks of native species grasses.

12.82(9) Conservation cover.

[ARC 8755B, IAB 5/19/10, effective 7/1/10]

27—12.83(161C) Practice standards and specifications. Soil and water conservation practices shall meet Natural Resources Conservation Service conservation standards and specifications where applicable. These standards may be accessed through the electronic field office technical guide at http://efotg.nrcs.usda.gov/efotg_locator.aspx?map=IA.

Tree planting, forest stand improvement, site preparation for natural regeneration and rescue treatment standards may be accessed through the department of natural resource's forestry technical guide found at <http://www.iowadnr.com/forestry/pdf/techguide.pdf>.

Standards and specifications are also available in hard copy in the district office where the practice will be implemented. These specifications and the general conditions, rule 27—10.81(161A), shall be met in all cases. To the extent of any inconsistency between the general conditions and the specifications, the general conditions shall control.

[ARC 8755B, IAB 5/19/10, effective 7/1/10]

27—12.84(161C) Cost-share rates. The following cost-share rates shall apply for eligible practices designated in rule 27—12.82(161C). The use of state cost-share funds alone or in combination with other public funds shall not exceed the limits established by these rules.

12.84(1) *Windbreaks.* 75 percent of the eligible or estimated cost, whichever is less, not to exceed \$1500 for the total cost of the establishment or restoration of the windbreak.

12.84(2) *Field windbreaks.* 75 percent of the eligible or estimated cost, whichever is less, not to exceed \$450 per acre.

12.84(3) *Forest stand improvement.* 75 percent of the eligible or estimated cost, whichever is less, not to exceed \$120 per acre for prescribed woodland burning, thinning, pruning crop trees, or releasing seedlings or young trees.

12.84(4) *Tree planting.*

a. Seventy-five percent of the eligible or estimated cost, whichever is less, not to exceed \$600 per acre, for tree planting including the following:

- (1) Establishing ground cover,
- (2) Trees and tree-planting operations,
- (3) Weed and pest control,
- (4) Mowing, disking, and spraying.

b. 75 percent of the eligible or estimated cost, whichever is less, not to exceed \$150 per acre for woody plant competition control.

12.84(5) *Site preparation for natural regeneration.* 75 percent of the eligible or estimated cost, whichever is less, not to exceed \$120 per acre of site preparation.

12.84(6) *Riparian forest buffer.* 75 percent of the eligible or estimated cost, whichever is less.

12.84(7) *Rescue treatment.*

a. 75 percent of the eligible or estimated cost, whichever is less, not to exceed \$60 per acre to establish alternate cover for competition control.

b. A one-time payment of 75 percent of the eligible or estimated cost, whichever is less, not to exceed \$15 per acre to control damaging rodent populations.

c. 75 percent of the eligible or estimated cost, whichever is less, not to exceed \$450 per acre, for plantation replanting including the following:

- (1) Establishing ground cover,
- (2) Trees and tree planting,
- (3) Weed control.

12.84(8) *Prescribed grazing.* 75 percent of the eligible or estimated cost, whichever is less. Systems must include at least two paddocks of native species grasses. Development of a water source is not eligible. Boundary fences or road fences are not included.

12.84(9) *Conservation cover.* 75 percent of the eligible or estimated cost, whichever is less.

12.84(10) *Fencing systems.* Fencing systems used to implement or protect a conservation practice described in rule 27—12.82(161C) are eligible for the lesser of 75 percent of the eligible or estimated cost. The fencing costs cannot exceed \$14 per rod for permanent fencing or \$5 per rod for temporary electric fencing. Fences along roads or land boundaries are not eligible.

[ARC 8755B, IAB 5/19/10, effective 7/1/10; ARC 3244C, IAB 8/2/17, effective 9/6/17]

27—12.85(161C) *Special practice and cost-share procedures eligibility.* Districts may submit requests to establish eligible practices, develop cost-share procedures, experiment with new conservation practices and explore new technologies with approval of the state soil conservation and water quality committee.

12.85(1) *District designation.* Districts shall submit to the state soil conservation and water quality committee the description of their intentions, which could include:

- a.* Type of practice.
- b.* Cost-share rate.
- c.* Resource to be protected.
- d.* Estimated cost.
- e.* Landowner interest.
- f.* Technology to be addressed.

12.85(2) *State soil conservation and water quality committee evaluation.* The state soil conservation and water quality committee shall examine the district submission under 12.85(1) with respect to the following criteria.

- a.* The public and current use of the resource to be protected.
- b.* The nature, extent, and severity of the problem to be addressed.
- c.* The degree to which the request focuses practice or technology application in a manner that will achieve a soil erosion or water quality benefit from the funds available.
- d.* Whether a specification can be developed by NRCS or DNR for the new technology or practice.

12.85(3) *Review time limit.* The state soil conservation and water quality committee shall approve or disapprove the district designation within 90 days of receipt by the division.

12.85(4) *Disapproval of designation.* In the event of disapproval of district requests, the state soil conservation and water quality committee shall inform the district of the reason for disapproval.

This rule is intended to implement Iowa Code chapters 161A and 161C.

[ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—12.86 to 12.89 Reserved.

PART 9

27—12.90(161C,312) Reporting and accounting. Reports will be prepared in the same manner as provided in rule 27—10.91(161A).

These rules are intended to implement Iowa Code chapters 161A and 161C and Iowa Code section 455A.19.

[Filed 12/8/89, Notice 10/18/89—published 12/27/89, effective 1/31/90]

[Filed emergency 7/6/90 after Notice 5/30/90—published 7/25/90, effective 7/6/90]

[Filed 4/12/91, Notice 3/6/91—published 5/1/91, effective 6/5/91]

[Filed 12/12/97, Notice 10/8/97—published 12/31/97, effective 2/4/98]

[Filed 4/13/99, Notice 3/10/99—published 5/5/99, effective 6/15/99]

[Filed 8/3/01, Notice 6/27/01—published 8/22/01, effective 9/26/01]

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[Filed emergency 6/26/08 after Notice 5/7/08—published 7/30/08, effective 6/26/08]

[Filed ARC 8755B (Notice ARC 8633B, IAB 3/24/10), IAB 5/19/10, effective 7/1/10]

[Filed ARC 0737C (Notice ARC 0655C, IAB 3/20/13), IAB 5/15/13, effective 7/1/13]

[Filed ARC 2192C (Notice ARC 2102C, IAB 8/19/15), IAB 10/14/15, effective 11/18/15]

[Filed ARC 3243C (Notice ARC 3086C, IAB 6/7/17), IAB 8/2/17, effective 9/6/17]

[Filed ARC 3244C (Notice ARC 3112C, IAB 6/7/17), IAB 8/2/17, effective 9/6/17]

CHAPTER 13
ORGANIC NUTRIENT MANAGEMENT PROGRAM
Rescinded IAB 4/21/10, effective 5/26/10

CHAPTER 14
LEVEE RECONSTRUCTION AND REPAIR PROGRAM
Rescinded IAB 4/21/10, effective 5/26/10

CHAPTER 15
SOIL PRACTICES LOAN PROGRAM
Rescinded IAB 4/21/10, effective 5/26/10

CHAPTER 16
WATER QUALITY INITIATIVE

27—16.1(161A) Purpose. The purpose of these rules is to support the reduction of nutrient losses and exports over time through the adoption of water quality practices and through the establishment and administration of targeted watershed demonstration projects and individual cost-share practices. The purpose is also to assist education and outreach about the feasibility and value of establishing water quality practices.

[ARC 1104C, IAB 10/16/13, effective 11/20/13]

27—16.2(161A) Definitions.

“*Council*” means the water resources coordinating council established pursuant to Iowa Code section 466B.3.

“*Department*” means the department of agriculture and land stewardship.

“*Division*” means the division of soil conservation and water quality, department of agriculture and land stewardship.

“*Eligible cost-share applicants*” means persons who hold a legal interest in agricultural land used in farming.

“*Eligible targeted watershed demonstration project applicants*” means individual or multiple soil and water conservation districts, counties, county conservation boards, cities, not-for-profit organizations authorized by the secretary of state, public water supply utilities or watershed management authorities.

“*Funds*” include the water quality initiative fund in Iowa Code section 466B.45 and may include other moneys appropriated to the department from the environment first fund created in Iowa Code section 8.57A for cost sharing to match federal funds or other nongovernmental funds.

“*Identified watersheds*” means the area identified by the council or by the division.

“*Maintenance/performance agreement*” means an agreement between the division, the recipient and the landowner. The recipient and landowner agree to maintain the soil conservation practices for which financial incentives from the division through the district have been received. The agreement states that the recipient and landowner will maintain, repair, or reconstruct the practices if they are not maintained according to the terms specified in the agreement. The terms of the agreement shall be specified by the division.

“*Nutrient*” includes total nitrogen and total phosphorus.

“*Nutrient reduction strategy*” means the document created by the department, the department of natural resources, and Iowa State University of Science and Technology dated May 29, 2013.

“*Recipient*” means an eligible applicant who has qualified for and received cost-share payments under this chapter or a project participant who has qualified for and received cost-share payments.

“*Secretary*” means the Iowa secretary of agriculture.

“*Watershed management authority*” means an authority as defined in Iowa Code section 466B.21.
[ARC 1104C, IAB 10/16/13, effective 11/20/13; ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—16.3(161A) Cost share. The division’s share of the practice cost shall not exceed the lesser of 50 percent of the estimated cost of establishing the practice as determined by the division or 50 percent of the actual cost of the practice.

[ARC 1104C, IAB 10/16/13, effective 11/20/13]

27—16.4(161A) Eligible practices. Only practices applied to agricultural crop and pasture land whose primary function is to improve water quality will be eligible for funds. These practices are identified in the nutrient reduction strategy or by the division. Practices shall meet applicable Natural Resources Conservation Service conservation standards and specifications or applicable standards and specifications set out by the department. Permanent practices eligible for funding include but are not limited to wetlands, bioreactors, and buffers. Management practices eligible for funding include but are

not limited to cover crops and living mulches. Application may be made to the division for cost-share funding for individual cost-share practices or for targeted watershed demonstration projects.

[ARC 1104C, IAB 10/16/13, effective 11/20/13]

27—16.5(161A) Ineligible practices. Repair and maintenance of existing practices are not eligible for funding.

[ARC 1104C, IAB 10/16/13, effective 11/20/13]

27—16.6(161A) Statewide cost-share practices. Individual statewide cost-share practices may be eligible for funding as determined by the division.

[ARC 1104C, IAB 10/16/13, effective 11/20/13]

27—16.7(161A) Targeted watershed demonstration projects. Projects shall be conducted in the identified watersheds. The division shall conduct water quality evaluations within supported subwatersheds.

[ARC 1104C, IAB 10/16/13, effective 11/20/13]

27—16.8(161A) Project threshold application requirements.

16.8(1) General application requirements. Project applications shall include the demonstration, outreach, and education objectives of the project and the plan for implementation; project costs, including the estimated cost of each measure to be implemented for each year of participation; anticipated landowner contributions; requested cost-share match; and expected contributions from project participants. Personnel needs and contributions should be outlined.

16.8(2) Landowner interest. An assessment of the interest and participation of the eligible applicants shall be included. A majority of the eligible applicants must reside or own land in the demonstration project. Collaborative participation by eligible applicants in the same identified subwatershed will be viewed favorably.

16.8(3) Project maintenance. Measures to be taken to ensure the long-term viability of the project through maintenance agreements, easements, or other such measures will be outlined in the agreement.

16.8(4) Time frame. The time frame for implementation will be identified in the application and set out in the agreement.

16.8(5) Project evaluation. The criteria for evaluation plans will be identified in the request for applications, and an evaluation plan will be contained in the project application.

[ARC 1104C, IAB 10/16/13, effective 11/20/13]

27—16.9(161A) Application review. Identified watershed projects meeting the threshold requirements will be reviewed, evaluated and ranked by the division using criteria described in the request for applications. Funding recommendations will take into account the program objective to demonstrate and promote a variety of conservation practices in combination with education and outreach.

[ARC 1104C, IAB 10/16/13, effective 11/20/13]

27—16.10(161A) Annual review. The division will review each project annually. The division may establish a budget for the next project year; renegotiate with the applicant or recipient about the objectives, procedures, budget, reports or time schedule; or terminate the project.

[ARC 1104C, IAB 10/16/13, effective 11/20/13]

27—16.11(161A) Contract requirements. Recipients must complete performance and maintenance of the practice as required by the contract. Practices shall meet applicable Natural Resources Conservation Service conservation standards and specifications or applicable standards and specifications set out in the contract. The division may, for cause, find that a recipient is not in compliance with the requirements. At the division's discretion, remedies for noncompliance may include penalties up to and including the return of funds to the division. Reasons for a finding of noncompliance include but are not limited to the recipient's use of funds for activities not described in the contract, the recipient's failure to complete funded projects in a timely manner, the recipient's failure to carry out the terms of the performance/maintenance agreement, the recipient's failure to comply with applicable state or

local rules or regulations, or the lack of a continuing capacity of the recipient to carry out the approved project in a timely manner.

[ARC 1104C, IAB 10/16/13, effective 11/20/13]

27—16.12(161A) Appeal. A recipient who has been ordered to maintain, repair or reconstruct a temporary or permanent practice subject to a maintenance/performance agreement may, as appropriate, review the order with the division. When a recipient wishes to appeal an order to maintain, repair or reconstruct a temporary or permanent practice subject to a maintenance/performance agreement, the recipient may file a written request for review with the division. The division review shall be conducted by the division director or the director's designee. This proceeding shall be informal. The recipient shall request the review with the secretary in writing within 30 days following the review with the division. The secretary or the secretary's designee will either affirm, modify, or vacate the administrative order following the completion of the contested case hearing.

[ARC 1104C, IAB 10/16/13, effective 11/20/13]

These rules are intended to implement 2013 Iowa Acts, House File 648, section 20, and Senate File 435, sections 8 and 10 and Iowa Code sections 466B.42 and 466B.45.

[Filed ARC 1104C (Notice ARC 0979C, IAB 8/21/13), IAB 10/16/13, effective 11/20/13]

[Filed ARC 2192C (Notice ARC 2102C, IAB 8/19/15), IAB 10/14/15, effective 11/18/15]

CHAPTERS 17 to 19
Reserved

CHAPTER 20
IOWA SOIL 2000 PROGRAM
[Prior to 12/28/88, see Soil Conservation Department, 780—Ch 6]

PART 1

27—20.1 to 20.9 Reserved.

27—20.10(161A) Authority and scope. This chapter establishes procedures and standards to be followed by the division of soil conservation and water quality, department of agriculture and land stewardship, in accordance with the policies of the state soil conservation and water quality committee in implementing the Iowa Soil 2000 Program goal of satisfactorily controlling erosion on all Iowa land. It also establishes standards and guidelines which the soil and water conservation districts will use in fulfilling their responsibilities under this program.

[ARC 2192C, IAB 10/14/15, effective 11/18/15; ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—20.11(161A) Rules or subrules are severable. If any provision of a rule or subrule or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rule or subrule which can be given effect without invalid provision or application, and to this end the provisions of these rules or subrules are severable.

27—20.12 to 20.19 Reserved.

PART 2

27—20.20(161A) Availability, development, distribution, updating and notice of conservation folders. This division establishes rules for the development, distribution, updating, and minimum requirements for notifying landowners that a conservation folder has been developed. This section also defines the responsibilities of the seller and the district to provide copies of conservation folders and farm unit soil conservation plans to a prospective purchaser.

20.20(1) Priority for development of conservation folders. The district staff when developing conservation folders as required by Iowa Code section 161A.62 will include as a minimum the content items required by 27—20.30(161A) of these rules.

The district commissioners will select priority watershed(s) or area(s) within their district, using the following criteria:

- a. Highest priority will be given to watersheds or areas with the largest percentage of acreage of soils in the first priority criteria.
- b. Lowest priority will be given to watersheds or areas with the largest percentage of acreage of soils in the fifth priority criteria.
- c. If after screening watersheds or areas against these priority criteria, no watersheds or areas fall in the highest priority, that district will select the next highest category for which soils exist in that district as the top priority category.
- d. Priority criteria.
 - (1) Fragile soils which under present agricultural use and management will be depleted in 20 years.
 - (2) Fragile soils which under present agricultural use and management will be depleted in 40 years.
 - (3) Excessively eroding soils that under present agricultural use and management are eroding greater than 15 tons per acre per year.
 - (4) Excessively eroding soils that under present agricultural use and management are eroding greater than 10 tons per acre per year.
 - (5) Excessively eroding soils that under present agricultural use and management are eroding greater than the districts adopted soil loss limits.

20.20(2) *Rate of development of conservation folders.* Iowa Code section 161A.62(1) “a” requires that each farm unit must be furnished a conservation folder not later than January 1, 1985, or as soon thereafter as funding is available.

The number of conservation folders to be developed in any given year will be at a rate established in the annual work plan developed and adopted by the commissioners of that district.

20.20(3) *Notification of landowner and operator.* Iowa Code section 161A.62 requires notification of appropriate parties and the keeping of certain records.

Notification that a particular conservation folder is completed will be sent on a date specified by the commissioners. The district records concerning completion and notification of availability of the conservation folder will be maintained in the manner prescribed in 27—20.60(161A) of these rules.

a. Certified completion. A conservation folder will be certified complete upon a vote of approval by the commissioners, on a motion at any regular or special meeting.

b. Notification of landowner and operator. Following certification of completion by the commissioners, the chairman will send a letter by regular mail to the landowner and the operator if known to the commissioners. The letter will offer those persons a copy of the conservation folder in accordance with a distribution procedure adopted by the commissioners in compliance with the guidelines of subrule 20.20(4).

20.20(4) *Distribution procedure.*

a. The annual work plan adopted by the commissioners will specify, within these guidelines, a conservation folder distribution procedure for use in their district. These procedures may include the following:

(1) Neighborhood meetings may be utilized to deliver conservation folders to landowners or operators.

(2) Personal delivery may be by district staff, a commissioner, assistant commissioner, or any individual the commissioners deem qualified to do so.

b. Mailing of conservation folders will only be used in those cases where the individual cannot reasonably be contacted otherwise.

20.20(5) *Updating conservation folders.* Conservation folders previously distributed may be updated at any time the commissioners determine that to do so would be appropriate and helpful to landowners and operators. Records concerning delivery of updated material will be in accordance with 20.60(161A) of these rules.

20.20(6) *Certified updated farm plan.* An existing farm plan prepared for a particular farm unit in January 1971 or later may be certified by the commissioners, as adequate replacement for the conservation folder upon:

a. Commissioner review to determine that the farm plan provides adequate information to meet the intent and purposes of the conservation folder.

b. Updating the farm plan, if needed, with supplemental information to bring the farm plan into conformance with the conservation folder.

c. Certification of adequacy upon a vote of approval by the commissioners on a motion at any regular or special meeting.

d. Establishment of a record and file for that farm plan in compliance with 20.61(161A) of these rules.

20.20(7) *Availability to prospective purchasers.*

a. Copies of a conservation folder or farm unit soil conservation plan will be made available for review in the district office to any prospective purchaser.

b. A statement explaining conservation cover will be supplied to any prospective purchaser when that individual reviews a copy of either a conservation folder or farm unit soil conservation plan.

c. Seller’s responsibility. The seller of land, which has a conservation folder or a farm unit soil conservation plan, will either provide that person copies of these documents or refer the prospective purchaser to the district.

27—20.21 to 20.29 Reserved.

PART 3

27—20.30(161A) Conservation folder content. This division establishes rules concerning required content items and establishes guidelines for the inclusion of additional material at the discretion of the commissioners. The conservation folder contents will provide the landowner and operator with adequate information to develop an understanding of the impacts of excessive erosion, the approximate rate of erosion on their own land, potential alternative solutions to excessive erosion, their erosion control obligations under Iowa law and information about available educational, technical and financial assistance.

20.30(1) Standard conservation folder content.

a. Concise document covering the following:

- (1) Short-term and long-term economic effects of erosion.
- (2) Effects associated with potential land treatments; economic, yield, operational, management.
- (3) Low cost land treatment alternatives.
- (4) Explanation of Iowa's soil conservation laws and landowner's responsibilities.
- (5) Erosion's impact on long-term productivity.

b. District specific items.

- (1) Estimated erosion rates in the local area.
- (2) Rates of acceptable soil loss in the local area.
- (3) Potential erosion rates for the dominant soils of the farm unit.

c. Information on educational, technical, and financial assistance available from various agencies.

20.30(2) Supplemental conservation folder content. The commissioners may at their own discretion include local information that might be beneficial to landowners and operators in the furtherance of soil conservation and the protection and maintenance of the future productivity of the soil.

27—20.31 to 20.39 Reserved.

PART 4

27—20.40(161A) Farm unit soil conservation plan. The farm unit soil conservation plan as defined in rule 20.70(161A) will identify specific permanent and temporary soil and water conservation practices for achieving erosion control to meet soil loss limits established by the district. Where practicable, the plan shall also identify alternatives by which this objective may be obtained. The completed plan must be acceptable to and approved by the commissioners.

27—20.41 to 20.49 Reserved.

PART 5

27—20.50(161A) Conservation agreement. This part establishes procedures for entering conservation agreement as defined in rule 27—20.70(161A) between district commissioners and landowners and operators.

20.50(1) In accordance with Iowa Code section 161A.62, for any farm unit that has received a conservation folder after January 1, 1986, or one year after the completion of the farm unit plan, whichever is later, state cost-sharing funds through the voluntary program will be available only when a conservation agreement is in effect.

20.50(2) Eligibility. A landowner and, if appropriate, the operator of a farm unit, may enter into a conservation agreement with the commissioners after a farm unit soil conservation plan has been approved by the commissioners.

20.50(3) Initiation of conservation agreement. Within 60 days after the commissioners approve a farm unit soil conservation plan, the district shall offer to enter into a conservation agreement with the landowner.

20.50(4) Conservation agreement form. The schedule for implementing the farm unit soil conservation plan will be recorded on form SCD-6. To complete the conservation agreement, form SCD-6 will be signed by the landowner and the chairman of the district.

20.50(5) Period of conservation agreement. The implementation period of the initial agreement shall not exceed five years, unless amended as defined in 20.50(7).

20.50(6) Performance of conservation agreement. To continue to qualify for state cost-share funds, the landowner shall implement the agreed-upon soil conservation practices according to the schedule contained in the conservation agreement.

20.50(7) Amending or extending the conservation agreement. Conservation agreements may be amended or extended provided the revisions are mutually acceptable to the landowner and the commissioners, for reasons not limited to but including the following:

- a. Lack of public cost-share funding.
- b. Loss or gain of land under agreement.
- c. Uncontrollable circumstances (flood, drought, hail).
- d. Economic constraints on the landowner.

20.50(8) Terminating conservation agreements. Conservation agreements can be terminated for the following reasons:

- a. Conservation agreements shall be terminated when the land changes ownership.
- b. Conservation agreements may be terminated at any time upon request of the landowner, with the understanding that the landowner forfeits the future right to receive state cost-share funds for soil conservation practices on that farm unit.
- c. Conservation agreements may be terminated by the commissioners in the event that the landowner fails to implement the agreed-upon soil conservation practices according to the schedule contained in the conservation agreement.

20.50(9) Distribution of conservation agreement records. Copies of the soil conservation agreement and any revisions or terminations thereto shall be provided to the landowner, the division of soil conservation and water quality and the district case file.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—20.51 to 20.59 Reserved.

PART 6

27—20.60(161A) Records. This part establishes rules concerning standards and records necessary to ensure orderly progress toward attaining the requirements of Iowa Code section 161A.62 to furnish a conservation folder to owners of every farm unit in Iowa.

27—20.61(161A) Record of distribution—district file.

The district will maintain a file system, indexed according to township, range and section to adequately describe each farm unit, that contains a record of:

1. The date the conservation folder was certified complete.
2. The date a letter of notification was sent to the landowner.
3. The landowner's name and address.
4. The operator's name and address.
5. The date the conservation folder was delivered and:
 - By whom,
 - To whom,
 - Method of delivery.

27—20.62(161A) Conservation folder file copy. The district will maintain a record of information furnished to each farm unit. The file will also contain all correspondence related to notification, delivery and updating of the conservation folder.

27—20.63(161A) Program performance records. The district will use existing record systems to provide a data base from which progress can be identified by the division in the following areas:

1. Implementing treatment of fragile soils
2. Reducing nonpoint source pollution
3. Reducing excessive soil erosion
4. Attaining a nondepleting level of erosion on all agricultural lands.

27—20.64 to 20.69 Reserved.

PART 7

27—20.70(161A) Definition of terms. In addition to the definitions in rule 27—10.20(161A), the following terms are defined:

“Adjacent tracts” means two or more tracts of land in the same legal section of land or in touching legal sections lying such that the two tracts have a common side or common corner.

“Conservation agreement” is defined in Iowa Code section 161A.42 to mean a commitment by the owner or operator of a farm unit to implement a farm unit soil conservation plan or, with the approval of the commissioners of the district within which the farm unit is located, a portion of a farm unit soil conservation plan. The commitment shall be conditioned on the furnishing by the district of such technical or planning assistance in the establishment of, and cost-sharing or other financial assistance for establishment and maintenance of the soil and water conservation practices necessary to implement the plan, or a portion of the plan.

“Conservation folder” is defined in Iowa Code section 161A.42 to mean compiled information concerning the topography, soil composition, natural or artificial drainage characteristics and other pertinent factors concerning a particular farm unit, which are necessary to the preparation of a sound and equitable conservation agreement for that farm unit. The specific items to be contained in a conservation folder shall be prescribed by administrative rules of the division of soil conservation and water quality. The division shall provide by rule that an updated farm plan prepared for a particular farm unit within 10 years prior to the effective date of this subsection shall be considered an adequate replacement for the conservation folder for that farm unit.

“Contiguous” means two or more tracts of land lying in the same legal section that have separate legal descriptions, but which have at least a partially common boundary line.

“District staff” means all individuals assigned to, assisting, or employed by a soil and water conservation district.

“Farm plan” as used in these rules refers to any conservation plan or other plan developed in cooperation with the landowner, which provides compiled information concerning the topography, soil composition, natural and artificial drainage characteristics, permanent soil and water conservation practices, and other pertinent factors for the farm unit.

“Farm unit” is defined in Iowa Code section 161A.42 to mean a single contiguous tract of agricultural land, or two or more adjacent tracts of agricultural land, located within a single district, upon which farming operations are being conducted by a person who owns or is purchasing or renting all of such land, or by a tenant or tenants. If a landowner has multiple farm tenants, the land on which farming operations are being conducted by each tenant shall constitute a separate farm unit. This definition does not prohibit land which is within a single district and is owned or being purchased by the same person, or is being rented by the same tenant, from being treated as two or more farm units if the commissioners of the district deem it preferable to do so.

“Farm unit soil conservation plan” is defined in Iowa Code section 161A.42 to mean a plan jointly developed by the owner and, if appropriate, the operator of a farm unit and the commissioners of the district within which that farm unit is located, based on the conservation folder for that farm unit and identifying those permanent soil and water conservation practices and temporary soil and water conservation practices the use of which may be expected to prevent soil loss by erosion from that farm

unit in excess of the applicable soil loss limit or limits. The plan shall, if practicable, identify alternative practices by which this objective may be attained.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

These rules are intended to implement Iowa Code chapter 161A.

[Filed 5/10/82, Notice 2/17/82—published 5/26/82, effective 6/30/82]

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[Filed ARC 3243C (Notice ARC 3086C, IAB 6/7/17), IAB 8/2/17, effective 9/6/17]

CHAPTER 21
WATER QUALITY PROTECTION PROJECTS—WATER PROTECTION FUND

PART 1
AUTHORITY AND SCOPE

27—21.1 to 21.9 Reserved.

27—21.10(161A) Authority and scope. This chapter establishes procedures and standards to be followed by the division of soil conservation and water quality, Iowa department of agriculture and land stewardship, in accordance with the policies of the state soil conservation and water quality committee in implementing water quality protection projects through the water protection fund created in Iowa Code chapter 161C. These projects will protect the state's groundwater and surface water from point and nonpoint sources of contamination, including but not limited to agricultural drainage wells, sinkholes, sedimentation, and chemical pollutants. Water protection fund resources will provide administrative, operational, and personnel support for the projects and funds for management and structural measures to address identified water quality problems.

[ARC 2192C, IAB 10/14/15, effective 11/18/15; ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—21.11(161A) Rules or subrules are severable. If any provisions of a rule or subrule or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rule or subrule which can be given effect without invalid provisions or application, and to this end the provisions of these rules or subrules are severable.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—21.12 to 21.19 Reserved.

PART 2
APPLICATIONS

27—21.20(161A) Announcement, eligibility, development and submission of applications. Part 2 establishes procedures for announcement, eligibility, development and submission of applications for water quality projects supported through the water protection fund.

21.20(1) Announcement of application opportunities. The state soil conservation and water quality committee will announce to districts and other interested parties the opportunity to submit applications for projects. The announcement will state:

- a. The application submission deadline.
- b. The location to which applications will be submitted.
- c. The number of copies of applications to be submitted.

21.20(2) Eligibility of applicants. All applications must be submitted by individual or multiple soil and water conservation districts.

a. Districts are encouraged to cooperate with and accept assistance in the development and preparation of applications from other agencies and organizations.

b. Districts are encouraged to accept financial and nonfinancial participation in project implementation from other agencies and organizations.

[ARC 2192C, IAB 10/14/15, effective 11/18/15; ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—21.21 to 21.29 Reserved.

PART 3
APPLICATION CONTENT

27—21.30(161A) Water quality protection project application content. Part 3 establishes the minimum content requirements of project applications.

21.30(1) Title, applicant and participants. Each application will identify:

- a. Water quality protection project title.
- b. Name of district or districts submitting the application.
- c. Names of participating agencies and organizations.
- d. Number of landowners within the project area.

21.30(2) Project location. Each application will identify:

- a. Project location by description and map.
- b. Project size.
- c. Geographic setting.

21.30(3) Project description. Each application will identify:

- a. Land use, land management, and land ownership within the project area and, if appropriate, the surrounding area.
- b. Priority water resources to be protected.
- c. Water quality problems within the project area.
- d. Quantification of the sources of contamination.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—21.31(161A) Project water quality improvement objectives. Each application will identify:

21.31(1) Water quality objectives of the project.

21.31(2) Measures to be taken to address each water quality problem identified within the project.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—21.32(161A) Project costs. Each application will identify on an annual basis:

21.32(1) Project measure costs.

- a. Estimated cost of each measure to be implemented.
- b. Landowner contribution.
- c. Financial incentive contribution of the water protection fund.
- d. Financial or other contribution of project participants.

21.32(2) Project personnel needs.

- a. Personnel contribution of the water protection fund.
- b. Personnel contribution of project applicants and participants.

21.32(3) Project operating expenses.

- a. Project expense contribution from the water protection fund.
- b. Project expense contribution from applicants and participants.

21.32(4) Total project costs for each project year.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—21.33(161A) Landowner interest. Each application will provide an assessment of landowner interest in participating in the project.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—21.34(161A) Project maintenance. Each application will describe measures to be taken to ensure the long-term viability of the implemented project through maintenance agreements, easements, or other such measures.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—21.35(161A) Time frame. Each application will provide a time frame for project implementation.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—21.36(161A) Project evaluation. Each application will describe criteria that will be used to evaluate the success of the project. Evaluation criteria should state, at a minimum, projected landowner participation and water quality improvements.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—21.37 to 21.39 Reserved.

PART 4
PROPOSAL REVIEW

27—21.40(161A) Proposal review. Part 4 establishes the process that the state soil conservation and water quality committee will follow in reviewing the applications submitted and selecting which, if any, will be funded.

21.40(1) The state soil conservation and water quality committee will give consideration to the following criteria in evaluating the project proposals submitted:

- a. The water resource to be protected.
- b. The nature, extent and severity of water quality issues identified and targeted for correction.
- c. The nature and variety of the proposed project measures.
- d. The level of financial contribution requested for the project.
- e. The cost-effectiveness of the proposed project measures.
- f. Agency, organization and landowner participation.
- g. The public benefits projected.
- h. The likelihood of project success within the projected time frame.

21.40(2) Proposal presentation. The state soil conservation and water quality committee may, at its discretion, ask the project applicant to make a formal presentation concerning the application or provide additional information.

21.40(3) Review assistance. The state soil conservation and water quality committee may receive assistance in the evaluation of project applications from division staff or other agencies.

21.40(4) Negotiation. The state soil conservation and water quality committee may negotiate any part of the proposal with the applicant prior to project selection.

21.40(5) Project selection. Projects selected will be funded on an annual basis. Funding for additional years of the projects will be provided on the basis of satisfactory progress and available funds of the water protection fund.

21.40(6) Notification. The state soil conservation and water quality committee will inform each applicant of the final determination with respect to the applicant's application.

[ARC 2192C, IAB 10/14/15, effective 11/18/15; ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—21.41 to 21.49 Reserved.

PART 5
BUDGET AND STAFF

27—21.50(161A) Budget and staff. Part 5 establishes procedures that the division will follow in providing budgets and staff for projects.

21.50(1) *Budget.* The division will establish an annual budget allocation for each selected project, to support:

- a. Field office staff.
- b. Project expenses.
- c. Commissioner project expenses.
- d. Financial incentives.

21.50(2) *Staff.* Appropriate to the project, the division will establish positions and allocate them to district field offices.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—21.51 to 21.59 Reserved.

PART 6
REPORTING

27—21.60(161A) Project reporting. Part 6 establishes reporting requirements for projects.

21.60(1) Annual reports. Annual reports meeting the following criteria will be submitted to the division:

- a. Annual report deadline to be established consistent with the initiation of the project.
- b. The annual report will describe accomplishments during the reporting period and compare them to the objectives of the application.
- c. The annual report will itemize funds disbursed during the reporting period.

21.60(2) Reserved.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—21.61(161A) Supplemental reports. Supplemental reports shall be submitted as required by the division.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—21.62(161A) Content of project reports. All project reports will contain the following credit: “This project is supported in part or in total by the department of agriculture and land stewardship, division of soil conservation and water quality, through funds of the water protection fund.”

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—21.63 to 21.69 Reserved.

PART 7 ANNUAL PROJECT REVIEW

27—21.70(161A) Annual project review, continuation, amendment and termination. Part 7 describes procedures that the state soil conservation and water quality committee will follow to review annual progress for each project and to approve continuation, amend, or terminate them.

21.70(1) Annual review. The state soil conservation and water quality committee and district(s) will review each project annually. Upon completion of the annual review, the committee will inform the district(s) of their findings. Based on their findings, the committee will do one or more of the following:

- a. Instruct the division to establish a budget for the next project year.
- b. Renegotiate with the applicant district(s) the project objectives, procedures, budget or time schedule.
- c. Terminate the project.

21.70(2) Reserved.

[ARC 2192C, IAB 10/14/15, effective 11/18/15; ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—21.71 to 21.79 Reserved.

PART 8 PROJECT COMPLETION

27—21.80(161A) Project completion. Part 8 describes the procedures to be followed to close out projects upon completion or termination.

21.80(1) Required reports. Upon project completion or termination, the project district(s) will complete the following reports within 90 days:

- a. Final project report that summarizes project accomplishments, comparing them to original project objectives.
- b. Final financial status report on all water project fund expenditures and any participating agency and organization expenditures.

21.80(2) Reserved.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—21.81 to 21.89 Reserved.

These rules are intended to implement Iowa Code chapter 161A.

[Filed 11/23/88, Notice 10/5/88—published 12/14/88, effective 1/18/89]

[Filed ARC 2192C (Notice ARC 2102C, IAB 8/19/15), IAB 10/14/15, effective 11/18/15]
[Filed ARC 3243C (Notice ARC 3086C, IAB 6/7/17), IAB 8/2/17, effective 9/6/17]

CHAPTER 22
SOIL AND WATER RESOURCE CONSERVATION PLANS

27—22.1 to 22.9 Reserved.

27—22.10(161A) Authority and scope. This chapter establishes procedures and standards to be followed by the division of soil conservation and water quality, Iowa department of agriculture and land stewardship, in accordance with the policies of the state soil conservation and water quality committee in implementing the development of soil and water resource conservation plans in all soil and water conservation districts in Iowa and developing a comprehensive soil and water resource conservation plan for the state of Iowa. It establishes standards and guidelines which the soil and water conservation districts will use in fulfilling their responsibilities under this program.

[ARC 2192C, IAB 10/14/15, effective 11/18/15; ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—22.11(161A) Rules or subrules are severable. If any provision of a rule or subrule or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or application of the rule or subrule which can be given effect without invalid provision or application, and to this end the provisions of these rules or subrules are severable.

27—22.12 to 22.19 Reserved.

27—22.20(161A) Definition. In addition to the definitions in rule 27—10.20(161A), the following term is defined:

“Soil and water resource conservation plan” is a comprehensive long-range assessment of soil and surface water resources in the district consistent with rules approved by the committee under Iowa Code section 161A.4. The plan will assess the condition of soil and water in the district; evaluate the type, amount, and quality of soil and water, the threat of soil erosion, floodwater, and sediment damages, and necessary preventative and control measures; develop methods to maintain or improve soil and water condition; and cooperate with other state and federal agencies to carry out this plan.

27—22.21(161A) Soil and water resource conservation plan development. This rule establishes criteria for districts to develop a plan to preserve and protect the public interest in the soil and water resources of this state and for future generations.

22.21(1) Plan development criteria. The soil and water conservation district commissioners will develop a soil and water resource conservation plan as required by Iowa Code section 161A.4 that will include the content items required by rule 27—22.30(161A).

The district commissioners will use the following planning process criteria:

- a. Examine and inventory the current resource situation.
- b. Identify current problems.
- c. List available resources—human and financial.
- d. Determine objectives and goals.
- e. Determine the best course of action to obtain those objectives and goals.
- f. Review the action periodically for progress and effectiveness.

22.21(2) Plan development deadline. The soil and water resource conservation plan should be developed by May 31, 1991. The duration of the plan is five years. After five years, the plan should be revised and updated. It will go through the adoption and approval process again.

22.21(3) Participation in the planning process. Each soil and water conservation district should enlist the support and input of public and private sector agencies and organizations, including the county board of supervisors, the USDA Soil Conservation Service, the Cooperative Extension Service, and the division.

27—22.22 to 22.29 Reserved.

27—22.30(161A) Soil and water resource conservation plan content. The plan will preserve and protect the public interest in the soil and water resources of this state for future generations. It will include the proper control of and use of the soil and water resources by measures including, but not limited to, the control of floods, the control of erosion by water or by wind, the preservation of the quality of water for its optimum use for agricultural, irrigation, recreational, industrial, and domestic purposes, all of which shall be presumed to be conducive to the public health, convenience, and welfare, both present and future.

22.30(1) Plan content.

- a. Preface.
 - (1) Purpose of the soil and water resource conservation planning process.
 - (2) Credits to sources and those assisting in the planning.
 - (3) Credits to groups providing input for district objectives and goals.
- b. Organization and authorities.
- c. General description of soil and water conservation district.
- d. Inventory of soil, water, and related natural resources.
 - (1) Existing land use—general description.
 - (2) Soil resources.
 - (3) Water resources.
 - (4) Recreation and wildlife resources.
 - (5) Mining and mineral resources.
 - (6) Land management.
 - (7) Factors limiting practice application.
 - (8) Actions needed to overcome limiting factors.
- e. District objectives, goals, and priorities.
- f. District policies.
- g. Statement of adoption.
- h. Statement of approval.
- i. Maps.

22.30(2) Annual review. There shall be an annual review of the plan by the district that will assist in developing the annual work plan. The plan may be amended as a part of the annual review.

27—22.31 to 22.39 Reserved.

27—22.40(161A) Soil and water resource conservation plan adoption, approval, filing, and distribution. The plan shall meet all of the requirements of Iowa Code chapter 161A and this chapter before final plan completion.

22.40(1) Adoption. The district commissioners by a motion at their regularly scheduled meeting shall approve their completed plan or amendment.

22.40(2) Approval. The district shall submit their completed plan or amendment to the state soil conservation and water quality committee for approval. If found to meet the content requirements of rule 27—22.30(161A), the state soil conservation and water quality committee shall approve the plan or amendment by motion at their regularly scheduled meeting. The approved plan will be signed by the administrator of the division.

22.40(3) Filing. The approved district plan or amendment shall be filed with the recorder in the county in which the district is located and shall be filed with the division as part of the state soil and water resource conservation plan.

22.40(4) Distribution. The commissioners shall provide notice of the filing and may provide a copy of the approved district plan to the county board of supervisors in the county where the district is located. The district may provide copies to all interested parties that have been a part of the planning process.

[ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—22.41 to 22.49 Reserved.

27—22.50(161A) State soil and water resource conservation plan. The division is responsible for developing a state plan according to Iowa Code section 161A.4(4)“h.” The state plan shall contain on a statewide basis the information required for a district plan.

These rules are intended to implement Iowa Code chapter 161A.

[Filed 1/18/91, Notice 10/31/90—published 2/6/91, effective 3/13/91]

[Filed ARC 2192C (Notice ARC 2102C, IAB 8/19/15), IAB 10/14/15, effective 11/18/15]

[Filed ARC 3243C (Notice ARC 3086C, IAB 6/7/17), IAB 8/2/17, effective 9/6/17]

CHAPTERS 23 to 29

CHAPTER 30
AGRICULTURAL DRAINAGE WELLS—ALTERNATIVE DRAINAGE SYSTEM
ASSISTANCE PROGRAM

27—30.1 to 30.9 Reserved.

27—30.10(161A,460) Authority and scope. This chapter establishes procedures and standards to be followed by the division of soil conservation and water quality, Iowa department of agriculture and land stewardship, in accordance with the policies of the state soil conservation and water quality committee in implementing the agricultural drainage wells — alternative drainage system assistance program. This program provides financial assistance for closing agricultural drainage wells and constructing alternative drainage systems that are part of a drainage district. These rules establish the assistance program, provide for the allocation of assistance funds, and establish procedures and standards for eligibility to receive assistance under the program.

[ARC 2192C, IAB 10/14/15, effective 11/18/15; ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—30.11(161A,460) Rules are severable. If any provision of a rule or subrule or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rule or subrule which can be given effect without invalid provision or application, and to this end the provisions of these rules or subrules are severable.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—30.12 to 30.19 Reserved.

27—30.20(161A,460) Definitions. When used in this chapter:

“Agricultural drainage well” means a vertical opening to an aquifer or permeable substratum which is constructed by any means including but not limited to drilling, driving, digging, boring, augering, jetting, washing, or coring, and which is capable of intercepting or receiving surface or subsurface drainage water from land directly or by a drainage system.

“Agricultural drainage well area” means an area of land where surface or subsurface water drains into an agricultural drainage well directly or through a drainage system connecting to the agricultural drainage well.

“Alternative drainage system” means a drainage system constructed as part of a drainage district in order to drain surface or subsurface water from land due to the closing of an agricultural drainage well.

“Designated agricultural drainage well area” means an agricultural drainage well area in which there is located an anaerobic lagoon or earthen manure storage basin required to obtain a construction permit by the department of natural resources.

“Division” means the division of soil conservation and water quality of the department of agriculture and land stewardship.

“Drainage district” means a drainage district established pursuant to Iowa Code chapter 468.

“Drainage system” means tile lines, laterals, surface inlets, or other improvements which are constructed to facilitate the drainage of land.

“Earthen storage structure” means an earthen cavity, either covered or uncovered, including but not limited to an anaerobic lagoon or earthen manure storage basin which is used to store manure, sewage, wastewater, industrial waste, or other waste regulated by the department of natural resources, if stored in a liquid or semiliquid state.

“Land” means land which is used or which is suitable for use for any purpose, if the land is located within an agricultural drainage well area which includes land used or suitable for use in farming.

“Noncrop acres” means a land tract as identified in the assessment schedule in the report of the classification commission adopted at public hearing pursuant to Iowa Code sections 468.44 through 468.46 which is not predominantly used for row crop production. Areas used for wetland mitigation shall not be considered in determining predominant land use.

“*Watershed area*” means the benefited land area of a drainage district.
[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—30.21 to 30.29 Reserved.

27—30.30(161A,460) Appropriations. Moneys shall be used to provide financial assistance under the program and to defray expenses by the division in administering the program. However, not more than 1 percent of the fund may be used to defray administrative expenses of the division. Moneys which are unobligated at the end of the fiscal year shall not revert but will be available during subsequent fiscal years of the program. Moneys earned as income, including interest, from the fund shall remain in the fund until expended, notwithstanding Iowa Code section 12C.7.
[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—30.31(161A,460) Other funds. Funds for the agricultural drainage wells—alternative drainage system assistance program may be from moneys available to and obtained or accepted by the division or the state soil conservation and water quality committee from the United States or private sources for placement in the fund.
[ARC 2192C, IAB 10/14/15, effective 11/18/15; ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—30.32 to 30.39 Reserved.

27—30.40(161A,460) Allocation of funds. Funds will be allocated by the division for specific agricultural drainage well closure and alternative drainage system improvement projects. Allocations shall be 75 percent of the estimated cost of installing the alternative drainage system improvements as defined by Iowa Code section 468.3.

30.40(1) *Allocation by a priority system based on contamination potential.* Rescinded IAB 10/14/15, effective 11/18/15.

30.40(2) *Allocation for a single drainage improvement project which will allow for the closing of 30 or more agricultural drainage wells.* Rescinded IAB 10/14/15, effective 11/18/15.

30.40(3) *Application for fund allocation.* Application for fund allocation to a new drainage district shall be submitted to the division by the board of supervisors on behalf of eligible owners of land following receipt of petition to establish a drainage district pursuant to Iowa Code section 468.8 and before the hearing on establishment pursuant to Iowa Code section 468.22. Application for fund allocation to an existing drainage district shall be submitted to the division by the district board on behalf of eligible owners of land prior to the hearing on improvement pursuant to Iowa Code section 468.126. The application for fund allocation shall be in writing and shall identify:

- a. Approximate location and boundary of the watershed area served by the proposed project.
- b. Approximate watershed drainage area.
- c. Expected number of agricultural drainage wells to be closed.
- d. Location of any anaerobic lagoon or earthen manure storage basin required to obtain a construction permit by the department of natural resources.
- e. Preliminary cost estimate for the alternative drainage system.
- f. Anticipated project time line.
- g. Anticipated or actual date of establishment of the drainage district under Iowa Code section 468.22.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—30.41 to 30.49 Reserved.

27—30.50(161A,460) Eligibility. Financial assistance from the program will be limited by the criteria of this rule.

30.50(1) *Cost-share rate.* Except for the cost of wetland restoration projects with permanent easements, cost-share payments from the fund shall not exceed 75 percent of the estimated cost or 75 percent of the actual cost of the project, whichever is less.

30.50(2) Eligible costs. Project costs eligible for financial assistance cost sharing from the fund are:

a. Construction costs normally incidental to the costs of a drainage district including, but not limited to:

- (1) Tile or channel mains.
- (2) Laterals.
- (3) Associated excavations, backfilling, tile line cradling materials, and junctions.

b. Cost of improvements as defined by Iowa Code section 468.3 including, but not limited to:

- (1) Administrative, legal and publication costs.
- (2) Classification.
- (3) Engineering design, construction inspection and contract administration.
- (4) Financing costs.
- (5) Damages.

c. Costs of wetland mitigation required under federal law.

d. Costs of connection lines from mains or laterals of the drainage district to the terminus of in-field drains at the existing wellheads of the agricultural drainage wells.

e. Costs of closure and plugging of agricultural drainage wells in accordance with 567 IAC 39, Requirements for Properly Plugging Abandoned Wells, or by an alternative method approved by the department of natural resources.

f. Costs for removal of agricultural drainage well cisterns in accordance with applicable requirements of the department of natural resources.

g. Costs for the purchase of permanent easements for the wetland restoration if the easements are more cost-effective than the construction of alternative drainage systems and all directly impacted landowners agree to grant permanent easements.

h. Construction costs for wetland restoration projects with permanent easements including, but not limited to:

- (1) Tile modifications.
- (2) Installation of water level maintenance structures.
- (3) Associated excavation, grading and seeding activities.

30.50(3) Project design and construction. The alternative drainage system of the drainage district or the wetland restoration shall be designed to meet standard engineering practice and be approved by the division. Construction shall be in accordance with the design and standard construction practice for drainage district improvements or the wetland restoration.

30.50(4) Easement purchases. For projects where wetland restoration is completed, a permanent easement restricting active disturbance of the easement area including cropland and pasture uses shall be granted to the applicable soil and water conservation district. The value of the easement is determined by using the average farmland value per acre for all soil types as determined by the most recently published county land value survey developed by Iowa State University adjusted by the value of any existing easements on the land.

30.50(5) Eligible persons. A person who owns an interest in land within a designated agricultural drainage well area shall not be eligible to participate in the program, if the person is any of the following:

a. A party to a pending legal or administrative action, including a contested case proceeding under Iowa Code chapter 17A, relating to an alleged violation involving an animal feeding operation as regulated by the department of natural resources, regardless of whether the pending action is brought by the department or the attorney general.

b. Classified as a habitual violator for a violation of state law involving an animal feeding operation as regulated by the department of natural resources.

30.50(6) Closure of agricultural drainage wells. Closure of all agricultural drainage wells located within the watershed area served by the alternative drainage system of the drainage district is required for landowners to be eligible for financial assistance from the fund.

30.50(7) Compliance with applicable statutes. The alternative drainage system project of the drainage district shall be conducted in compliance with all applicable statutes, rules and requirements.

[ARC 2192C, IAB 10/14/15, effective 11/18/15; ARC 3839C, IAB 6/6/18, effective 7/11/18]

27—30.51 to 30.59 Reserved.

27—30.60(161A,460) Payment of financial assistance. Financial assistance under the program will be distributed to eligible landowners by the drainage district, under the terms of a 28E agreement between the division and the drainage district.

30.60(1) Distribution to eligible landowners under adopted classification. Funds will be transferred by the division for all eligible costs of the project under the program to the drainage district for distribution to eligible landowners in accordance with the adopted classification of the district. The financial assistance shall be distributed to reduce the actual assessment to eligible landowners under the adopted classification.

30.60(2) Time of payment. Financial assistance funds shall be transferred to the drainage district to reimburse actual expenditures of the district. The fund transfer to the drainage district will be in accordance with the terms of the 28E agreement.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—30.61 to 30.69 Reserved.

27—30.70(161A,460) Compliance procedures and reviews. This rule establishes procedures for compliance actions taken by the division when it is found that program requirements or funding agreements are not being carried out.

30.70(1) Compliance with program requirements or funding agreements. Upon determination that program requirements or funding agreements have not been complied with, the division shall notify the affected landowners or drainage district of the lack of compliance and establish a schedule for achieving compliance with applicable requirements. In the event compliance is not achieved, no financial assistance from the program shall be provided. If financial assistance payments have previously been made, the division may order the recipient to pay back the division the total amount of the financial assistance payment in accordance with a schedule determined by the division.

30.70(2) Compliance reviews. A landowner or drainage district that has been determined ineligible for financial assistance or has been ordered to pay back to the division financial assistance payments because of lack of compliance with program requirements or funding agreements may seek review of the compliance action taken by the division. The affected landowner or drainage district may address concerns about the compliance action in writing to the director of the division. Upon receipt of such concern, the director shall review the actions taken and shall communicate the findings of the compliance review to the complainant. The director's decision following review of the actions taken shall constitute final agency action for purposes of invoking the judicial review provisions of Iowa Code chapter 17A.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

These rules implement Iowa Code chapter 460.

[Filed 12/12/97, Notice 10/22/97—published 12/31/97, effective 2/4/98]

[Filed ARC 2192C (Notice ARC 2102C, IAB 8/19/15), IAB 10/14/15, effective 11/18/15]

[Filed ARC 3243C (Notice ARC 3086C, IAB 6/7/17), IAB 8/2/17, effective 9/6/17]

[Filed ARC 3839C (Notice ARC 3730C, IAB 4/11/18), IAB 6/6/18, effective 7/11/18]

CHAPTERS 31 to 39

CHAPTER 40
COAL MINING

[Prior to 6/15/88, see Soil Conservation Department, 780—Ch 4]
[Prior to 12/26/90, see Soil Conservation[27] Chs 1 to 49]

PART 1A
COAL MINING—GENERAL

27—40.1(17A,207) Authority and scope. The following sets forth the rules and procedures through which the department of agriculture and land stewardship, division of soil conservation and water quality, will implement the regulatory program pursuant to Iowa Code chapter 207 and the federal Surface Mining Control and Reclamation Act of 1977 (SMCRA).

40.1(1) Parts and sections of the federal regulations of the U.S. Office of Surface Mining Reclamation and Enforcement, U.S. Department of Interior, promulgated pursuant to the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87), are incorporated by reference as rules of the division as specified in this chapter, with exceptions as indicated. Rules incorporated by reference, as specified in each specific rule, are those from the Code of Federal Regulations (30 CFR), as in effect on July 1, 2010.

40.1(2) The following general word substitutions are made in all incorporated federal regulations except as otherwise indicated:

“*Act*” refers to Iowa Code chapter 207.

“*Administrator*” is to be substituted for “*director*”, “*regional director*”, and “*secretary*”.

“*Division of soil conservation and water quality*” is to be substituted for “*department*”, “*the office*”, “*OSM*”, “*OSMRE*”, “*office of surface mining reclamation and enforcement*”, “*regulatory authority*”, “*State regulatory program*”, and “*regulatory program*”.

“*These rules*” is to be substituted for “*chapter*” and “*subchapter*”.

40.1(3) Delete from 30 CFR 779.25(b), 780.14(c), and 783.25(b) the words “or in any State which authorizes land surveyors to prepare and certify such cross sections, maps and plans, a qualified, registered, professional land surveyor.” Also, replace “,” with “or” between “professional engineer” and “professional geologist”.

Delete from 30 CFR 780.25(a)(1)(i), 780.25(a)(3)(i), 784.16(a)(1)(i), and 784.16(a)(3)(i) the words “or in any State which authorizes land surveyors to prepare and certify such plans, a qualified, registered, professional land surveyor.” Also, replace “,” with “or” between “professional engineer” and “professional geologist”.

Delete from 30 CFR 816.46(b)(3) the words “or in any State which authorizes land surveyors to prepare and certify plans in accordance with §780.25(a) of this chapter a qualified, registered, professional land surveyor.”

Delete from 30 CFR 817.46(b)(3) the words “or in any State which authorizes land surveyors to prepare and certify plans in accordance with §784.16(a) of this chapter a qualified, registered, professional land surveyor.”

Delete from 30 CFR 816.151(a) and 817.151(a) the words “or in any State which authorizes land surveyors to certify the construction or reconstruction of primary roads, a qualified, registered, professional land surveyor.”

40.1(4) Delete “or qualified, registered, professional land surveyor” from 30 CFR 816.49(a)(3) and 816.49(a)(11)(ii).

40.1(5) Delete “registered, professional engineer” from 30 CFR Parts 779, 780, 783, 784, 816 and 817, and replace it with “professional engineer, registered with the State of Iowa”.

[ARC 9575B, IAB 6/29/11, effective 8/3/11; ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—40.2(207) Rules or subrules are severable. If any provision of a rule or subrule or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rule or subrule which can be given effect without the invalid provision or application, and to this end the provisions of these rules or subrules are severable.

27—40.3(207) General. The following is incorporated by reference: 30 CFR Part 700, as in effect on July 1, 2010, except for 30 CFR 700.1, 700.2, 700.3, 700.4, 700.10 and 700.12. The phrase “section 520 of the Act” is deleted from 30 CFR 700.13(a) and the words “Iowa Code section 207.17” are inserted in lieu thereof.

In lieu of the regulations deleted at 30 CFR 700.12 concerning “Petitions to initiate rule making,” rules of the Iowa Department of Agriculture and Land Stewardship at 21 IAC Chapter 3, “Petitions for Rule Making” shall serve as the basis for submitting petitions to initiate rule making.

Definitions for “*Federal lands*,” “*Federal lands program*,” “*Fund*,” “*Indian lands*,” and “*Indian tribe*” are correspondingly deleted from 30 CFR 700.5.

The definition of “*Regulatory program*” is deleted at 30 CFR 700.5 and the following definition is inserted in lieu thereof:

“*Regulatory program*” means Iowa’s approved State program.

Delete from 30 CFR 700.14 the phrase “43 CFR Part 2, which implements the Freedom of Information Act and the Privacy Act” and insert in lieu thereof “Iowa Code chapter 22, the Iowa open records law”.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.4(207) Permanent regulatory program and exemption for coal extraction incidental to the extraction of other minerals. The following is incorporated by reference: 30 CFR Part 701 and 30 CFR Part 702, as in effect on July 1, 2010, with the following exceptions:

40.4(1) None of the general word substitutions at rule 27—40.1(17A,207) apply to the definitions of “*Permit*,” “*Permittee*,” and “*State program*” at 30 CFR 701.5.

40.4(2) Delete from 30 CFR 701.5 the definitions “*Agricultural activities*,” “*Alluvial valley floor*,” “*Arid or semiarid area*,” “*Essential hydrologic functions*,” “*Farming*,” “*Federal program*,” “*Complete federal program*,” “*Partial federal program*,” “*Flood irrigation*,” “*Materially damage the quantity or quality of waters*,” “*Special bituminous coal mines*,” “*Subirrigation*,” “*Undeveloped rangeland*,” and “*Upland areas*.”

40.4(3) Delete from the last sentence in the definition of “*Permittee*” in 30 CFR 701.5 the words “section 523 of the Act” and insert the words “Iowa Code section 207.20”.

In 30 CFR 701.5, delete from the definition of “*Significant imminent environmental harm to land, air or water resources*” at (b)(2), the words “section 521(a)(3) of the Act” and insert the words “Iowa Code section 207.14, subsection 2”.

40.4(4) Delete 30 CFR 701.1, 701.3, 701.4, and 701.11(c).

40.4(5) Delete references to “Subchapter B” and “Subchapter K” at 30 CFR 701.11(d) and (e) and substitute in lieu thereof “Part 1B” and “Part 6”, respectively.

40.4(6) Delete 30 CFR 702.1 and 702.10.

40.4(7) Delete 30 CFR 702.11(f) and insert in lieu thereof the following:

(f) Administrative review. (1) Any adversely affected person may request administrative review of a determination under paragraph (e) of this section within 30 days of notification of such determination in accordance with Part 9 of these rules.

(2) A petition for administrative review filed under Part 9 of these rules shall not suspend the effect of a determination under paragraph (e) of this section.

40.4(8) Delete 30 CFR 702.17(c)(2) and (3) and insert in lieu thereof the following:

(2) Any adversely affected person may request administrative review of a decision whether to revoke an exemption within 30 days of the notification of such a decision in accordance with the procedures of Part 9 of these rules.

(3) A petition for administrative review filed under Part 9 of these rules shall not suspend the effect of a decision whether to revoke an exemption.

40.4(9) Reserved.

40.4(10) Add to 30 CFR 701.5 the definition:

“Full water year” means at a minimum, the nine-month period from March through November.

40.4(11) Delete the definition for “Violation, failure or refusal” at 30 CFR 701.5 and insert in lieu thereof the following:

“Violation, failure, or refusal” means—

(1) A violation of a condition of an approved permit pursuant to the Iowa program or an enforcement action pursuant to Iowa Code section 207.14, or

(2) A failure or refusal to comply with any order issued under Iowa Code section 207.14 or any order incorporated in a final decision issued by the administrator, except an order incorporated in a decision issued under subrule 40.74(7) or rule 27—40.7(207).

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.5(207) Restrictions on financial interests of state employees. The general word substitutions used elsewhere in these rules do not apply to Iowa’s incorporation of 30 CFR Part 705. The following is incorporated by reference: 30 CFR Part 705, as in effect on July 1, 2010, with the following exceptions:

40.5(1) Delete from 30 CFR 705.5 the definition for “State regulatory authority” and insert the following definition in lieu thereof:

“State regulatory authority” means the division of soil conservation and water quality, Iowa department of agriculture and land stewardship, or its authorized representative.

40.5(2) Delete 30 CFR 705.1, 705.2, 705.3, 705.4(b), 705.10, and 705.11(e).

[ARC 9575B, IAB 6/29/11, effective 8/3/11; ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—40.6(207) Exemptions for coal extraction incident to government-financed highway or other constructions. The following is incorporated by reference: 30 CFR Part 707, as in effect on July 1, 2010, with the following exceptions:

40.6(1) Add to 30 CFR 707.11 a paragraph (c) that shall read:

(c) Any person who conducts or intends to conduct such coal extraction must file a letter of intent with the division 60 days prior to surface disturbance.

40.6(2) Reserved.

40.6(3) Delete 30 CFR 707.10.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.7(207) Protection of employees. The following is incorporated by reference: 30 CFR Part 865, as in effect on July 1, 2010, with the following exceptions:

40.7(1) Delete the words “Office of Hearings and Appeals” and insert the word “division”.

40.7(2) Delete the words “43 CFR Part 4” and insert the words “Iowa Code section 207.14”.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.8 to 40.10 Reserved.

PART 1B
COAL MINING—INITIAL PROGRAM

27—40.11(207) Initial regulatory program. The following is incorporated by reference: 30 CFR Part 710, as in effect on July 1, 2010, with the following exceptions:

40.11(1) Reserved.

40.11(2) Delete 30 CFR 710.1, 710.3, 710.4(a), 710.10, 710.11(b) and (c), and 710.12.

40.11(3) Reserved.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.12(207) General performance standards—initial program. The following is incorporated by reference: 30 CFR Part 715, as in effect on July 1, 2010, with the following exceptions:

40.12(1) Delete from 30 CFR 715.11(c) the scale of “1:6000” and insert the scale of “1:2400”.

40.12(2) Delete from 30 CFR 715.17(h)(3) the words “in a manner approved by the regulatory authority” and insert the words “monthly, and reported quarterly to the regulatory authority.”

40.12(3) Delete 30 CFR 715.10.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.13(207) Special performance standards—initial program. The following is incorporated by reference: 30 CFR Part 716, as in effect on July 1, 2010, with the following exception:

Delete 30 CFR 716.1(a), subparagraphs (1) through (5), 716.2, 716.3, 716.4, 716.5, 716.6, and 716.10.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.14 to 40.19 Reserved.

PART 2
COAL MINING—AREAS UNSUITABLE

27—40.20 Reserved.

27—40.21(207) Areas designated by an Act of Congress. The following is incorporated by reference: 30 CFR Part 761, as in effect on July 1, 2010, with the following exceptions:

40.21(1) None of the general word substitutions in rule 27—40.1(17A,207) apply to the definition of “Valid existing rights” at 30 CFR 761.5.

40.21(2) Delete from the definition of “Surface operations and impacts incident to an underground coal mine” in 30 CFR 761.5 the words “section 701(28) of the Act” and insert the words “Iowa Code section 207.2, subsection 14”.

40.21(3) None of the general word substitutions in rule 27—40.1(17A,207) apply to 30 CFR 761.11(b).

40.21(4) Delete from 30 CFR 761.5 under the definition for “Valid existing rights” the words “30 U.S.C. 1272(e)” and insert the words “Iowa Code section 207.8”.

40.21(5) Delete 30 CFR 761.13.

40.21(6) Delete from 30 CFR 761.16 the words “30 U.S.C. 1272(e)” and insert the words “Iowa Code section 207.8”.

40.21(7) None of the general word substitutions for “Act” and “secretary” at rule 27—40.1(17A,207) apply to 30 CFR 761.3.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.22(207) Criteria for designating areas as unsuitable for surface coal mining operations. The following is incorporated by reference: 30 CFR Part 762, as in effect on July 1, 2010, with the following exceptions:

40.22(1) The general word substitutions in rule 27—40.1(17A,207) do not apply to 30 CFR 762.12(b) or 762.13(a).

40.22(2) Delete from 30 CFR 762.15 the words “section 522 of the Act” and insert the words “Iowa Code section 207.8”.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.23(207) State procedures for designating areas unsuitable for surface coal mining operations. The following is incorporated by reference: 30 CFR Part 764, as in effect on July 1, 2010, with the following exceptions:

40.23(1) Delete 30 CFR 764.10.

40.23(2) Delete from 30 CFR 764.13(b)(1)(v) the words “sections 522(a)(2) and (3) of the Act” and insert the words “Iowa Code section 207.8, subsection 1”.

40.23(3) Delete from 30 CFR 764.19(c) the words “section 526(e) of the Act” and insert the words “Iowa Code section 207.8, subsection 4, and Iowa Code section 17A.19”.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.24 to 40.29 Reserved.

PART 3
COAL MINING—PERMITS FOR OPERATIONS AND EXPLORATION

27—40.30(207) Requirements for coal exploration. The following is incorporated by reference: 30 CFR Part 772, as in effect on July 1, 2010, with the following exceptions:

40.30(1) Delete from 30 CFR 772.11 and 772.11(a) the words “250 tons” and insert the words “50 tons”.

40.30(2) Delete 30 CFR 772.11(b)(3) and insert the following:

(3) A precise description and map at a scale of 1:24,000 or larger of the exploration area showing the lease limits and identifying lessor(s);

40.30(3) Add a new paragraph (6) to 30 CFR 772.11(b) to read as follows:

(6) If the surface is owned by a person other than the person who intends to explore, a description of the basis upon which the person who will explore claims the right to enter such area for the purpose of conducting exploration and reclamation.

40.30(4) Delete from 30 CFR 772.12, 772.12(a), and 772.12(b)(7) the words “250 tons” and insert the words “50 tons”.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.31(207) Requirements for permits and permit processing. The following is incorporated by reference: 30 CFR Part 773, as in effect on July 1, 2010, with the following exceptions:

40.31(1) Delete the second sentence of 30 CFR 773.4(a).

40.31(2) Add at the end of the last sentence of 30 CFR 773.6(a)(1)(ii) the words “and the scale of the map”, and the following paragraph:

“The legal description shall include popular township, county, township, range, section, and the United States Geological Survey map identification by property owners. Section lines shall be marked and the sections shall be identified on the map. The total acreage of the proposed permit area shall be given to the nearest acre.”

40.31(3) Delete from 30 CFR 773.7(a) the words “a reasonable time set by the regulatory authority” and insert the words “90 days following the completion of the adequacy review”.

40.31(4) Delete 30 CFR 773.3, 773.4(c) and (d).

40.31(5) Delete from 30 CFR 773.4(b)(2) the words “section 502 of the Act” and insert the words “Iowa Code section 207.4”.

40.31(6) Delete from 30 CFR 773.6(a)(3)(ii) the words “section 503(a)(6) or 504(h) of the Act” and insert the words “Iowa Code section 207.5”.

40.31(7) Delete the first sentence from 30 CFR 773.6(c)(2)(iv).

40.31(8) Delete from 30 CFR 773.6(d)(3)(ii) the words “section 508 of the Act” and insert the words “Iowa Code section 22.7, subsection 6”.

40.31(9) The general word substitution for “Act” at rule 27—40.1(17A,207) does not apply to 30 CFR 773.11(a).

40.31(10) The general word substitution for “secretary” at rule 27—40.1(17A,207) does not apply to 30 CFR 773.17(d).

40.31(11) The general word substitution for “OSM” at rule 27—40.1(17A,207) does not apply to 30 CFR 773.19(b)(3).

40.31(12) Add the following paragraph (h) to 30 CFR 773.17:

(h) The permittee shall ensure and the permit shall contain specific conditions requiring that, as a condition of the permit, the permittee shall not, except as permitted by law, willfully resist, prevent, impede, or interfere with the division or any of its agents in the performance of their duties.

40.31(13) Delete from 30 CFR 773.6(b)(1) the words “a reasonable time established by the regulatory authority” and insert the words “60 days of the notification”.

40.31(14) Reserved.

40.31(15) Delete 773.23(d) and insert in lieu thereof the following:

(d) Right to appeal. The permittee may file an appeal for administrative review of the notice of proposed suspension or rescission under Part 9 of these rules.
[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.32(207) Revision or amendment; renewal; and transfer, assignment, or sale of permit rights. The following is incorporated by reference: 30 CFR Part 774, as in effect on July 1, 2010, with the following exceptions:

40.32(1) 30 CFR 774.10(b) and (c) are deleted.

40.32(2) 30 CFR 774.13 is deleted, with the exception that the notice, public participation, and notice of decision requirements of 30 CFR 773.6, 773.19(b), and 778.21 shall apply to all revisions.

These rules utilize the term “revision” to describe a change to a permit that constitutes a significant departure from the approved permit and the term “amendment” to describe a change that does not constitute a significant departure. A significant departure shall be any change in permit area, mining method or reclamation procedure, which would, in the opinion of the division, significantly change the effect that mining operations would have on persons impacted by the permitted operation, on cultural resources, or on the environment.

40.32(3) Permit revisions and amendments.

a. During the term of a permit, the permittee may submit an application to the division for revision or amendment of the permit.

(1) A revision or amendment is required for any changes in the approved permit. All information related to approved revisions or amendments shall be updated in all public copies of the permit.

(2) When a permit is reviewed at any time, including midterm review, the division may, by order, require revision or amendment of the approved permit to ensure compliance with the Act and these rules. Any order of the division requiring revision or amendment of permits shall be based upon written findings, and the order shall be subject to the provisions for administrative and judicial review of Part 9 of this chapter.

(3) A revision or amendment shall be obtained in order to continue operation after the cancellation or material reduction of the liability insurance policy, capability of self-insurance, performance bond, or other equivalent guarantee upon which the approved permit was issued.

(4) A revision or amendment shall also be obtained as otherwise required under the Act or these rules.

b. An application for a permit revision will be approved or disapproved within 90 days following a determination of completeness for the revision application by the division. An application for an amendment will be approved or disapproved within 60 days of submittal of the application to the division.

c. Any application for an amendment or a revision under these rules shall, at a minimum, be subject to the requirements of Part 9 of these rules and must provide replacement documentation fully describing changes to be made in the same detail as required in the original permit.

d. Criteria for approval. No application for a permit revision or amendment shall be approved unless the application demonstrates and the division finds that the reclamation as required by the Act and the regulatory program can be accomplished, that the application complies with all requirements of the Act and the regulatory program, and any applicable requirements of written findings for the permit have also been met.

e. Extensions to permit area.

(1) Any increase in permit area, except for incidental boundary revisions, shall not be approved under this subrule, but shall be treated as a new permit application.

(2) Incidental boundary revisions are considered significant departures and as such shall be treated as revisions. A total of 20 acres of incidental boundary changes will be allowed over the life of a permit with individual increments being subject to approval by the division. Application for an incidental boundary revision shall include demonstration by the applicant that the area for which mining operations are proposed is contiguous to the approved permit.

40.32(4) Delete 30 CFR 774.9 and 774.15(c)(3).

40.32(5) Add at the end of 30 CFR 774.15(a) the sentence “Renewal is not required if the division determines that the phase II bond was released over the entire permit area before the expiration of the permit term.”

40.32(6) Delete from 30 CFR 774.15(b)(2)(i) the word “and” in the third line, and add at the end the words “and current status of the mine plan, other details and the time table—if different from the one previously approved—of the remaining phases of the operation and reclamation plans.”

40.32(7) The general word substitution for “OSM” at rule 27—40.1(17A,207) does not apply to 30 CFR 774.17(e)(1).

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.33(207) General content requirements for permit applications. The following is incorporated by reference: 30 CFR Part 777, as in effect on July 1, 2010, with the following exceptions:

40.33(1) Delete 30 CFR 777.11(a)(3) and insert the following:

(3) Be filed in three copies with the format addressed by subrule and subject title.

40.33(2) Delete from 30 CFR 777.14(a) the scale of “1:6000” and insert the scale of “1:2400”. Also delete the words “be in a scale determined by the regulatory authority, but in no event” and insert in lieu thereof “shall have a scale no”.

40.33(3) Delete 30 CFR 777.17 and insert in lieu thereof the following:

777.17 Permit fees.

An application for a surface coal mining and reclamation permit shall be submitted to the division and accompanied by the appropriate fee. All checks shall be made payable to the Treasurer of the State of Iowa.

(1) New permits require a fee of \$15 per acre to be permitted with a minimum fee of \$100.

(2) Permit revisions within present permit boundaries require a fee of \$2 per acre for the total permit area with a minimum of \$40. Permit revisions which include additional area require the revision fee plus \$5 per acre for the additional area, with a minimum of \$40.

(3) Permit renewals require a fee of \$100.

(4) Transfer, assignment, or sale by the permit holder requires a fee of \$50.

40.33(4) Delete 30 CFR 777.10.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.34(207) Permit application—minimum requirements for legal, financial, compliance, and related information. The following is incorporated by reference: 30 CFR Part 778, as in effect on July 1, 2010, with the following exceptions:

40.34(1) Amend 30 CFR Part 778 by adding the following section:

778.23 Identification of other licenses and permits. Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed surface mining activities. This list shall identify each license and permit by:

1. Type of permit or license;

2. Name and address of issuing authority;

3. Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses;

4. If a decision has been made, the date of approval or disapproval by each issuing authority; and

5. Date of expiration of permits.

40.34(2) Delete 30 CFR 778.8.

40.34(3) Reserved.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.35(207) Surface mining permit applications—minimum requirements for information on environmental resources. The following is incorporated by reference: 30 CFR Part 779, as in effect on July 1, 2010, except as modified by subrule 40.1(3) and with the following exceptions:

40.35(1) Delete from 30 CFR 779.19(a) the words “if required by the regulatory authority, contain a map” and insert the words “contain a map at a scale of 1:2400 or larger”.

40.35(2) Delete from 30 CFR 779.19(b) the words “When a map or aerial photograph is required, sufficient adjacent areas shall be included” and insert the words “A map at a scale of 1:2400 or larger or an aerial photo shall include sufficient adjacent areas”.

40.35(3) Reserved.

40.35(4) Amend the first sentence of 30 CFR 779.25(a) to read: “The permit application shall include cross sections at a vertical exaggeration of 1:10, maps at a scale of 1:2400 or larger and plans showing—”

40.35(5) Add to 30 CFR 779.25(a)(1) the words “and a survey coordinate net”.

40.35(6) Amend 30 CFR 779.25, cross sections, maps and plans, by adding the following paragraphs:

(c) Drill logs must contain the following:

(1) Must have survey coordinates (northing and easting) relating them to the map grid in the permit application.

(2) Must show surface elevation.

(3) Must be detailed enough to show all changes in material encountered in both consolidated and unconsolidated overburden.

40.35(7) Delete 30 CFR 779.1 and 779.10.

40.35(8) Reserved.

40.35(9) Delete from 30 CFR 779.18(a) the words “When requested by the regulatory authority”.

40.35(10) Add a new paragraph (c) to 30 CFR 779.18 as follows:

(c) Location of the rain gauges nearest to the permit area, preferably in the same watershed as the permit itself, shall be marked on a map, and these shall be described in the text as well, along with the period of available record at these gauges.

40.35(11) Add a new paragraph (d) to 30 CFR 779.18 as follows:

(d) A brief description shall be provided about the impact of the climatological factors on operation and reclamation plans, specifically what part of the year would be more conducive than others to various mining and reclamation operations.

40.35(12) Delete from 30 CFR 779.24(g) the words “defined by the regulatory authority” and add at the end the words “Hydrologic area is the area that consists of the permit area and the adjacent area.”

40.35(13) Insert the words “and its identification” between the words “road” and “located” in 30 CFR 779.24(h).

40.35(14) Insert at the beginning of 30 CFR 779.24(l) the words “Section lines and section identification, and any”.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.36(207) Surface mining permit applications—minimum requirements for reclamation and operation plan. The following is incorporated by reference: 30 CFR Part 780, as in effect on July 1, 2010, except as modified by subrules 40.1(3) and 40.1(5) and with the following exceptions and clarifications:

40.36(1) Delete 30 CFR 780.1 and 780.10.

40.36(2) The general word substitutions at rule 27—40.1(17A,207) do not apply at 30 CFR 780.21(a).

40.36(3) The determination of probable hydrologic consequence (PHC) made pursuant to these rules as part of a permit application shall address all proposed mining activities associated with the permit area for which authorization is sought as opposed to addressing only those activities expected to occur during the term of the permit.

40.36(4) Delete from 30 CFR 780.12 references to “Subchapter B” and “Subchapter K” and replace with “Part 1B” and “Part 6”, respectively.

40.36(5) Insert at the end of 30 CFR 780.21(a) the sentence “The methodology for measurement of the quantity of both surface water and groundwater shall also be described.”

40.36(6) Delete from 30 CFR 780.21(d) the words “may be required by the regulatory authority” and insert the words “is required”.

40.36(7) Delete from 30 CFR 780.21(i) and (j) the word “approved” and insert the word “proposed”.
[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.37(207) Underground mining permit applications—minimum requirements for information on environmental resources. The following is incorporated by reference: 30 CFR Part 783, as in effect on July 1, 2010, except as modified by subrules 40.1(3) and 40.1(5) and with the following exceptions:

40.37(1) Delete from 30 CFR 783.18(a) the words “When requested by the regulatory authority,”.

40.37(2) Delete 30 CFR 783.21(a)(1) and insert the following:

(1) A map, at the scale of 1:2400 or larger, delineating different soils;

40.37(3) Amend the first sentence in 30 CFR 783.24 to read: “The permit application shall include maps at a scale of 1:2400 or larger showing:”

40.37(4) Amend the first sentence in 30 CFR 783.25(a) to read: “The application shall include cross sections at a vertical exaggeration of 1:10, maps at a scale of 1:2400, and plans showing—”

40.37(5) Delete 30 CFR 783.1 and 783.10.

40.37(6) Reserved.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.38(207) Underground mining permit applications—minimum requirements for reclamation and operation plan. The following is incorporated by reference: 30 CFR Part 784, as in effect on July 1, 2010, except as modified by subrules 40.1(3) and 40.1(5) and with the following exceptions and clarifications:

40.38(1) Delete from 30 CFR 784.14(d) the words “information may be required” and insert the words “information is required”.

40.38(2) Delete from 30 CFR 784.20(b)(4) the words “if any”.

40.38(3) Delete from 30 CFR 784.20(b)(6) the words “if any”.

40.38(4) Amend the first sentence of 30 CFR 784.23 to read: “Each application shall contain maps at a scale of 1:2400 or larger and plans as follows:”

40.38(5) Delete 30 CFR 784.1 and 784.10.

40.38(6) The general word substitutions at rule 27—40.1(17A,207) do not apply to 30 CFR Part 784.14(a).

40.38(7) Delete from 30 CFR 784.13(a) the words “sections 515 and 516 of the Act” and insert the words “Iowa Code sections 207.7 and 207.19”.

40.38(8) The determination of probable hydrologic consequence (PHC) made pursuant to these rules as part of a permit application shall address all proposed mining activities associated with the permit area for which authorization is sought as opposed to addressing only those activities expected to occur during the term of the permit.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.39(207) Requirements for permits for special categories of mining. The following is incorporated by reference: 30 CFR Part 785, as in effect on July 1, 2010, with the following exceptions:

40.39(1) Delete 30 CFR 785.10, 785.11, 785.12, 785.14, 785.15, 785.16, 785.17(d)(1), (2), and (3), 785.19, and 785.22.

40.39(2) The general word substitutions for “director” and “department” at rule 27—40.1(17A,207) do not apply at 30 CFR 785.13.

40.39(3) None of the general word substitutions at rule 27—40.1(17A,207) apply at 30 CFR 785.17(c)(1)(i) and (d).

40.39(4) Delete paragraphs (d) and (e) from 30 CFR 785.21 and insert in lieu thereof a new paragraph (d) as follows:

(d) Coal preparation plants are required to obtain permanent program permits under the Iowa regulatory program after April 10, 1981, as approved by the U.S. Office of Surface Mining.

40.39(5) Delete from 30 CFR 785.18(c)(5) the words “section 515(b)(16) of the Act” and insert the words “Iowa Code section 207.7”.

40.39(6) Delete from 30 CFR 785.18(c)(7) the words “section 515(b)(22) of the Act” and insert the words “Iowa Code section 207.7”.

40.39(7) Delete from 30 CFR 785.18(c)(9) the words “section 515(b) of the Act” and insert the words “Iowa Code section 207.7”.

40.39(8) Add the following clarifying sentence to 30 CFR 785.21(a): “An off-site processing plant operated in connection with the mine but off the mine site will be regulated without regard to its proximity to the mine.”

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

PART 4

COAL MINING—SMALL OPERATOR ASSISTANCE

27—40.40 Reserved.

27—40.41(207) Permanent regulatory program—small operator assistance program. The following is adopted by reference: 30 CFR Part 795, as in effect on July 1, 2010, with the following exceptions:

40.41(1) Delete 30 CFR 795.4, 795.5 and 795.6(b).

40.41(2) Delete from 30 CFR 795.1 the words “section 507(c) of the Act” and insert the words “Iowa Code section 207.4, subsection 1, paragraph “d”.”

40.41(3) Eligibility thresholds for annual production in tons at 30 CFR 795.6(a)(2) shall not apply until the same threshold at Iowa Code section 207.4(1)(d) has been amended from 100,000 tons to 300,000 tons.

40.41(4) Program services at 30 CFR 795.9(b)(3) through 795.9(b)(6) shall not apply until Iowa Code section 207.4(1)(d) has been amended to authorize these services.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.42 to 40.49 Reserved.

PART 5

COAL MINING—BONDING AND INSURANCE

27—40.50 Reserved.

27—40.51(207) Bond and insurance requirements for surface coal mining and reclamation operations under regulatory programs. The following is incorporated by reference: 30 CFR Part 800, as in effect on July 1, 2010, with the following exceptions:

40.51(1) Add to 30 CFR 800.40(c) a paragraph (4) that shall read as follows:

(4) The maximum liability under performance bonds applicable to a permit which may be released at any time prior to the release of all acreage from the permit area shall be calculated by multiplying the ratio between the acreage on which a reclamation phase has been completed and the total acreage in the permit area, times the total liability under performance bonds applicable to a permit, times 0.6 if reclamation phase I has been completed, or 0.25 if reclamation phase II has been completed.

Acreage may be released from the permit area only after reclamation phase III has been completed. The maximum performance bond liability applicable to a permit which may be released at any time prior to the completion of reclamation phase III on the entire permit area shall be calculated by multiplying the ratio between the acreage on which reclamation phase III has been completed and the total acreage in the permit area, times the total liability under performance bonds applicable to a permit, times 0.15.

40.51(2) Delete from 30 CFR 800.60(a) the words “authorized to do business in the United States” and insert the words “authorized to do business in the State of Iowa”.

40.51(3) Delete 30 CFR 800.10, 800.11(e), and 800.70.

40.51(4) Delete from 30 CFR 800.40(a)(1) the words “established in the regulatory program or”.

40.51(5) Delete from 30 CFR 800.40(c)(2) the words “sections 515 and 515(b)(10) of the Act” and insert the words “Iowa Code section 207.7”. Delete also from 30 CFR 800.40(c)(2) the words “performed

pursuant to section 507(b)(16) of the Act” and insert the words “information included in the permit application and obtained from the official soil survey for the county in which the permit is located,”.

40.51(6) Delete from 30 CFR 800.40(h) the words “section 513(b) of the Act” and insert the words “Iowa Code section 207.5”.

40.51(7) An application for bond release shall not be considered filed until a written determination of completeness for the bond release application has been provided to the applicant by the division. The division will make a determination of completeness for the bond release application within 30 days following receipt of such application.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.52 to 40.59 Reserved.

PART 6

COAL MINING—PERMANENT PROGRAM PERFORMANCE STANDARDS

27—40.60 Reserved.

27—40.61(207) Permanent program performance standards—general provisions. The following is incorporated by reference: 30 CFR Part 810, as in effect on July 1, 2010, with the following exceptions:

40.61(1) Delete 30 CFR 810.3 and 30 CFR 810.4(a).

40.61(2) Delete 30 CFR 810.4(b) and substitute in lieu thereof the following:

(b) The division shall ensure that performance standards and design requirements are implemented and enforced under the Iowa program.

40.61(3) Delete 30 CFR 810.4(c) and substitute in lieu thereof the following:

(c) Each person conducting coal exploration or surface coal mining and reclamation operations is responsible for complying with the performance standards and design requirements of the approved Iowa program.

40.61(4) Delete the phrase “Parts 818 through 828” at 30 CFR 810.11 and substitute in lieu thereof “Parts 819, 823, and 827”.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.62(207) Permanent program performance standards—coal exploration. The following is incorporated by reference: 30 CFR Part 815, as in effect on July 1, 2010.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.63(207) Permanent program performance standards—surface mining activities. The following is incorporated by reference: 30 CFR Part 816, as in effect on July 1, 2010, except as modified by subrules 40.1(3), 40.1(4), and 40.1(5) and with the following exceptions:

40.63(1) Delete 30 CFR 816.61(c)(1) and insert the following:

(c) Blasters. (1) All blasting operations shall be conducted under the direction of a blaster certified by the division.

40.63(2) Delete 30 CFR 816.101. For “Backfilling and grading: Time and distance requirements,” the following shall apply:

a. Except as provided in paragraph “*b*” of this subrule, rough backfilling and grading for surface mining activities shall be completed within 180 days following coal removal, and not more than four spoil ridges behind the pit being worked, the spoil from the active pit constituting the first ridge.

b. The division may extend the time allowed for rough backfilling and grading for the entire permit area or for a specified portion of the permit area if the permittee demonstrates in accordance with 27 IAC 40.36 / 30 CFR 780.18(b)“3” of these rules that additional time is necessary.

40.63(3) Add to 30 CFR 816.131(b) the sentence “The notice shall state a specific date when operations will resume.”

40.63(4) Add to 30 CFR 816.131 a paragraph (c) that shall read as follows:

(c) The period of temporary cessation shall be a period of two years after which cessation will become permanent cessation and subject to the conditions of 30 CFR 816.132. The applicant may request

one 12-month extension of the two-year time period. Approval of the extension request shall be at the discretion of the division administrator.

40.63(5) Delete 30 CFR 816.10.

40.63(6) The following is incorporated by reference: “Revegetation Success Standards and Statistically Valid Sampling Techniques,” dated April 1999, as approved on December 27, 2001, and as amended December 27, 2004.

40.63(7) Reserved.

40.63(8) Reserved.

40.63(9) Add at the end of 30 CFR 816.49(a)(11)(i) the sentence “Yearly inspection of the impoundments shall be done in the second quarter of each calendar year, and the inspection report shall be submitted to the division with the second quarter water monitoring report.”

40.63(10) Reserved.

40.63(11) Reserved.

40.63(12) Delete 30 CFR 816.89 and insert in lieu thereof the following:

816.89 Disposal of noncoal mine wastes.

(a) Noncoal mine wastes including, but not limited to, grease, garbage, abandoned mining machinery, lumber and other combustible materials generated during mining activities shall be placed and stored in a controlled manner in a landfill permitted by the Iowa department of natural resources (DNR) pursuant to 561 IAC 101, 102, and 103. Lubricants, paints, and flammable liquids may not be buried in the State of Iowa but, along with other toxic wastes, must be disposed of in the legally prescribed manner. Iowa law prohibits final disposal of noncoal wastes within the permit area.

Pending final disposal at a permitted DNR facility, noncoal mine waste shall be placed and stored in a controlled manner in a designated portion of the permit area so as to ensure that leachate and surface runoff do not degrade surface or groundwater, that fires are prevented and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings.

Noncoal mine waste shall at no time be deposited in a refuse pile or impounding structure.

No excavation for or storage of noncoal mine waste shall be located within eight feet of any coal outcrop or coal storage area.

(b) Final disposal of noncoal mine wastes shall be in a designated, State-approved solid waste disposal site permitted by the Iowa department of natural resources pursuant to 561 IAC 101, 102, and 103.

(c) Notwithstanding any other provision in this chapter, any noncoal mine waste defined as “hazardous” under section 3001 of the Resource Conservation and Recovery Act (RCRA) (Public Law 94-580 as amended) and 40 CFR Part 261 shall be handled in accordance with the requirements of Subtitle C of RCRA and any implementing regulations.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.64(207) Permanent program performance standards—underground mining activities. The following is incorporated by reference: 30 CFR Part 817, as in effect on July 1, 2010, except as modified by subrules 40.1(3), 40.1(4), and 40.1(5) and with the following exceptions:

40.64(1) Reserved.

40.64(2) Delete 30 CFR 817.10 and 817.107.

40.64(3) Delete 30 CFR 817.61(c)(1) and insert the following:

(c) Blasters (1) All blasting operations shall be conducted under the direction of a blaster certified by the division.

40.64(4) The following is incorporated by reference: “Revegetation Success Standards and Statistically Valid Sampling Techniques,” dated April 1999, as approved on December 27, 2001, and as amended December 27, 2004.

40.64(5) Add to 30 CFR 817.131 a paragraph (c) that shall read as follows:

(c) The period of temporary cessation shall be a period of two years after which cessation will become permanent cessation and subject to the conditions of 30 CFR 817.132. The applicant may request

one 12-month extension of the two-year time period. Approval of the extension request shall be at the discretion of the division administrator.

40.64(6) Reserved.

40.64(7) Reserved.

40.64(8) Reserved.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.65(207) Special permanent program performance standards—auger mining. The following is incorporated by reference: 30 CFR Part 819, as in effect on July 1, 2010.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.66(207) Special permanent program performance standards—operations on prime farmland. The following is incorporated by reference: 30 CFR Part 823, as in effect on July 1, 2010, except for 30 CFR 823.11(a) which is deleted.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.67(207) Permanent program performance standards—coal preparation plants not located within the permit area of a mine. The following is incorporated by reference: 30 CFR Part 827, as in effect on July 1, 2010, except for the following:

40.67(1) Delete 30 CFR 827.1.

40.67(2) Delete 30 CFR 827.13(a) and insert the following:

(a) Persons operating or who have operated coal preparation plants after April 10, 1981, shall comply with the applicable interim or permanent program performance standards for the Iowa program.

40.67(3) Proximity shall not be the decisive factor in deciding to regulate an off-site processing plant.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.68 and 40.69 Reserved.

PART 7
COAL MINING—INSPECTION AND ENFORCEMENT

27—40.70 Reserved.

27—40.71(207) State regulatory authority—inspection and enforcement. The following is incorporated by reference: 30 CFR Part 840, as in effect on July 1, 2010, with the following exceptions:

40.71(1) Delete 30 CFR 840.1, 840.10, and 840.13.

40.71(2) The general word substitution for “director” does not apply in 30 CFR 840.14.

40.71(3) Delete from 30 CFR 840.11(d)(2) the words “section 521(a)(2) of the Act” and insert the words “Iowa Code section 207.14”.

40.71(4) Delete from 30 CFR 840.11(g)(3)(ii) the words “section 518(e), 518(f), 521(a)(4) or 521(c) of the Act” and insert the words “Iowa Code subsections 207.15(6), 207.15(7), 207.14(3) and 207.14(8)”, respectively.

40.71(5) Delete from 30 CFR 840.15 the words “43 CFR Part 4” and insert the words “Iowa Code section 207.14”.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.72(207) Inspections and monitoring.

40.72(1) Requests for inspections.

a. A person may request an inspection under Iowa Code section 207.13 by furnishing to an authorized representative of the administrator a signed, written statement (or an oral report followed by a signed, written statement) giving the authorized representative reason to believe that a violation exists. The statement shall set forth a phone number and address where the person can be contacted.

b. The identity of any person supplying information to the division relating to a possible violation or imminent danger or harm shall remain confidential with the division, if requested by that person,

unless that person elects to accompany the inspector on the inspection, or unless disclosure is required under Iowa Code section 22.7, subsection 18.

c. If an inspection is conducted as a result of information provided to the division by a person as described in paragraph “a” of this subrule, the person shall be notified as far in advance as practicable when the inspection is to occur and shall be allowed to accompany the authorized representative of the administrator during the inspection. Such person has a right of entry to, upon and through the coal exploration or surface coal mining and reclamation operation about which the person supplied information but only if in the presence of and under the control, direction and supervision of the authorized representative while on the mine property. Such right of entry does not include a right to enter buildings without consent of the person in control of the building or without a search warrant.

d. Within 10 days of the inspection or, if there is no inspection, within 15 days of receipt of the person’s written statement, the division shall send the person the following:

(1) If an inspection was made, a description of the enforcement action taken, which may consist of copies of the inspection report and all notices of violation and cessation orders issued as a result of the inspection, or an explanation of why no enforcement action was taken;

(2) If no inspection was conducted, an explanation of the reason why; and

(3) An explanation of the person’s right, if any, to informal review of the action or inaction of the division under subrule 40.72(3).

e. The division shall give copies of all materials in paragraph “d,” subparagraphs (1) and (2), of this subrule, within the time limits specified in those paragraphs to the person alleged to be in violation, except that the name of the person supplying information shall be removed unless disclosure of the person’s identity is permitted under paragraph “b” of this subrule.

40.72(2) Review of adequacy and completeness of inspections. Any person who is or may be adversely affected by a surface coal mining and reclamation operation or a coal exploration operation may notify the administrator or designee in writing of any alleged failure on the part of the division to make adequate and complete or periodic State inspections. The notification shall include sufficient information to create a reasonable belief that these rules are not being complied with and to demonstrate that the person is or may be adversely affected. The administrator or designee shall within 15 days of receipt of the notification determine whether adequate and complete or periodic inspections have been made. The administrator or designee shall furnish the complainant with a written statement of the reasons for such determination and the actions, if any, taken to remedy the noncompliance.

40.72(3) Review of decision not to inspect or enforce.

a. Any person who is or may be adversely affected by a coal exploration or surface coal mining and reclamation operation may ask the administrator or designee to review informally an authorized representative’s decision not to inspect or take appropriate enforcement action with respect to any violation alleged by that person in a request for inspection under subrule 40.72(1). The request for review shall be in writing and include a statement of how the person is or may be adversely affected and why the decision merits review.

b. The administrator or designee shall conduct the review and inform the person, in writing, of the results of the review within 30 days of receipt of the request. The person alleged to be in violation shall also be given a copy of the results of the review, except that the name of the person who is or may be adversely affected shall not be disclosed unless confidentiality has been waived or disclosure is required under Iowa Code section 22.7, subsection 18.

c. Informal review shall not affect any right to formal review under Iowa Code section 207.14 or to a citizen’s suit under Iowa Code section 207.17.

d. Any determination made under paragraph “b” of this subrule shall constitute a decision of the division within the meaning of Iowa Code section 207.14 and shall contain a right of appeal to the division in accordance with Iowa Code section 207.14.

27—40.73(207) Enforcement.

40.73(1) Definitions. As used in this Part 7, the following terms have the specified meanings:

“*Unwarranted failure to comply*” means the failure of a permittee to prevent the occurrence of any violation of the permit or any requirement of Iowa Code chapter 207 due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit of Iowa Code chapter 207 due to indifference, lack of diligence, or lack of reasonable care.

“*Willful violation*” means an act or omission which violates Iowa Code chapter 207, these rules or any permit condition required by Iowa Code chapter 207 or these rules, committed by a person who intends the result which actually occurs.

40.73(2) Cessation orders.

a. Cessation orders following State inspections:

(1) An authorized representative of the administrator shall immediately order a cessation of surface coal mining and reclamation operations or of the relevant portion thereof, if the representative finds, on the basis of any State inspection, any condition or practice, or any violation of Iowa Code chapter 207, these rules or any condition of an exploration approval or permit imposed under any such program, Iowa Code chapter 207 or these rules which:

- Creates an imminent danger to the health or safety of the public; or
- Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(2) Surface coal mining and reclamation operations conducted by any person without a valid surface coal mining permit constitute a condition or practice which causes or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources, unless such operations:

- Are an integral, uninterrupted extension of previously permitted operations, and the person conducting such operations has filed a timely and complete application for a permit to conduct such operations; or
- Were conducted lawfully without a permit under the interim regulatory program because no permit has been required for such operations by the division.

(3) If the cessation ordered under paragraph “*a*,” subparagraph (1), of this subrule will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the authorized representative of the administrator shall impose affirmative obligations on the permittee to abate the imminent danger or significant environmental harm. The order shall specify the time by which abatement shall be accomplished.

b. Cessation orders following expiration of abatement period:

(1) When a notice of violation has been issued under 40.73(3)“*a*” and the permittee fails to abate the violation within the abatement period fixed or subsequently extended by the authorized representative, the authorized representative of the administrator shall immediately order a cessation of coal exploration or surface coal mining and reclamation operations, or of the portion relevant to the violation.

(2) A cessation order issued under this paragraph “*b*” shall require the permittee to take all steps the authorized representative of the administrator deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.

c. A cessation order issued under paragraphs “*a*” or “*b*” of this subrule shall be in writing, signed by the authorized representative who issues it, and shall set forth with reasonable specificity:

- (1) The nature of the condition, practice or violation;
- (2) The remedial action or affirmative obligation required, if any, including interim steps, if appropriate;
- (3) The time established for abatement if appropriate; and
- (4) A reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies.

The order shall remain in effect until the condition, practice or violation resulting in the issuance of the cessation order has been abated or until vacated, modified or terminated in writing by an authorized representative of the administrator, or until the order expires pursuant to Iowa Code section 207.14(6) and subrule 40.73(6).

d. Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of any order unless otherwise provided in the order.

e. An authorized representative of the administrator may modify, terminate or vacate a cessation order for good cause and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the permittee.

f. An authorized representative of the administrator shall terminate a cessation order by written notice to the permittee when the representative determines that all conditions, practices or violations listed in the order have been abated. Termination shall not affect the right of the division to assess civil penalties for those violations under rule 27—40.74(207).

g. Within 60 days after the issuance of a cessation order, the division shall notify in writing any person who has been identified under 27—40.32(207), 30 CFR 774.12, and 27—40.34(207), 30 CFR 778.11(c) and (d), as owning or controlling the permittee, that the cessation order was issued and that the person has been identified as an owner or controller.

40.73(3) Notices of violation.

a. An authorized representative of the administrator shall issue a notice of violation if, on the basis of a State inspection carried out during the enforcement of a State program, the representative finds a violation of Iowa Code chapter 207, these rules, or any condition of a permit or an exploration approval imposed under such program, Iowa Code chapter 207, or these rules, which does not create an imminent danger or harm for which a cessation order must be issued under subrule 40.73(2).

b. A notice of violation shall be in writing signed by the authorized representative who issues it, and shall set forth with reasonable specificity:

- (1) The nature of the violation;
- (2) The remedial action required, which may include interim steps;
- (3) A reasonable time for abatement, which may include time for accomplishment of interim steps;

and

(4) A reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies.

c. An authorized representative of the administrator may extend the time set for abatement or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the permittee. The total time for abatement under a notice of violation, including all extensions, shall not exceed 90 days from the date of issuance, except upon a showing by the permittee that it is not feasible to abate the violation within 90 calendar days due to one or more of the circumstances in paragraph “*f*” of this subrule. An extended abatement date pursuant to this subrule shall not be granted when the permittee’s failure to abate within 90 days has been caused by lack of diligence or intentional delay by the permittee in completing the remedial action required.

d. If the permittee fails to meet the time set for abatement the authorized representative shall issue a cessation order under 40.73(2)“*b.*”

If the permittee fails to meet the time set for accomplishment of any interim step, the authorized representative may issue a cessation order under 40.73(2)“*b.*”

e. An authorized representative of the administrator shall terminate a notice of violation by written notice to the permittee when it is determined that all violations listed in the notice of violation have been abated. Termination shall not affect the right of the division to assess civil penalties for those violations under rule 27—40.74(207).

f. Circumstances which may qualify a surface coal mining operation for an abatement period of more than 90 days are:

(1) Where the permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans but such permit or approval has not been or will not be issued within 90 days after a valid permit expires or is required, for reasons not within the control of the permittee;

(2) Where there is a valid judicial order precluding abatement within 90 days as to which the permittee has diligently pursued all rights of appeal and as to which the permittee has no other effective legal remedy;

(3) Where the permittee cannot abate within 90 days due to a labor strike;
(4) Where climatic conditions preclude abatement within 90 days, or where, due to climatic conditions, abatement within 90 days clearly would cause more environmental harm than it would prevent; or

(5) Where abatement within 90 days requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act of 1977.

g. Whenever an abatement time in excess of 90 days is permitted, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public or the environment.

h. If any of the conditions in paragraph “*f*” of this subrule exist, the permittee may request the authorized representative to grant an abatement period exceeding 90 days. The authorized representative shall not grant such an abatement period without the concurrence of the administrator or designee and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The permittee shall have the burden of establishing by clear and convincing proof that the permittee is entitled to an extension under the provisions of 40.73(3) “*c*” and “*f*.” In determining whether or not to grant an abatement period exceeding 90 days, the authorized representative may consider any relevant written or oral information from the permittee or any other source. The authorized representative shall promptly and fully document in the file the reasons for granting or denying the request. The authorized representative’s immediate supervisor shall review this document before concurring in or disapproving the extended abatement date and shall promptly and fully document the reasons for concurrence or disapproval in the file.

i. Any determination made under paragraph “*h*” of this subrule shall contain a right of appeal to the division in accordance with Iowa Code section 207.14.

j. No extension granted under paragraph “*h*” of this subrule may exceed 90 days in length. Where the condition or circumstance which prevented abatement within 90 days exists at the expiration of any such extension, the permittee may request a further extension in accordance with the procedures of paragraph “*h*” of this subrule.

40.73(4) *Suspension or revocation of permits.*

a. Order for show cause:

(1) The administrator shall issue an order to a permittee requiring the permittee to show cause why the permit and right to mine under Iowa Code chapter 207 should not be suspended or revoked, if the administrator determines that a pattern of violations of any requirements of Iowa Code chapter 207, these rules, or any permit condition required by Iowa Code chapter 207 exists or has existed, and that the violations were caused by the permittee willfully or through unwarranted failure to comply with those requirements or conditions. Violations by any person conducting surface coal mining operations on behalf of the permittee shall be attributed to the permittee, unless the permittee establishes that they were acts of deliberate sabotage.

(2) The administrator may determine that a pattern of violations exists or has existed, based upon two or more State inspections of the permit area within any 12-month period, after considering the circumstances, including:

- The number of violations, cited on more than one occasion, of the same or related requirements of Iowa Code chapter 207, these rules, or the permit;
- The number of violations, cited on more than one occasion, of different requirements of Iowa Code chapter 207, these rules, or the permit; and
- The extent to which the violations were isolated departures from lawful conduct.

(3) The administrator shall promptly review the history of violations of any permittee who has been cited for violations of the same or related requirements of Iowa Code chapter 207, these rules, or the permit during three or more State inspections of the permit area within any 12-month period. If, after such review, the administrator determines that a pattern of violations exists or has existed, the administrator shall issue an order to show cause as provided in paragraph “*a*,” subparagraph (1), of this subrule.

b. If the permittee files an answer to the show cause order and requests a hearing under Iowa Code section 207.14, a public hearing shall be provided. The division shall give 30 days’ written notice of

the date, time and place of the hearing to the permittee, and any intervenor. Upon receipt of the notice, the administrator shall publish it, if practicable, in a newspaper of general circulation in the area of the surface coal mining and reclamation operations and shall post it in the division.

c. Within 60 days after the hearing, and within the time limits set forth in Iowa Code section 207.14, the division shall issue a written determination as to whether a pattern of violations exists and, if appropriate, an order. If the division revokes or suspends the permit and the permittee's right to mine under Iowa Code chapter 207, the permittee shall immediately cease surface coal mining operations on the permit area and shall:

(1) If the permit and the right to mine under Iowa Code chapter 207 are revoked, complete reclamation within the time specified in the order; or

(2) If the permit and the right to mine under Iowa Code chapter 207 are suspended, complete all affirmative obligations to abate all conditions, practices, or violations as specified in the order.

d. Whenever a permittee fails to abate a violation contained in a notice of violation or cessation order within the abatement period set in the notice or order or as subsequently extended, the administrator shall review the permittee's history of violations to determine whether a pattern of violations exists pursuant to this subrule, and shall issue an order to show cause as appropriate pursuant to subrule 40.73(4), paragraph "a," subparagraph (1).

40.73(5) *Service of notices of violation, cessation orders, and show cause orders.*

a. A notice of violation, cessation order, or show cause order shall be served on the person to whom it is directed or the person's designated agent promptly after issuance as follows:

(1) By tendering a copy at the coal exploration or surface coal mining and reclamation operation to the designated agent or to the individual who, based upon reasonable inquiry, appears to be in charge. If no such individual can be located at the site, a copy may be tendered to any individual at the site who appears to be an employee or agent of the person to whom the notice or order is issued. Service shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept.

(2) As an alternative to paragraph "a," subparagraph (1), of this subrule, service may be made by sending a copy of the notice or order by certified mail or by hand to the permittee or designated agent. Service shall be complete upon tender of the notice or order or of the mail and shall not be deemed incomplete because of refusal to accept.

b. Designation by any person of an agent for service of notices and orders shall be made in writing to the division.

c. The division may furnish copies of notices and orders to any person having an interest in the coal exploration, surface coal mining and reclamation operation, or the permit area.

40.73(6) *Informal public hearing.*

a. Except as provided in paragraphs "b" and "c" of this subrule, a notice of violation or cessation order which requires cessation of mining, expressly or by necessary implication, shall expire within 30 days after it is served unless an informal public hearing has been held within that time. The purpose of the hearing is to provide the division with information needed to decide whether or not to extend the cessation of mining. The hearing shall be held at or reasonably close to the mine site so that it may be viewed during the hearing or at any other location acceptable to the division and the person to whom the notice or order was issued. The division office shall be deemed to be reasonably close to the mine site unless a closer location is requested and agreed to by the division. Expiration of a notice or order shall not affect the division's right to assess civil penalties with respect to the period during which the notice or order was in effect. No hearing will be required where the condition, practice, or violation in question has been abated or the hearing has been waived. For purposes of this subrule only, "mining" includes (1) extracting coal from the earth or from coal waste piles and transporting it within or from the permit area, and (2) the processing, cleaning, concentrating, preparing or loading of coal where such operations occur at a place other than at a mine site.

b. A notice of violation or cessation order shall not expire as provided in paragraph "a" of this subrule if the informal public hearing has been waived, or if, with the consent of the person to whom the

notice or order was issued, the informal public hearing is held later than 30 days after the notice or order was served. For purposes of this subrule:

(1) The informal public hearing will be deemed waived if the person to whom the notice or order was issued:

- Is informed, by written notice served in the manner provided in paragraph “b,” subparagraph (2), of this subrule, that the person will be deemed to have waived an informal public hearing unless one is requested within 30 days after service of the notice; and

- Fails to request an informal public hearing within that time.

(2) The written notice referred to in subrule 40.73(6) “b”(1) shall be delivered to such person by an authorized representative or sent by certified mail to such person no later than five days after the notice or order is served on such person.

(3) The person to whom the notice or order is issued shall be deemed to have consented to an extension of the time for holding the informal public hearing if a request is received on or after the twenty-first day after service of the notice or order. The extension of time shall be equal to the number of days elapsed after the twenty-first day.

c. The division shall give as much advance notice as is practicable of the time, place, and subject matter of the informal public hearing to:

(1) The person to whom the notice or order was issued; and

(2) Any person who filed a report which led to that notice or order.

d. The division shall also post notice of the hearing in the division and, where practicable, publish it in a newspaper of general circulation in the area of the mine.

e. Iowa Code chapter 17A regarding requirements for formal adjudicatory hearings shall not govern informal public hearings. An informal public hearing shall be conducted by a representative of the division, who may accept oral or written arguments and any other relevant information from any person attending.

f. Within five days after the close of the informal public hearing, the division shall affirm, modify, or vacate the notice or order in writing. The decision shall be sent to:

(1) The person to whom the notice or order was issued; and

(2) Any person who filed a report which led to the notice or order.

g. The granting or waiver of an informal public hearing shall not affect the right of any person to formal review under Iowa Code section 207.14 or 207.15.

h. The person conducting the hearing for the division shall determine whether or not the mine site should be viewed during the hearing. In making this determination the only consideration shall be whether a view of the mine site will assist the person conducting the hearing in reviewing the appropriateness of the enforcement action or of the required remedial action.

40.73(7) Formal review of citations.

a. A person issued a notice of violation or cessation order under subrule 40.73(2) or 40.73(3), or a person having an interest which is or may be adversely affected by the issuance, modification, vacation or termination of a notice or order, may request review of that action by filing an application for review and request for hearing under Iowa Code section 207.14 within 30 days after receiving notice of the action.

b. The filing of an application for review and request for a hearing under this subrule shall not operate as a stay of any notice or order, or of any modification, termination or vacation of either.

40.73(8) Inability to comply.

a. No cessation order or notice of violation issued under this Part 7 may be vacated because of inability to comply.

b. Inability to comply may not be considered in determining whether a pattern of violations exists.

c. Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of civil penalty under rule 27—40.74(207) and of the duration of the suspension of a permit under 40.73(4) “c.”

40.73(9) Compliance conference.

a. A permittee may request an on-site compliance conference with an authorized representative to review the compliance status of any condition or practice proposed at any coal exploration or surface coal mining and reclamation operation. Any such conference shall not constitute an inspection within the meaning of Iowa Code section 207.13.

b. The division may accept or refuse any request to conduct a compliance conference under paragraph “*a*” of this subrule. Where the division accepts such a request, reasonable notice of the scheduled date and time of the compliance conference shall be given to the permittee.

c. The authorized representative at any compliance conference shall review such proposed conditions and practices as the permittee may request in order to determine whether any such condition or practice may become a violation of any requirement of Iowa Code chapter 207 or any applicable permit or exploration approval.

d. Neither the holding of a compliance conference under this subrule nor any opinion given by the authorized representative at such a conference shall affect:

(1) Any rights or obligations of the division or of the permittee with respect to any inspection, notice of violation or cessation order, whether prior or subsequent to such conference; or

(2) The validity of any notice of violation or cessation order issued with respect to any condition or practice reviewed at the compliance conference.

27—40.74(207) Civil penalties. The following is incorporated by reference: 30 CFR Part 845, as in effect on July 1, 2010, with the following exceptions:

40.74(1) Delete from 30 CFR 845.13(b)(1) the words “One point shall be assigned for each past violation contained in a notice of violation” and insert the words “One point shall be assigned for each past notice of violation of a similar nature”.

40.74(2) Delete 30 CFR 845.1.

40.74(3) Delete from 30 CFR 845.2 the words “section 518 of the Act” and insert the words “Iowa Code section 207.15”.

Delete from 30 CFR 845.15(b) the words “section 521(a) of the Act” and insert the words “Iowa Code section 207.14”.

Delete from 30 CFR 845.15(b)(1)(i) the words “section 525(c) of the Act” and insert the words “Iowa Code section 207.14, subsection 7”.

Delete from 30 CFR 845.15(b)(1)(ii) the words “section 526 of the Act” and “section 526(c) of the Act” and insert the words “Iowa Code section 207.15”.

Delete from 30 CFR 845.15(b)(2) the words “section 518(e), 518(f), 521(a)(4), or 521(c) of the Act” and insert the words “Iowa Code sections 207.15(6), 207.15(7), 207.14(3) or 207.14(8)”, respectively.

Delete from 30 CFR 845.15(b)(1)(i) the words “Office of Hearings and Appeals” and insert the word “division”.

40.74(4) Delete from 30 CFR 845.17(c) the phrase “Unless a conference has been requested,” and add a new sentence to the end of the paragraph that reads “The reassessment shall be served as a Notice of Assessment.”

40.74(5) “Procedures for assessment conference” are created by deleting 30 CFR 845.18 and establishing procedures for the same in this subrule.

a. The division will arrange for an assessment conference to review the Notice of Assessment, upon written request of the person to whom notice or order was issued, if the request is received within 30 days from the date the Notice of Assessment is mailed.

b. The division administrator or the administrator’s designee shall hold the assessment conference.

(1) The assessment conference shall be considered an informal proceeding and shall not be governed by Iowa Code chapter 17A, regarding requirements for formal adjudicatory hearings. The assessment conference shall be held within 60 days of the date the conference request is received or the end of the abatement period, whichever is later. However, failure by the division to hold such a conference within 60 days from the date of the conference request shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed proves actual prejudice as a result of the delay.

(2) The division shall post notice of the time and place of the conference at least five days prior to the conference. Any person shall have a right to attend and participate in the conference.

(3) The division administrator or the administrator's designee shall consider all relevant information on the violation. Within 30 days after the conference is held, the division shall either:

- Settle the issues, in which case a settlement agreement shall be prepared and signed by the permittee and the division; or

- Affirm, raise, lower, or vacate the penalty.

c. The division shall promptly serve the person assessed with a notice of the agency's action in the manner provided in 30 CFR 845.17(b), and shall provide a worksheet if the penalty has been raised or lowered. The reasons for the conference officer's actions shall be fully documented in the file.

d. Terms of settlement agreement.

(1) If a settlement agreement is entered into, the person assessed will be deemed to have waived all rights to further review of the violation or penalty in question except as otherwise expressly provided for in the settlement agreement. The settlement agreement shall contain a clause to this effect.

(2) If full payment of the amount specified in the settlement agreement is not received by the division within 30 days after the date of signing the settlement agreement, the division may enforce the agreement or rescind it and either affirm, raise, lower, or vacate the penalty within 30 days from the date of the decision.

e. The division may terminate the conference when the administrator or the administrator's designee determines that the issues cannot be resolved or that the person assessed is not diligently working toward resolution of the issues.

f. No evidence as to statements made or evidence produced by one party at a conference shall be introduced as evidence by another party or to impeach a witness at a subsequent contested case or judicial proceeding.

40.74(6) Procedures to prepare a Request for a Hearing are created by deleting 30 CFR 845.19 and establishing procedures for the same in this subrule.

a. The person charged with the violation may contest the proposed penalty or the fact of the violation by submitting a petition and an amount equal to the proposed penalty, or if a conference has been held, the reassessed or affirmed penalty to the division (to be held in escrow as provided for in paragraph "b" of this subrule) within 30 days of receipt of the proposed assessment or reassessment or 30 days from the date of service of the division's action, whichever is later. The fact of the violation may not be contested if it has been decided in a review proceeding commenced under subrule 40.73(7).

b. The division shall hold all funds submitted under paragraph "a" of this subrule in an interest-bearing escrow fund, pending completion of the administrative and judicial review process, at which time funds shall be disbursed as provided in subrule 40.74(7). Interest shall accrue at the prevailing earnings rate for the fiscal year for the pooled investment fund of the State of Iowa.

40.74(7) Procedures for determining Final Assessment are created by deleting 30 CFR 845.20 and establishing procedures for the same in this subrule.

a. If the person to whom a notice of violation or cessation order is issued fails to request a hearing as provided in 40.74(6) "a," the Notice of Assessment shall become a final order of the division and the penalty assessed shall become due and payable upon expiration of the time allowed to request a hearing.

b. If any party requests judicial review of a final order of the division, the proposed penalty shall continue to be held in escrow until completion of the review.

c. If the final decision in the administrative and judicial review results in an order reducing or eliminating the proposed penalty assessed under this subrule, the division shall within 30 days of receipt of the order refund to the person assessed all or part of the escrowed amount, with interest from the date of payment into escrow to the date of the refund.

d. If the review results in an order increasing the penalty, the person or entity to whom the notice or order was issued shall pay the difference to the division within 15 days after the order is mailed to such person.

40.74(8) Use of civil penalties for reclamation. In accordance with Iowa Code section 207.10(6), the division may expend funds collected from civil penalties to perform reclamation work on sites where the bond has been forfeited and additional funds are needed to complete the reclamation of the site.

40.74(9) Delete 845.21.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.75(207) Individual civil penalties. The following is adopted by reference: 30 CFR Part 846, as in effect on July 1, 2010, with the following exceptions:

40.75(1) Delete 30 CFR 846.1.

40.75(2) Reserved.

40.75(3) Delete 30 CFR 846.17(b)(1) and insert in lieu thereof:

(1) The individual files within 30 days of service of the notice of proposed individual civil penalty assessment a petition for review with the administrator; or

40.75(4) Delete 30 CFR 846.17(c) and insert in lieu thereof the following:

(c) Service. For purposes of this subrule, service is sufficient if it would satisfy Division III of the Iowa rules of civil procedure for service of an original notice and petition.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.76 to 40.79 Reserved.

PART 8
COAL MINING—BLASTER CERTIFICATION

27—40.80 Reserved.

27—40.81(207) Permanent regulatory program requirements—standards for certification of blasters. The following is incorporated by reference: 30 CFR Part 850, as in effect on July 1, 2010, with the following exceptions:

40.81(1) Amend 30 CFR 850.15 by adding paragraph (f) as follows:

(f) Reciprocal certification.

(1) The division may issue an Iowa blaster certificate to a qualified applicant who holds a valid blaster's certification granted by the Office of Surface Mining Reclamation and Enforcement (OSMRE).

(2) The division may issue an Iowa blaster certificate through reciprocity to a qualified applicant that holds a valid State blaster's certification granted by a State regulatory authority under OSMRE approved blaster certification and regulatory program.

(3) A reciprocal blaster's certification issued in Iowa will expire on the same date as the expiration of the original State's certification. Renewal will be by reexamination.

(4) Blaster's certification from other states will not be honored or recognized in Iowa except by reciprocal issuance as outlined in this rule. Blasters from states without OSMRE approved blaster certification may become certified in Iowa by passing the Iowa certification test.

40.81(2) Delete 30 CFR 850.10.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.82(207) Certification of blasters. The following is incorporated by reference: 30 CFR Part 955, as in effect on July 1, 2010, with the following exceptions:

40.82(1) Delete 30 CFR 955.1 and 955.2.

40.82(2) Delete 30 CFR 955.13(a)(1) and (2).

40.82(3) Delete 30 CFR 955.10.

40.82(4) Delete from 30 CFR 955.5 the definition of "Reciprocity" and delete 30 CFR 955.16.

40.82(5) Delete from 30 CFR 955.17(c) the phrase "to the Department of the Interior Board of Land Appeals under 43 CFR 4.1280 and 4.1286" and insert in lieu thereof the phrase "as a contested case action pursuant to Iowa Code chapter 17A".

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.83 to 40.89 Reserved.

PART 9
COAL MINING—CONTESTED CASES AND PUBLIC HEARINGS

27—40.90 Reserved.

27—40.91(17A,207) Procedural rules—contested cases and public hearings. These rules shall govern procedures in contested cases, as defined in Iowa Code section 17A.2(2), and public hearings required to be held pursuant to the provisions of Iowa Code chapter 207.

27—40.92(17A,207) Contested cases. Contested cases include, but are not limited to, the following:

40.92(1) An appeal of a decision to grant or deny a permit pursuant to Iowa Code sections 207.4 and 207.5; approval or failure to approve a transfer pursuant to Iowa Code section 207.12(5); appeal of a decision of the division on an application for coal exploration pursuant to Iowa Code section 207.18.

40.92(2) Permit suspension or revocation proceedings pursuant to Iowa Code sections 207.14(3) and 207.14(4).

40.92(3) Review of a notice or order pursuant to Iowa Code section 207.14(7).

40.92(4) Employee discrimination complaints pursuant to Iowa Code section 207.28.

40.92(5) Suspension or revocation of a mining license pursuant to Iowa Code section 207.3.

40.92(6) Bond forfeiture proceedings pursuant to Iowa Code section 207.14.

40.92(7) Appeal of the determination by the division of the amount of a bond pursuant to Iowa Code section 207.10.

40.92(8) A request to conduct mining in areas where otherwise prohibited by Iowa Code section 207.8 and 30 CFR 761.11, revised July 1, 2010.

40.92(9) A petition requesting designation of an area as unsuitable for mining, or termination of such a designation, pursuant to Iowa Code section 207.8 and rule 27—40.23(207).

40.92(10) Review of a civil penalty pursuant to Iowa Code section 207.15.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.93(17A,207) Commencement of proceeding. A notice of order by the division shall be served as in civil actions, delivered by certified mail, or personally served by a division employee with a signed acknowledgment of receipt being taken from an employee or agent of the permittee. In bond forfeiture, the surety shall also be served.

27—40.94(17A,207) Appeals of division notices and orders.

40.94(1) An appeal of a notice or order for which a contested case hearing is requested shall be mailed or personally delivered to the administrator and:

a. Shall be made in writing and signed by the requesting party or representative;

b. Shall identify the notice or order being appealed;

c. Shall be served in a timely manner as stated in Iowa Code section 207.14;

d. May state other relevant information as desired by the requesting party.

40.94(2) In a bond forfeiture proceeding a copy of the notice of appeal shall be served to the surety.

40.94(3) Upon receipt of an appeal, the administrator shall assign a docket number to the appeal as follows: D.S.C. (coal) (State fiscal year in which received)—(number, being consecutively numbered in each year).

27—40.95(17A,207) Prehearing motions. To the greatest extent possible and not inconsistent with Iowa Code chapters 17A and 207, prehearing motions may be filed and ruled upon in a manner consistent with the Iowa rules of civil procedure. In considering a prehearing motion, the administrative law judge may consider the practicality of receiving evidence or consolidating the motion into the full evidentiary hearing.

27—40.96(17A,207) Issuance of notices of hearing.

40.96(1) A hearing date shall be set upon the request of the division or any party and shall be arranged by the division through the department of inspections and appeals. The department of inspections and appeals shall assign an administrative law judge to the proceeding. The request shall be served to all parties of record.

40.96(2) The administrative law judge shall issue notice of hearing to all parties at least 30 days prior to the date of hearing, unless an earlier date is agreed to by all parties.

40.96(3) The notice of hearing shall conform to Iowa Code section 17A.12(2).

27—40.97(17A,207) Hearing procedures.

40.97(1) An administrative law judge selected pursuant to Iowa Code section 17A.11 shall preside at all contested cases.

40.97(2) Oral proceedings of a contested case shall be recorded by electronic or mechanized means or by certified shorthand reporters.

27—40.98(17A,207) Posthearing procedures.

40.98(1) Within 20 days of the conclusion of the hearing, each party may file with the administrative law judge and all parties of record proposed findings of fact, conclusions of law, a proposed order, or a brief in support of specified findings and conclusion. Said brief shall contain all arguments concerning evidentiary rulings made during hearing or challenges to the jurisdiction of the division to conduct the hearing and order the relief requested by the division or a party of record.

40.98(2) Within 20 days of receipt of proposed findings of fact, conclusions of law, order, or brief, parties may file a brief responding to opposing briefs, and may submit additional proposed findings of fact, conclusions of law, or order.

27—40.99(17A,207) Decision of the administrative law judge, procedure in appeals before the committee, extensions of time, public hearings, and judicial review of the committee decision.

40.99(1) *Decision of the administrative law judge.*

a. Decisions of the administrative law judge shall conform to the provisions of Iowa Code section 17A.16(1).

b. A decision of the administrative law judge is a proposed decision pursuant to Iowa Code section 17A.15(2).

c. An appeal to the committee may be initiated by the division or a party of record by filing with the administrator, and serving on all parties, a written statement captioned “Notice of Appeal to the State Soil Conservation and Water Quality Committee,” which shall also state the number of the notice or order involved in the hearing and the docket number assigned by the administrator to the contested case proceeding.

d. Appeal of the decision of the administrative law judge shall be made pursuant to Iowa Code section 17A.15(3). If an application for a rehearing has been filed, appeal to the committee shall be made within 30 days after the issuance of a decision after rehearing, a decision denying a rehearing, or the date on which the rehearing is deemed denied pursuant to Iowa Code section 17A.16(2).

40.99(2) *Procedure in appeals before the committee.*

a. An appeal before the committee shall be conducted according to the provisions of Iowa Code section 17A.15(3).

b. The administrator shall set a date for the committee hearing at least 30 days after receipt of the notice of appeal to the committee.

c. A decision of the committee shall be issued within 60 days of the close of the hearing before them.

40.99(3) *Extensions of time.* The period of time in which an action is required by Part 9 of these rules may be extended for good cause by the administrative law judge or the committee, as appropriate.

40.99(4) Public hearings. Public hearings, also referred to as informal conferences, are held by the division to gather information prior to making a decision regarding the approval of a permitting action, issues relating to lands unsuitable for mining, or the extension of cessation of mining.

The administrator or designee shall act as the administrative law judge.

The division will provide notice to the public by publishing in a newspaper of local circulation at least 14 days prior to the hearing the following: purpose of the hearing, the place, date, and time of the hearing.

40.99(5) Judicial review of committee decision. Judicial review of a decision of the committee shall be in accordance with Iowa Code chapter 17A. In the case of judicial review of a civil penalty assessment, the petitioner shall post a bond in the district court equal to the amount of the assessed penalty or shall deposit a sum equal in amount to the assessed penalty in an interest-bearing escrow fund approved by the division, as required under Iowa Code section 207.15.

[ARC 3243C, IAB 8/2/17, effective 9/6/17]

PART 10
COAL MINING—FORMS

Reserved

These rules are intended to implement Iowa Code chapter 207.

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[Filed ARC 3243C (Notice ARC 3086C, IAB 6/7/17), IAB 8/2/17, effective 9/6/17]

¹ Effective date of 780—Ch 4 delayed 70 days by the Administrative Rules Review Committee.

CHAPTERS 41 to 49
Reserved

CHAPTER 50
IOWA ABANDONED MINED LAND RECLAMATION PROGRAM
[Prior to 12/28/88, see Soil Conservation Department, 780—Ch 27]

27—50.1 to 50.9 Reserved.

27—50.10(207) Authority and scope. This chapter establishes procedures and standards to be followed by the division of soil conservation and water quality, Iowa department of agriculture and land stewardship, in accordance with the policies of the state soil conservation and water quality committee, to participate in the federal abandoned mined land and reclamation program as established in the Surface Mining Control and Reclamation Act of 1977, Public Law 95-87, and Iowa Code chapter 207.

These rules will also provide for the establishment of a state abandoned mined land fund for use in conducting the Iowa abandoned mined land reclamation program, and will also establish authority for the division to request, receive and administer grant moneys for use in the program.

[ARC 2192C, IAB 10/14/15, effective 11/18/15; ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—50.11(207) Rules or subrules are severable. If any provision of a rule or subrule or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rule or subrule which can be given effect without invalid provision or application, and to this end the provisions of these rules or subrules are severable.

27—50.12 to 50.19 Reserved.

27—50.20(207) Definition of terms.

50.20(1) “*Emergency*” means a sudden danger or impairment that presents a high probability of substantial physical harm to the health, safety or general welfare of people before the danger can be abated under normal program operation procedures.

50.20(2) “*Extreme danger*” means a condition that could reasonably be expected to cause substantial physical harm to persons, property, or the environment and to which persons or improvements on real property are currently exposed.

50.20(3) “*Reclamation activities*” means restoration, reclamation, abatement, control or prevention of adverse effects of mining.

50.20(4) “*State reclamation program*” or “*program*” means a program established by the division in this chapter for reclamation of land and water adversely affected by past mining, including the reclamation plan and annual applications for grants under the plan.

50.20(5) “*State abandoned mined land fund*” or “*fund*” means a separate fund established by the division for the purpose of accounting for moneys granted by the director of the office of surface mining reclamation and enforcement (OSM) under an approved state reclamation program and other moneys authorized by these rules to be deposited in the fund.

50.20(6) “*Left or abandoned in either an unreclaimed or inadequately reclaimed condition*” means land and water:

a. Where all mining processes ceased and no current permit for continuing operations existed as of August 3, 1977, or, if a permit did exist on that date, but all mining processes had ceased, it has since lapsed and has not been renewed or superseded by a new permit as of the date of the request for reclamation assistance; and

b. Which continue in their present condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of the land or water resources, or endanger the health or safety of the public.

27—50.21 to 50.29 Reserved.

27—50.30(207) State abandoned mined land fund. Revenue to the fund shall include:

50.30(1) Amounts granted to the state by OSM for purpose of conducting the Iowa reclamation plan.

50.30(2) Moneys collected by the state from charges for uses of land acquired or reclaimed with moneys from the fund.

50.30(3) Moneys recovered by the state through the satisfaction of liens filed against privately owned lands reclaimed with moneys from the fund.

50.30(4) Moneys recovered by the state from the sale of lands acquired with moneys from the fund.

50.30(5) Such other moneys as the state decides should be deposited in the fund for use in carrying out the Iowa abandoned mined land program.

27—50.31 to 50.39 Reserved.

27—50.40(207) Eligible lands and water.

50.40(1) Coal mined lands and associated waters are eligible for reclamation activities if:

- a. They were mined or affected by mining processes;
- b. They were mined prior to August 3, 1977, and left or abandoned in either an unreclaimed or inadequately reclaimed condition; and
- c. There is no continuing responsibility for reclamation by the operator, permittee or agent of the permittee under statutes of the state or federal government, or the state as a result of bond forfeiture. Bond forfeiture will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation.

50.40(2) Lands and water which were mined or affected by mining for minerals and materials other than coal shall be eligible for reclamation activities if:

- a. The conditions of subrule 50.40(1) have been met;
- b. The reclamation has been requested by the governor;
- c. All reclamation with respect to abandoned coal mined land and water has been accomplished within the state or the reclamation is necessary for the protection of the public health and safety.

27—50.41 to 50.49 Reserved.

27—50.50(207) Reclamation objectives and priorities.

50.50(1) Reclamation projects shall reflect the priorities set out in Section 403 of Public Law 95-87 (30 U.S.C. 1233) and should be accomplished in accordance with OSM's "Final Guidelines for Reclamation Programs and Projects" (45 FR 14810-14819, March 6, 1980).

50.50(2) Reclamation of eligible noncoal mined lands and waters shall comply with the provisions of Section 409 of Public Law 95-87 (30 U.S.C. 1239).

27—50.51 to 50.59 Reserved.

27—50.60(207) Reclamation project evaluation. Proposed reclamation projects and completed reclamation work shall be evaluated in terms of the factors stated in this rule. The factors shall be used to determine whether or not proposed reclamation will be undertaken and to assign priorities to proposals intended to meet the same objective as 27—50.50(207). Completed reclamation shall be evaluated in terms of the factors set forth below as a means of identifying conditions which should be avoided, corrected, or improved in plans for future reclamation work. The factors shall include:

50.60(1) The need for reclamation work to accomplish one or more specific reclamation objectives.

50.60(2) The availability of technology to accomplish the reclamation work with reasonable assurance of success. In the case of research and demonstration projects, the research capability and plans shall provide reasonable assurance of beneficial results without residual adverse impacts.

50.60(3) The specific benefits of reclamation which are desirable in the area in which the work will be carried out. Benefits to be considered include but are not limited to:

- a. Protection of human life, health, or safety.
- b. Protection of the environment, including air and water quality, abatement of erosion sedimentation, fish, wildlife, and plant habitat, visual beauty, historic or cultural resources and recreation resources.

- c.* Protection of public or private property.
- d.* Abatement of adverse social and economic impacts of past mining on persons or property including employment, income, and land values or uses, or assistance to persons disabled, displaced or dislocated by past mining practices.
- e.* Improvement of environmental conditions which may be considered to generally enhance the quality of human life.
- f.* Improvement of the use of natural resources, including postreclamation land uses which:
 - 1. Increase the productive capability of the land to be reclaimed.
 - 2. Enhance the use of surrounding lands consistent with existing land use plans.
 - 3. Provide for construction or enhancement of public facilities.
 - 4. Provide for residential, commercial, or industrial developments consistent with the needs and plans of the community in which the site is located.
- g.* Demonstration to the public and industry of methods and technologies which can be used to reclaim areas disturbed by mining.

50.60(4) The acceptability of any additional adverse impacts to people or the environment that will occur during or after reclamation and of uncorrected conditions, if any, that will continue to exist after reclamation.

50.60(5) The costs of reclamation. Consideration shall be given to both the economy and efficiency of the reclamation work and to the results obtained or expected as a result of reclamation.

50.60(6) The availability of additional coal or other mineral or material resources within the project area which:

- a.* Results in a reasonable probability that the desired reclamation will be accomplished during the process of future mining; or
- b.* Requires special consideration to ensure that the resource is not lost as a result of reclamation and that the benefits of reclamation are not negated by subsequent, essential resource recovery operations.

50.60(7) The acceptability of postreclamation land uses in terms of compatibility with land uses in the surrounding area, consistency with applicable state, regional, and local land use plans and laws, and the needs and desires of the community to which the project is located.

50.60(8) The probability of postreclamation management, maintenance and control of the area consistent with the reclamation completed.

27—50.61 to 50.69 Reserved.

27—50.70(207) Consent to entry. The division shall take all reasonable actions to obtain written consent from the owner of record of the land or property to be entered in advance of such entry. The consent shall be in the form of a signed statement by the owner of record or their authorized agent which, as a minimum, includes a legal description of the land to be entered, the projected nature of work to be performed on the lands and any special conditions for entry. This statement shall not include any commitment by the division to perform reclamation work nor to compensate the owner for entry.

27—50.71 to 50.79 Reserved.

27—50.80(207) Entry for studies or exploration.

50.80(1) The division or its agents, employees, or contractors, shall have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and the feasibility of restoration, reclamation, abatement, control, or prevention of such adverse effects.

50.80(2) If the owner of the land to be entered under this section will not provide consent to entry, the division shall give notice in writing to the owner of its intent to enter for purposes of study and exploration to determine the existence of adverse effects of past coal mining practices which may be harmful to the public health, safety, or general welfare. The notice shall be by mail, return receipt requested, to the owner, if known, and shall include a statement of the reasons why entry is believed necessary. If the

owner is not known, or the current mailing address of the owner is not known, or the owner is not readily available, the notice shall be posted in one or more places on the property to be entered where it is readily visible to the public and advertised once in a newspaper of general circulation in the locality in which the land is located. Notice shall be given at least 30 days before entry.

27—50.81 to 50.89 Reserved.

27—50.90(207) Entry and consent to reclaim.

50.90(1) The division or its agents, employees, or contractors, may enter upon land to perform reclamation activities if the consent of the owner cannot be obtained.

50.90(2) Prior to entry under this rule, the division shall find in writing with support reasons that:

- a.* Land or water resources have been adversely affected by past coal mining practices;
- b.* The adverse effects have advanced, so that in the interest of the public health, safety, or the general welfare, action to restore, reclaim, abate, control or prevent should be taken; and
- c.* The owner of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices is not known or readily available; or
- d.* The owner will not give permission for the division, its agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.

50.90(3) The division shall give notice of its intent to enter for purposes of conducting reclamation at least 30 days before entry upon the property. The notice shall be in writing and shall be mailed, return receipt requested, to the owner, if known, with a copy of the findings required by this rule. If the owner is not known, or if the current mailing address of the owner is not known, notice shall be posted in one or more places on the property to be entered where it is readily visible to the public and advertised once in a newspaper of general circulation in the locality in which the land is located. The notice posted on the property and advertised in the newspaper shall include a statement of where the findings required by this rule may be inspected or obtained.

27—50.91 to 50.99 Reserved.

27—50.100(207) Land eligible for acquisition.

50.100(1) Land adversely affected by past coal mining practices may be acquired with moneys from the fund if approved in advance by OSM. OSM will determine if:

- a.* The acquired land will serve recreation, historic, conservation, or reclamation purposes, or provide open space benefits after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices; or
- b.* Permanent facilities such as a mine drainage treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

50.100(2) Coal refuse disposal sites and all coal refuse thereon may be acquired with moneys from the fund if approved in advance by OSM and if the acquisition of the land is necessary for successful reclamation and will serve the purposes of the program or if public ownership is desirable to meet an emergency situation and prevent reoccurrence of adverse effects of past coal mining practices.

50.100(3) The division shall acquire only such interests in the land as are necessary for the reclamation work planned or the postreclamation use of the land. Interest in improvements on the land, mineral rights, or associated water rights may be acquired if:

- a.* The interests are necessary to the reclamation work planned or the postreclamation use of the land; and
- b.* Adequate written assurance cannot be obtained from the owner of the severed interest that future use of the severed interest will not be in conflict with the reclamation to be accomplished.

27—50.101 to 50.109 Reserved.

27—50.110(207) Procedures for acquisition.

50.110(1) An appraisal of the fair market value of all land or interest in land to be acquired shall be obtained from a professional appraiser. The appraisal shall state the fair market value of the land as adversely affected by past mining and shall otherwise conform to the requirements of the handbook on “Uniform Appraisal Standards for Federal Land Acquisitions” (Interagency Land Acquisition Conference, 1973).

50.110(2) When practical, acquisition shall be by purchase from a willing seller. The amount paid for interests acquired shall reflect the fair market value of the interests as adversely affected by past mining.

50.110(3) When necessary, land or interests in land may be acquired by condemnation. Condemnation procedures shall not be started until all reasonable efforts have been made to purchase the land or interests in lands from a willing seller.

27—50.111 to 50.119 Reserved.

27—50.120(207) Acceptance of gifts of land.

50.120(1) The division may accept donations of title to land or interest in land that is necessary for reclamation activities. A donation shall not be accepted if the terms or conditions of acceptance are inconsistent with the objectives or requirements of the program.

50.120(2) Offers to make a gift of the land or interests in land shall be in writing and shall include:

- a.* A statement of the interest which is being offered.
- b.* A legal description of the land and a description of any improvements on it.
- c.* A description of any limitations on the title or conditions as to the use or disposition of the land existing or to be imposed by the donor.
- d.* A statement that:
 1. The donor is the record owner of interest being offered.
 2. The interest offered is free and clear of all encumbrances except as clearly stated in the offer.
 3. There are no adverse claims against the interest offered.
 4. There are not unredeemed tax deeds outstanding against the interest offered.
 5. There is no continuing responsibility by the operator under state or federal statutory law for reclamation.
- e.* An itemization of any unpaid taxes or assessments levied, assessed or due which could operate as a lien on the interest offered.

50.120(3) If the offer is accepted, a deed of conveyance shall be executed, acknowledged and recorded. The deed shall state that it is made “as a gift under the Surface Mining Control and Reclamation Act of 1977, Public Law 95-87, and Iowa Code chapter 207.” Title to donated land shall be in the name of the state of Iowa.

27—50.121 to 50.129 Reserved.

27—50.130(207) Management of acquired lands.

50.130(1) Land acquired under this rule may be used pending disposition under rule 50.140(207) for any lawful purpose that is not inconsistent with the reclamation activities and postreclamation uses for which it was acquired.

50.130(2) Any user of land acquired under this part shall be charged a use fee. The fee shall be determined on the basis of the fair market value of the benefits granted to the user, charges for comparable uses within the surrounding area, or the cost to the state for providing the benefit, whichever is appropriate. The division may waive the fee if found in writing that such a waiver is in the public interest.

50.130(3) All use fees collected shall be deposited in the state abandoned mined land fund, unless previously appropriated or otherwise authorized by the general assembly, for the specific purpose of operating and maintaining improvement of the land.

27—50.131 to 50.139 Reserved.

27—50.140(207) Disposition of reclaimed lands.

50.140(1) Prior to disposition of any acquired land, the division shall publish a notice which describes the proposed disposition of the land in a newspaper of general circulation in the area where the land is located for a minimum of four successive weeks. The notice shall provide at least 30 days for public comment and state where copies of plans for disposition of the land may be obtained or reviewed and the address to which comments on the plans should be submitted. The notice shall also state that a public hearing will be held if requested by a person.

50.140(2) The division may transfer administrative responsibility for land acquired under this part to any agency or political subdivision of the state with or without cost to that agency. The agreement, including amendments, under which a transfer is made shall specify:

a. The purposes for which the land may be used consistent with the authorization under which the land was acquired; and

b. That the administrative responsibility for the land will revert to the division if, at any time in the future, the land is not used for the purposes specified.

50.140(3) The division may transfer title to abandoned and unreclaimed land to the United States to be reclaimed and administered by OSM, and maintain a preference right to purchase land from OSM after reclamation is completed. The price shall be the fair market value of the land in its reclaimed condition less any portion of the land acquisition price paid by the division.

50.140(4) The division may sell land acquired under this part by public sale if the land is suitable for industrial, commercial, residential, or recreational development and if the development is consistent with local, state or federal land use plans for the area in which the land is located.

a. Land shall be sold by public sale only if it is found that retention by the state or disposal under other paragraphs of this rule is not in the public interest.

b. Land shall be sold for not less than the fair market value under a system of competitive bidding which includes at a minimum:

1. Publication of a notice once a week for four weeks in a newspaper of general circulation in the locality in which the land is located. The notice shall describe the land to be sold, state the appraised value, state any restrictive covenants which will be a condition of the sale, and state the time and place of the sale.

2. Provisions for sealed bids to be submitted prior to the sale date followed by an oral auction open to the public.

50.140(5) All moneys received from the disposal of land under this rule shall be deposited in the state abandoned mined land fund.

27—50.141 to 50.149 Reserved.

27—50.150(207) Operations on private land. Reclamation activities may be carried out on private land if a consent to enter is obtained or if entry is required and made.

27—50.151 to 50.159 Reserved.

27—50.160(207) Appraisals.

50.160(1) A notarized appraisal of the fair market value of private land to be reclaimed shall be obtained from an independent professional appraiser, with exceptions as noted in 50.160(4). Such appraisal shall meet the quality of appraisal practices found in the handbook on “Uniform Appraisal Standards for Federal Land Acquisitions” (Interagency Land Acquisition Conference, 1973). The appraisal shall be obtained before any reclamation activities are started, unless the work must start without delay to abate an emergency. Where an emergency exists, the appraisal shall be completed at the earliest practical time and before related nonemergency work is commenced. The appraisal shall state the fair market value of the land as adversely affected by past mining.

50.160(2) An appraisal of the fair market value of all land reclaimed shall be obtained after all reclamation activities have been completed. The appraisal shall be obtained in accordance with 50.160(1) and shall state the market value of the land reclaimed.

50.160(3) The landowner shall receive a statement of the increase in market value, an itemized statement of reclamation expenses and notice that a lien will or will not be filed against the property.

50.160(4) Appraisals for privately owned land which fall under subrule 50.170(1) shall be obtained from an independent professional appraiser.

27—50.161 to 50.169 Reserved.

27—50.170(207) Liens.

50.170(1) The division shall place a lien against land reclaimed if the reclamation results in an increase in the fair market value based on the pre- and postreclamation appraisals.

a. A lien shall not be placed against the property of a surface owner who acquired title prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operations which necessitated the reclamation work.

b. The division may waive the lien if the cost of filing it, including indirect costs, exceeds the increase in fair market value as a result of reclamation activities.

c. The lien may be waived if the reclamation work performed on private land primarily benefits health, safety or environmental values of the greater community or area in which the land is located, or if reclamation is necessitated by an unforeseen occurrence and the work performed to restore that land will not result in a significant increase in the market value of the land as it existed immediately before the occurrence.

50.170(2) If a lien is to be filed, the division shall, within six months after completion of the reclamation work, file a statement in the district court of the county for the lands to be liened. Such statement shall consist of an account of moneys expended for the reclamation work, together with notarized copies of the appraisals obtained. The amount reported to be the increase in value of the property shall constitute the amount of the lien recorded and shall have priority as a lien second only to the lien of real estate taxes imposed upon the land.

50.170(3) Within 60 days after the lien is filed by the division, the landowner may bring civil action in the district court of the county in which the reclaimed land lies to determine the increase in market value of the land as a result of reclamation work. Any aggrieved party may appeal in the manner provided by law.

27—50.171 to 50.179 Reserved.

27—50.180(207) Satisfaction of liens.

50.180(1) A lien placed on private property shall be satisfied to the extent of the value of the consideration received at the time of transfer of ownership. Any unsatisfied portion shall remain as a lien on the property and shall be satisfied in accordance with this paragraph. Testate and intestate transfers are excluded from this rule if the entire parcel of land subject to the lien is transferred and the transferee is related to the transferor within the second degree of consanguinity or affinity.

50.180(2) The department shall maintain or renew liens from time to time as may be required.

50.180(3) Moneys derived from the satisfaction of liens established under this part shall be deposited in the state abandoned mined land fund.

These rules are intended to implement Iowa Code chapter 207.

27—50.181 to 50.189 Reserved.

27—50.190(207) Abandoned mined land (AML) program forms.

50.190(1) *Availability of forms.* Copies of forms utilized in the AML program are available at the following address: Division of Soil Conservation and Water Quality, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319.

50.190(2) Bidding forms for construction projects.

Form number	Description
AML-001	<i>Proposal.</i> This form is used to document bid proposals from potential contractors for conducting reclamation work on abandoned mined lands. The form also includes a noncollusion affidavit. 2 pages.
AML-002	<i>Proposal Guarantee Bond.</i> This form identifies the bidder and the surety, lists the amount of the bid guarantee bond and provides for notarization of the signatures of the bound parties. 1 page.
AML-003	<i>Nondiscrimination Clause.</i> This form is used to document that the contractor is morally and legally committed to nondiscrimination in employment. 1 page.
AML-004	<i>Minority and Women Business Enterprise Solicitation Reporting Form.</i> This form is used to document the contractor's solicitation of subcontract or subsubcontract bids from minority or women business enterprises. 1 page.
AML-005	<i>Certificate of Nonsegregated Facilities.</i> This form is used to certify that the construction contractor does not maintain or provide employees any segregated facilities at any of contractor's establishments. 1 page.
AML-006	<i>Contract.</i> This form documents the agreement between the contractor and the division for the fulfillment of work in accordance with performance set forth and the payment therefor in accordance with the agreed-upon price. 2 pages.
AML-007	<i>Performance Bond.</i> This form identifies the contractor and the surety and binds them to the state of Iowa performing the contract in accordance with the plans, specifications, and contract documents. The form lists the amount of the bond and provides for notarization of the signatures of the contractor and surety. 2 pages.

This rule is intended to implement Iowa Code section 207.21.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

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CHAPTERS 51 to 59
Reserved

CHAPTER 60
MINERALS PROGRAM

27—60.1 to 60.9 Reserved.

27—60.10(208) Authority and scope. This chapter establishes procedures and standards to be followed by the division of soil conservation and water quality, Iowa department of agriculture and land stewardship, in accordance with the policies of the state soil conservation and water quality committee, in implementing the requirements of Iowa Code chapter 208 to ensure reclamation upon completion of mining operations for gypsum, clay, stone, sand, gravel, and other ores or mineral solids, except coal.

Information and forms can be obtained on the department's Web site or by contacting: Mines and Minerals Bureau, Division of Soil Conservation and Water Quality, Wallace State Office Building, Des Moines, Iowa 50319. Telephone: (515)242-5003 or (515)281-4246.

[ARC 2192C, IAB 10/14/15, effective 11/18/15; ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—60.11(208) Rules or subrules are severable. If any provision of a rule or subrule or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rule or subrule which can be given effect without the invalid provision or application, and to this end the provisions of these rules or subrules are severable.

27—60.12(208) Definitions. When used in this chapter, the following definitions apply:

“Acceptable species” means plant species recognized as desirable permanent species and normally used in conjunction with agriculture, forestry, wildlife or similar plans for reclamation.

“Administrator” means the administrator of the division of soil conservation and water quality, or a designee.

“Affected land” means the area of land from which overburden has been removed or upon which overburden has been deposited, or land which has otherwise been disturbed, changed, influenced, or altered in any way in the course of mining, including processing and stockpile areas but not including roads.

“Angle of repose” means the maximum angle of slope (measured from horizontal) at which loose cohesion materials will come to rest on a pile of similar material.

“Committee” means the state soil conservation and water quality committee.

“Critical slope angle” means the maximum slope incline which the soil and rock materials underlying the slope can support, without failure, under existing climate, vegetation, and land use.

“Department” means the department of agriculture and land stewardship.

“Division” means the division of soil conservation and water quality within the department of agriculture and land stewardship.

“Dredge operation” means an operation to mine sand, gravel, or other nonfuel minerals for sale or for processing or consumption in the regular operation of a business by removing the product directly from its natural state beneath the surface of a river, lake or other body of water.

“Exploration” means the excavation of limited amounts of any mineral to determine the location, quantity, or quality of the mineral deposit.

“Highwall” means the unexcavated face of exposed overburden and mineral in a surface mine.

“Mine” or *“mine site”* means a site where mining is being conducted or has been conducted in the past.

“Mineral” means gypsum, clay, stone, sand, gravel, or other ores or mineral solids, except coal.

“Mining” means the excavation of gypsum, clay, stone, sand, gravel, or other ores or mineral solids, except coal, for sale or for processing or consumption in the regular operation of a business and shall include surface mining and underground mining.

1. *“Surface mining”* means mining by removing the overburden lying above the natural deposits and excavating directly from the natural deposits exposed, or by excavating directly from deposits lying exposed in their natural state, and shall include dredge operations conducted in or on natural or artificially created waterways within the state.

2. “Underground mining” means mining by digging or constructing access tunnels, adits, ramps, or shafts and excavating directly from the natural mineral deposits exposed.

“*Mining operation*” means activities conducted by an operator on a mine site relative to the excavation of minerals and shall include disturbing overburden, excavation and processing of minerals, stockpiling and removal of minerals from a site, and all reclamation activities conducted on a mine site.

“*Official notice*” means service of a written notice or order to an operator via personal service or certified mail to the last-known address. Service shall not be deemed incomplete because of refusal to accept.

“*Operator*” means any person, firm, partnership, corporation, or political subdivision engaged in and controlling a mining operation.

“*Overburden*” means all of the earth and other materials which lie above natural mineral deposits and includes all earth and other materials disturbed from their natural state in the process of mining.

“*Pit floor*” or “*quarry floor*” means the lower limit of a surface excavation to extract minerals.

“*Political subdivision*” means any county, district, city, or other public agency within the state of Iowa.

“*Reclamation*” means the process of restoring disturbed lands to the premined uses of the lands or other productive uses.

“*Registered site*” means a site which meets the requirements of Iowa Code section 208.13 and for which the operator has received a valid registration certificate from the division.

“*Topsail*” means the natural medium located at the surface of the land which contains favorable characteristics for the growth of vegetation.

[ARC 2192C, IAB 10/14/15, effective 11/18/15; ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—60.13 to 60.19 Reserved.

27—60.20(208) License.

60.20(1) *Application for mining license.* All operators wanting to mine minerals in Iowa shall apply for a mining license. The application shall be complete only if submitted on the form supplied by the division, signed by the operator or an authorized representative, and accompanied by a license application fee.

60.20(2) *Fees.* Licensing and license renewal fees are established by Iowa Code section 208.7 at \$50 for an initial license and \$20 for a license renewal.

60.20(3) *License term and expiration.* A license shall be maintained by the operator until all sites have been properly reclaimed or transferred to another licensed operator.

The initial license shall expire on December 31 of the year in which the license was obtained. A license for renewal shall expire on December 31 of the second year in which the license was issued. Any applications for renewal received within 30 days of the expiration date shall be accepted as renewals for the previous license. New licenses obtained after November 1 shall remain valid for a period to include the next calendar year or years.

60.20(4) *License renewal.* Any operator who fails to renew the mining license within the 30-day period following the expiration deadline established in subrule 60.20(3) will be required to apply for an initial license. Failure to renew a license within 30 days after official notice will invalidate all registrations.

60.20(5) *Valid license.* A license to mine is valid only if approved by the division and acknowledged by a license certificate which has been signed by the administrator and lists the operator and the assigned license number.

[ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—60.21 to 60.29 Reserved.

27—60.30(208) Registration.

60.30(1) *Registration required.* All mine sites shall be registered at least seven days prior to the beginning of mining or the removal of overburden. Exploration activities are exempt from registration requirements unless they affect more than 10,000 square feet of surface area.

60.30(2) *Application fee.* The registration application fee shall be \$50 per site.

60.30(3) *Application for registration.* An application for registration shall be acceptable only if completed on the form provided by the division and signed by the operator or an authorized representative and accompanied by a bond or bond increase, a map of the area to be mined, and the registration fee. The completed registration application, registration fee, map, and the bond or bond increase shall be received at least seven days prior to the removal of overburden.

60.30(4) *Valid registration.* A registration is valid only if approved by the division and acknowledged by a registration certificate signed by the division administrator, listing site name, location, and operator to which the site is registered.

Failure to fulfill the requirements of this rule or chapter may result in the invalidation of a site registration following notification to the operator by the division.

The division may request additional information or materials to further distinguish a site from other sites.

A single registration shall consist of contiguous describable tracts of land which can be enclosed by a single unbroken boundary line and including only that property upon which the operator has a legal right to conduct mining.

60.30(5) *Registration conflicts.* If more than one operator is extracting minerals from a given contiguous site within the same time frame, then each operator shall file with the division a statement signed by the operator, including a map defining the scope of operations and bond responsibility of each operator in regard to the final reclamation of the site.

60.30(6) *Registration information.* It shall be the responsibility of the operator to ensure that all information in connection with the application for registration and the registration certificate is correct.

60.30(7) *Registration exclusion.* No site or portion thereof will be released by exclusion from registration under subrules 60.30(1) to 60.30(6).

60.30(8) *Sign.* Any signs required by other governmental bodies may be used to comply with Iowa Code section 208.9(2) provided that the sign is posted at the main entrance of the site or at the scale house, if the scale house is visible from the nearest roadway, and includes the operator's name, telephone number, and the site registration number.

60.30(9) *Duration of registration.* A valid registration shall be maintained by the operator until approval for release has been granted by the division.

27—60.31(208) Registration renewal and fee.

60.31(1) *Registration renewal.* All site registrations shall expire on December 31 of the second year. Registrations shall be renewed by the division upon submittal of renewal fee by the operator within 30 days of the expiration date.

60.31(2) *Notice of registration renewal and fee.* All registrations shall be renewed by the operator upon receipt of a fee statement from the division.

The registration renewal fee shall be \$70 per site.

60.31(3) *Changes in a registration.* If, in the course of operation, any changes in the description, size or boundaries of a site become necessary the licensee shall be required to file a new registration application in accordance with rule 27—60.30(208).

[ARC 3216C, IAB 7/19/17, effective 7/1/17]

27—60.32 to 60.39 Reserved.

27—60.40(208) Bonding. Bond is required by these rules and by Iowa Code chapter 208 to ensure that all applicable mineral operations are properly reclaimed. Failure on the part of an operator to accomplish required reclamation may result in forfeiture of the bond by the division.

60.40(1) Bonding requirements. Each registration application shall be accompanied by a bond or a bond endorsement increasing an already existing bond. The bond or bond increase shall be equal to the amount set forth by a representative of the division or, if no amount is stipulated, the minimum set forth in subrule 60.40(6).

60.40(2) Bond form. All surety bonds shall be written on the form provided and approved by the division. In lieu of a surety bond, the operator may deposit cash or certificates of deposit with the division on the same conditions as prescribed by Iowa Code section 208.23.

60.40(3) Surety bond. A surety bond shall be written by a company authorized to do business in Iowa and shall be made on a form provided by the division. A surety bond shall be signed by the operator or an authorized representative of the operator as well as a representative of the surety.

The surety bond shall be written to cover all acres affected by the mining process pursuant to Iowa Code chapter 208. An attachment shall be included as part of the bond document which lists the sites by name and location (county, township, range, section, and legal description). This attachment shall be signed by representatives of the surety and the principal.

60.40(4) Certificates of deposit. Certificates of deposit posted as bond shall be made payable to the State of Iowa, Division of Soil Conservation and Water Quality AND (Operator). All interest earned shall be paid to the operator.

60.40(5) Cash. Cash deposited as bond does not pay interest to the operator.

60.40(6) Minimum bond. The minimum required bond on each site shall be the greater of \$2,000 per site or \$500 per affected acre on the site.

Actual bond shall be based on factors including, but not limited to, size of the site, thickness of overburden, type of mineral extracted, type of mining process, and stockpiling procedures for topsoil, overburden and product.

60.40(7) Interest-bearing account. Penalties, interest, bond reversions and bond forfeitures collected under the provisions of Iowa Code chapter 208 or these rules shall be deposited in an interest-bearing account and may be used for the cost and administrative expense of reclamation or rehabilitation activities for any mine site as deemed necessary and appropriate by the division.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—60.41(208) Bond release.

60.41(1) Release of bond. No bond shall be released unless the bonded area has met reclamation requirements of Iowa Code section 208.17, a replacement bond has been filed, or the site has been registered by another licensed operator who agrees, in writing, to complete all remaining required reclamation and has a valid registration for the site(s) in question.

60.41(2) Bond release request. When a bond needs to be decreased, replaced, or is no longer needed, a Request for Bond Release form shall be filed by the operator, a registered agent, or an authorized representative. One Request for Bond Release form shall be filed for each bond.

60.41(3) Return of bond. Upon release of a certificate of deposit or cash posted as bond, the certificate of deposit or cash payment shall be returned to the operator.

Upon the release of a surety bond, the original bond shall be returned to the surety company and the operator shall be notified of the action by the mailing of a courtesy copy.

60.41(4) Reverting of cash bond. If the operator fails to request a release of cash bond after termination or expiration of a mining license, cash bond funds held shall revert to an interest-bearing account maintained by the division, provided a period of at least five years has elapsed since the license expiration. These funds may be used for the cost and administrative expenses of reclamation or rehabilitation activities for any mine site as deemed necessary and appropriate by the division.

27—60.42 to 60.49 Reserved.

27—60.50(208) Transfers.

60.50(1) Registration transfer request. If control of a registered site is acquired by an operator other than the operator holding authorization to conduct surface mining on the site, then both operators shall

fill out the required portions of a Transfer Application form. The completed form shall then be filed with the division within 30 days of the actual transfer and prior to the start of any work by the new operator.

60.50(2) *Transfer information.* In addition to the Transfer Application form, the new operator shall file a Registration Application form in accordance with rule 27—60.30(208). A Request for Bond Release may be filed by the original operator in accordance with rule 27—60.41(208).

60.50(3) *Transfer action.* No action shall be taken in relation to bond releases for the original operator or registration of the new operator regarding the site in question until the transfer request has been filed with the division and approved.

60.50(4) *Other agreements.* A transfer request does not prevent the new operator from making any agreement with the previous operator or any other party dealing with reclamation or mining of the site.

27—60.51 to 60.59 Reserved.

27—60.60(208) Registration cancellation.

60.60(1) *Reclamation approval request.* Upon completion of reclamation activities on a mine site or any part thereof, the operator may file a Reclamation Approval Request with the division. The form shall be completed and signed by the operator.

60.60(2) *Inspection for approval.* Upon receiving a request the division shall, within 12 months, visit the site in question and shall respond, in writing, to the operator indicating either the approval or disapproval of the site condition.

60.60(3) *Approval denied.* If the site condition is not approved, the division shall notify the operator, in writing, and explain the reason for the disapproval. The operator shall then complete the reclamation specified by the division and reapply for approval.

27—60.61 to 60.64 Reserved.

27—60.65(208) Enforcement actions.

60.65(1) *Notice of violation.* Notice to an operator of violations of these rules or Iowa Code chapter 208 shall include:

- a. A description of the violation, including a citation of the rule or statute violated,
- b. A description of the action required to abate the violation, and
- c. A deadline for abatement.

60.65(2) *Issuance of administrative order.* If an operation fails to complete abatement measures in the time allowed, the division may initiate an administrative order in accordance with these rules and Iowa Code chapter 208.

60.65(3) *Referral to attorney general.* Pursuant to Iowa Code section 208.10A, the division may also notify the attorney general in the event of noncompliance by the operator following notice. The attorney general shall institute a civil action in district court for injunctive relief and for the assessment of a civil penalty not to exceed \$10,000. The division may make such referral either in lieu of or in conjunction with the issuance of an administrative order.

27—60.66 to 60.69 Reserved.

27—60.70(208) Annual mining report.

60.70(1) *Annual reports—surface operations.* Annual reports shall be filed for each site on the form provided by the division. These reports may include, but shall not be limited to, information concerning the location of the mine site, types of material mined, thickness and types of overburden materials, area of land disturbed during the report year, area of land reclaimed during the report year, as well as any other pertinent information concerning the mining operation and deemed necessary by the division.

60.70(2) *Underground mine maps.* The state geologist shall provide the division with copies of each map and map extension received pursuant to Iowa Code section 456.11.

60.70(3) *Filing date.* Reports shall be filed by January 31 for the previous year. Reports not received within 30 days after the specified date shall invalidate the registration of a site.

60.70(4) Final report. Upon conclusion of mining at any site the operator shall file a mining report indicating that all mining activity is completed. This report shall be filed regardless of any other reports filed in connection with subrule 60.70(3).
[ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—60.71 to 60.74 Reserved.

27—60.75(208) General mining activities.

60.75(1) Topsoil and overburden stockpiles. Topsoil shall not be buried or mixed with nontopsoil materials. All stockpiles (topsoil and overburden) shall be seeded and stabilized if they are to remain in place for a period of time in excess of 12 months.

60.75(2) Erosion control. Affected areas which will not be disturbed by future operations shall be graded, disked, mulched, fertilized, and seeded as necessary within a period of nine months to attain substantial and appropriate grass, legume, shrub, tree, crop, or other acceptable species and to ensure viable erosion control.

60.75(3) Setback.

a. A minimum excavation setback distance of 25 feet shall be maintained from all registered site boundaries to protect the adjacent property from erosion or damage which might result from mining activities.

b. In areas where excavation depth exceeds 25 feet, a minimum excavation setback distance of at least 50 feet shall be maintained from registered site boundaries.

c. A minimum excavation setback distance of 50 feet shall be maintained from all buildings, dwellings, public right-of-way boundaries and other man-made structures not associated with the mining operation.

d. Excavation on a registered site found to be closer than the allowable minimum setback shall be in violation of this subrule. The operator shall be required to backfill, slope and stabilize to the required limits.

e. The requirements of this subrule shall not apply to registered operations where mining has exceeded the setback limitation as of January 1, 1991, provided that the operator has filed adequate documentation as of July 1, 1991, detailing the area being grandfathered into these requirements.

The operator shall be responsible for maintaining a permanent record of all documentation once approved by the division.

f. The division may grant a variance from this subrule, provided the operator submits a complete application that meets the requirements of rule 27—60.85(208) at least 60 days prior to the proposed starting date of any mining within the setback limitations.

27—60.76 to 60.79 Reserved.

27—60.80(208) Reclamation.

60.80(1) Schedule. The operator, upon filing a mine report indicating the conclusion of all mining activities, will have a period of three years to complete all reclamation activities.

60.80(2) Requirements. The operator shall grade all remaining affected lands, except stockpiles, processing areas, pit floors, and highwalls, to allowable slopes within six months following the filing of the final report. Stockpiles and processing areas shall be graded or the material exported from the site within one year following the final report.

60.80(3) Extension of time. The operator shall be allowed a three-month extension of time on subrule 60.80(2) provided a written request is filed at least 30 days (or 20 working days) prior to the original deadline. Only one extension will be allowed the operator per release request.

60.80(4) Grading. All lands affected by the mining process, with the exception of pit floors, highwalls and water impoundments, shall be graded to slopes having a maximum one-foot vertical rise for every four feet horizontal distance or graded to blend with the surrounding terrain.

60.80(5) Waste disposal. In grading the site all mining-related waste products and machinery incompatible with the care and growth of vegetation shall be removed from the site and disposed of in

a manner consistent and acceptable with state law. Materials acceptable for on-site disposal, such as concrete and clay products free of reinforcing shall be buried a minimum of three feet below final grade.

Boulders and stones incompatible with the proposed postmining use of the site shall be buried or removed from the site.

60.80(6) *Vegetation.* Seeding of an area with grasses and legumes shall be accomplished within three months following the conclusion of all earthwork, weather permitting. Erosion control methods shall be used where necessary to prevent rill and gully formation. The operator shall be responsible for attaining a ground cover of acceptable species of grass, legume, shrub, tree or crop.

The vegetation shall be allowed at least one growing season to become established prior to the filing of a release request by the operator.

If necessary, additional seedings shall be performed to establish a viable vegetative cover.

60.80(7) *Failure to comply.* Failure to adhere to the reclamation schedule may be grounds for an administrative order, revocation of the operator's license to mine, or initiation of bond forfeiture proceedings.

60.80(8) *Variance.* The division may grant a variance from rule 27—60.80(208) provided the operator submits a complete application that meets the requirements of rule 27—60.85(208). Examples of variances would include wetland areas, building sites, or use of overburden materials for protective berms and screens.

27—60.81 to 60.84 Reserved.

27—60.85(208) Criteria for variance application and approval.

60.85(1) *Application for variance.* A complete application for a variance must include:

a. Site name, registration number, and location by county, township, range, section and quarter section.

b. A copy of an aerial photograph or a topographic map of the site on an 8½- × 11-inch page, in a scale not less than 1 to 24,000 (2½" to the mile), showing the areas to be affected by the proposed encroachment.

c. A reclamation plan which will address the final grading and revegetation for the area in question and a statement as to the postmining land use.

d. Name, address, and telephone number for current owner or owners of property adjacent to the area for which the variance is being requested.

e. Estimated time period when the mineral extraction will occur.

f. A brief narrative stating why the variance is being sought and how adverse effects of mining will be mitigated.

g. Other information requested by the division as needed for clarification.

h. Additional bond, if determined to be necessary by the division.

60.85(2) *Criteria for approval of a variance.* A variance filed with the division shall be approved or disapproved within 30 days of receiving a completed application for a variance.

In either approving or disapproving the variance request, the division will consider the reclamation plan, the postmining land use, the effects on the adjacent properties, the extent to which reclamation requirements are being met, and other relevant factors.

27—60.86 to 60.89 Reserved.

27—60.90(208) Administrative orders and assessment of penalties. The division may issue an administrative order directing an operator to desist in an activity or practice which constitutes a violation of these rules or to take corrective action to abate the violation.

60.90(1) *Issuance of administrative order.* Any administrative order issued by the division shall be signed by the division administrator and shall include:

- a. A description of the violation or violations being addressed, including a citation to each rule or provision being violated, a summary of the facts and legal requirements, and a general rationale for the prescribed penalty.
- b. A description of corrective measures or actions required to abate the violation or violations.
- c. A time period for commencing and completing corrective actions called for in the administrative order.
- d. A proposed penalty assessment.
- e. The time allowed for filing an appeal to contest the order.

60.90(2) Assessment of penalty. An administrative order issued by the division shall include a proposed penalty assessment for the violation or violations being cited. The proposed penalty called for in the order shall not exceed \$5,000 for each violation.

a. A point system will be used in assessing each violation. Criteria for assigning points shall be as follows:

- (1) For history, up to 20 points may be assigned based on the history of previous violations.
- (2) For seriousness,
 - 1. Up to 20 points may be assigned based on the seriousness of the violation in terms of its potential or actual damage, or
 - 2. Up to 15 points may be assigned for a violation of the administrative requirements of these rules. Administrative requirements would include items such as license and registration, payment of fees, posting of signs, and submittal of reports.
 - (3) For negligence, up to 10 points may be assigned on the basis of negligence on the part of the operator to whom the order is issued for failing to correct the cause of the violation. Up to 25 points may be assigned for a violation that occurs through a greater degree of fault than negligence, which means reckless, knowing, or intentional conduct. The division may also consider the degree to which the operator gained an economic benefit as a result of failing to comply with these regulations.

A reduction of the assigned points by up to 20 points may be allowed for good-faith efforts by the operator to achieve better than normal compliance.

b. The dollar value for points assigned shall be \$20 for each point from 1 to 25 and \$100 for each point thereafter to a maximum of 70 points. An abridged table summarizing dollar values for point assessments is as follows:

Points	\$		Points	\$
5	100		40	2,000
10	200		45	2,500
15	300		50	3,000
20	400		55	3,500
25	500		60	4,000
30	1,000		70 and above	5,000
35	1,500			

- c. When a penalty will be assessed.
 - (1) The division may assess a penalty for a proposed order that becomes a final order when 30 or fewer points are assigned to the administrative order.
 - (2) The division shall assess a penalty for a proposed assessment that becomes a final order when 31 or more points are assigned to the administrative order.
- d. A proposed assessment worksheet shall accompany each administrative order issued by the division.

60.90(3) Waiver of point system. Upon the division administrator's own initiative or upon written request from an operator within 15 days of receipt of an administrative order, the division may waive the use of the point system as a means of determining a proposed penalty. In so doing, the administrator must determine that the penalty is demonstrably unjust based upon factors present in the particular case.

When the division has waived the use of the point system in determining a penalty, the division administrator shall document the basis for the waiver in the case record and shall also provide a written explanation of the basis for the assessment made to the operator to whom the administrative order was issued.

60.90(4) Submittal of information. Within 15 days of receipt of an administrative order, an operator may provide the division information about the violation or violations addressed in the order. The division will consider any such information in determining the facts of the violation or violations and the amount of the final penalty.

60.90(5) Final assessment and payment of penalty.

a. Unless an appeal contesting the administrative order has been received, the proposed assessment shall become a final order within 30 days following service of the administrative order and the penalty assessed shall become due and payable. If the administrative order is appealed, the proposed assessment shall become a final order and the penalty assessed due and payable within 30 days following service of a final decision on the appeal.

b. All penalties shall be paid within 30 days of the date that the order assessing the penalty becomes final. An operator who fails to pay an administrative penalty assessed by a final order of the division shall pay, in addition, interest at the rate of 1½ percent of the unpaid balance of the assessed penalty for each month or part of a month that the penalty remains unpaid.

(1) Failure to pay all penalties within 30 days of the date that the order assessing the penalty becomes final shall constitute a violation of these rules.

(2) The division may request the attorney general to institute proceedings to recover all penalties assessed in the event of failure of the operator to make payment.

60.90(6) Deposit of penalty moneys. Penalties collected under the provisions of these rules shall be deposited in an interest-bearing account and may be used for the cost and administrative expenses of reclamation or rehabilitation activities for any mine site as deemed necessary and appropriate by the division.

27—60.91 to 60.94 Reserved.

27—60.95(208) Forms.

Annual Mine Report. This two-sided, one-page form requires identification of the operator and legal description of the mine site. This form requests a listing of the number of acres affected during the report year, the number of acres reclaimed, the number of acres estimated to be affected in the coming year and the number of acres presently bonded.

Assignment Form. This one-page form will be used by the operator to assign a certificate of deposit (CD) to the division when the CD is used in lieu of a surety bond or by the division to assign a CD to the operator, when the division is releasing a CD to the operator.

Bonding Form. This one-page form identifies the operator and the bonding company, lists the amount of the bond, the operator's license number, the bond number, the enforcement date, the surety's mailing address and provides for notarization of the signature for the surety.

Interest Release Form. This one-page form is used by the division to authorize banking authorities to release interest accumulated on a certificate of deposit, held in lieu of bond, to the operator.

License Application. This one-page form is used for both new applications and annual license renewals. This form serves to identify the person, firm, partnership or corporation applying for or renewing the license to mine minerals.

License Certificate. This one-page form is issued by the division upon successful application by the person, firm, partnership or corporation for a mining license.

Reclamation Approval Request. This one-page form identifies the operator and the name and location of the site. This form also requires operator certification that all reclamation work has been completed as set forth in Iowa Code sections 208.17 and 208.19 and rule 27—60.80(208) of the Iowa Administrative Code.

Registration Application. This one-page form is used by the applicant desiring to engage in surface mining. This form includes the name of the licensee, the site name and location, the material produced, the source of the operator's legal right to mine the described area and the owner(s) of the mineral rights and the land to be surface mined.

Registration Certificate. This one-page form is issued by the division upon successful application by an operator for site registration or updated registration.

Request for Bond Release. This one-page form identifies the operator and the bonding company, lists the amount of bond and the bond number, states the reason for the release request, and provides for an approval signature by the division.

Transfer Application. This one-page form identifies the transferee and the transferor and their respective surety companies, lists the site and site location, and provides a prewritten agreement for transfer of all bonding and site reclamation responsibilities to the transferee.

27—60.96 to 60.99 Reserved.

27—60.100(208) Political subdivisions engaged in mining. Any political subdivision of the state of Iowa which engages in or intends to engage in operating a mine as defined under rule 27—60.12(208) shall meet all requirements of this chapter except that the subdivision shall not be required to pay the license fee under rule 27—60.20(208) and shall not be required to post bonds as required under rule 27—60.40(208). An official representative of the political subdivision shall complete a license application form for informational purposes only.

These rules are intended to implement Iowa Code chapter 208.

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CHAPTER 61
Reserved