

NATURAL RESOURCES DEPARTMENT[561]

Created by 1986 Iowa Acts, chapter 1245, section 1802

Rules of divisions under this Department "umbrella" include Energy and Geological Resources[565], Environmental Protection Commission[567], Natural Resource Commission[571], and Preserves, State Advisory Board[575]

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CHAPTER 1
DESCRIPTION OF ORGANIZATION

561—1.1(17A,455A) Authority. The department of natural resources was created by an Act of the general assembly (Acts of the Seventy-First General Assembly, chapter 1245, 1986) through the consolidation of several departments and divisions to assist coordination among the natural resource and environmental agencies at all levels of government within Iowa.

561—1.2(17A,455A) Mission and programs. The department has the primary responsibility for state parks and forests, protecting the environment, and managing energy, fish, wildlife, and land and water resources in this state. The mission of the department is to conserve and enhance our natural resources in cooperation with individuals and organizations to improve the quality of life in Iowa.

1.2(1) Air pollution. The department is the agency of the state to prevent, abate, and control air pollution by developing comprehensive plans and programs, establishing air quality and emission standards, issuing permits for construction of air contaminant sources and control equipment, issuing operating permits, requiring monitoring of air contaminant sources to ensure compliance, enforcing standards and permit requirements, providing technical assistance and educational and training programs, and reviewing and evaluating local control programs.

1.2(2) Drinking water. The department is the agency of the state to conduct the public water supply program by adopting drinking water standards; issuing construction and operation permits for public water supplies; certifying the operators of certain public water supplies; enforcing the statutes, rules, and permits relating to public drinking water supplies; and administering the state revolving fund for drinking water. The department also provides minimum standards for private drinking water supplies which are regulated by local boards of health, administers grants to counties to assist in carrying out their responsibilities, and certifies well construction contractors.

1.2(3) Energy. The department is the agency of the state to establish and implement plans and policies that ensure wise development, use and management of all energy sources in the state by preparing for energy emergencies; allocating energy supplies; developing and delivering statewide energy management programs, including financial assistance programs; commercializing and promoting indigenous alternative energy sources, including wind, biomass and other renewable energy resources; and collecting, evaluating and disseminating energy information to citizens and public officials.

1.2(4) Fish and wildlife. The department is the agency of the state to manage fish and wildlife resources by licensing activities impacting fish and game; enforcement of fish and wildlife laws and rules; land acquisition and other habitat development; collection and dissemination of information; establishing public hunting, fishing, and trapping areas; propagating, purchasing, restoring, nurturing, stocking or otherwise managing fish and wildlife; advising and assisting private and local government management of fish and wildlife; and carrying on active programs for the protection, interpretation and public enjoyment of fish and wildlife species.

1.2(5) Flood plain development. The department is the agency of the state to promote the protection of life and property from flooding and to protect and conserve the water resources of the state through regulation of construction and excavation within floodways and flood plains by establishing administrative thresholds for the types of flood plain development which require a permit from the department; issuing appropriate permits; developing a flood plain mapping plan; and enforcing the statutes, rules, and permits relating to flood plain development.

1.2(6) Forests and prairies. The department is the agency of the state to manage and protect forests of the state by providing professional forestry advice to landowners; assisting landowners with woodland protection from insects, disease, fire, and livestock; managing state forests for educational, recreational, and economic benefits; providing nursery stock; and regulating timber buyers.

1.2(7) Geology. The department is the agency of the state to plan and implement programs that result in the acquisition of comprehensive geologic information on the mineral and water resources of the state with emphasis on water supply developments; to monitor the effects of environmental impacts on water quality, including surface and groundwater; to regulate oil, gas, or metallic mineral exploration

and production; and to disseminate information through publications, consultation services, and electronically in the form of databases that comprise the department's geographic information system.

1.2(8) *Hazardous materials and conditions.* The department is the agency of the state to prevent, abate, and control hazardous conditions resulting from releases of hazardous substances to the natural environment by issuing site licenses for certain hazardous waste facilities; maintaining a registry of hazardous waste or hazardous substance disposal sites; responding to hazardous conditions; regulating certain underground storage tanks; enforcing the statutes and rules relating to hazardous conditions and underground storage tanks; and informing and educating the public about hazardous materials.

1.2(9) *Parks, recreation, and preserves.* The department is the agency of the state to facilitate and promote public outdoor recreational opportunities by developing comprehensive plans; acquiring, establishing, planning, and managing specific parks, preserves, and water bodies for public use; advising and assisting local governments and private persons in establishing such facilities; licensing and permitting private use of sovereign land and waters; regulating water navigation safety and snowmobiling; informing the public of use opportunities; enforcing conservation laws; and protecting and managing threatened and endangered plant and animal species.

1.2(10) *Solid waste.* The department is the agency of the state to regulate the handling and disposal of solid waste by establishing standards for the handling and disposal of solid waste; issuing construction and operation permits for solid waste facilities; and enforcing the statutes, rules, and permits relating to solid waste handling. The department also establishes rules relating to beverage container redemption, which are enforced by local officials. The department is also the agency of the state to educate and promote sustainable practices of pollution prevention and responsible waste management.

1.2(11) *Water pollution.* The department is the agency of the state to prevent, abate, and control surface and groundwater pollution by developing comprehensive plans and programs; establishing standards for water quality and treatment of wastewater; issuing permits for the construction and operation of wastewater disposal systems and animal feeding operations; certifying public wastewater treatment plant operators; administering a loan program for construction of publicly owned wastewater disposal systems; regulating other potential sources of groundwater contamination; enforcing the statutes, rules, and permits relating to water pollution control; and informing and educating the public. The department also establishes minimum standards for private sewage disposal systems which are regulated by local boards of health, administers grants to counties to assist in carrying out their responsibilities, and certifies manure applicators.

1.2(12) *Water use.* The department is the agency of the state to ensure the orderly development, wise use, protection, conservation, and public understanding of the surface and groundwater resources of the state by issuing appropriate permits for the withdrawal, diversion or storage of water; by enforcing statutes, rules, and permits relating to the use of water; by allocating water during periods of shortage; and through public information activities.

561—1.3(17A,455A) Organization.

1.3(1) *General.* The department's organizational structure consists of the natural resource commission, the environmental protection commission, the state advisory board for preserves, the director, the deputy director, and seven administrative divisions, described in subrule 1.3(2).

The natural resource commission is responsible for establishing policy and adopting rules for natural resource conservation, management, and recreation programs of the department. This commission also acts as a hearing authority in contested cases, and approves or disapproves land and water acquisitions or dispositions. The substantive rules of the natural resource commission are found under agency number 571 of the Iowa Administrative Code.

The environmental protection commission is responsible for establishing policy and adopting rules for the control and protection of the state's water and air resources, and for the management of wastes. This commission also acts as hearing authority in contested cases, and issues site licenses for certain hazardous waste facilities. The substantive rules of the environmental protection commission are found under agency number 567 of the Iowa Administrative Code.

The state advisory board for preserves approves land or water areas for dedication as preserves, makes rules, and performs advisory functions related to the establishment and maintenance of preserves. The substantive rules of the state advisory board for preserves are found under agency number 575 of the Iowa Administrative Code.

The energy and geological resource policies are established by the department, and the rules relating to this subject are found under agency number 565 of the Iowa Administrative Code.

The director has rule-making authority for the general operation of the department, and the rules relating to this subject are found under agency number 561 of the Iowa Administrative Code.

1.3(2) Administrative divisions of the department.

a. Director. The director, who is appointed by the governor and subject to confirmation by the senate, and who serves at the pleasure of the governor, is the chief administrative officer of the department. In that capacity the director administers the programs and services of the department in compliance with the Iowa Code and the rules adopted by the commissions or department. The duties of the director include: recommending to the commissions the adoption of rules for the effective administration of the department and implementation of the programs and services of the department; promulgating rules related to energy and geological services and the organization of the department; preparation of the annual budget request and federal grant applications; establishment of the administrative structure of the department; and other actions to administer and direct the programs of the department.

The administrators of the seven divisions, the deputy director, and the information and education bureau chief report to the director.

The information and education bureau provides information and education to the public on department programs and relevant natural resources issues. Activities include publishing the "Iowa Conservationist" and other publications; videos and exhibits; communications with news media; providing communications services to other divisions; and conducting conservation education programs.

b. Deputy director. The deputy director, appointed by the director, directs and administers the department in the director's absence, and carries out other duties as assigned by the director.

c. Administrative services division. The administrative services division is responsible for budget and finance, administrative support, information technology, licensing, construction services, and land acquisition and management. The division consists of six bureaus:

(1) The budget and finance bureau prepares the agency budget and grant requests and the operating budget; reviews and monitors department budgets and contracts; and conducts special fiscal studies. It is also responsible for maintaining financial records; maintaining an inventory of department equipment and property; processing payrolls, personnel transactions, travel vouchers, and claims for payments of goods and services; processing cash receipts; and coordinating purchasing between field units and the department of general services.

(2) The administrative support bureau provides office support for the department, including records management; forms management; mail; provision of common supplies, central office telephone service and vehicle pool; word processing; data entry; telephone and reception services; technical library management; and information coordination.

(3) The information technology bureau develops and maintains computer-based information systems used by the department, maintains the information technology equipment used by the department, provides information technology user training and assistance for the department, provides system operation services for the department, maintains space for computer-based data files, and serves as the primary contact with the computer centers used by the department.

(4) The licensing bureau provides applications, permits, and licenses which permit the public to engage in environmental activities such as hunting and fishing. The bureau designs and orders forms; distributes forms and supplies to field personnel, county recorders, and license depositories; instructs license sellers on issuing and reporting requirements; supervises county recorders in the registration of boats, snowmobiles and all-terrain vehicles; issues licenses and permits directly through the mail; and certifies persons engaged in application and removal of waste material.

(5) The construction services bureau provides the engineering and contracting services needed for the construction of department facilities. Activities of the bureau include surveying and designing; administering construction contracts; contracting for the services of consulting architectural and engineering firms; and providing technical assistance for the proper operation and maintenance of department facilities.

(6) The land acquisition and management bureau acquires land and coordinates land management practices. Activities of the bureau include negotiating for purchase or donation; providing relocation assistance; preparing or contracting for land appraisals; contracting and recording land surveys; coordinating the leasing of department land; establishing and marking land boundaries; resolving boundary disputes and private encroachment upon state lands; maintaining land records; issuing sand and gravel permits; and coordinating the soil erosion control program above state lakes with the division of soil conservation within the department of agriculture and land stewardship.

d. Parks, recreation, and preserves division. The parks, recreation, and preserves division is responsible for programs relating to water access development, state parks and recreation areas, and preserves. The division consists of the field operations bureau and the program administration bureau.

(1) The field operations bureau manages state parks and recreation areas. Activities include operating and maintaining area facilities; protecting and managing the flora and fauna; monitoring concession operators; providing information to the public concerning use opportunities; and enforcing conservation laws. The bureau includes four district management offices, identified in rule 1.4(17A,455A).

(2) The program administration bureau conducts park master planning, ecosystem management planning, park and resource interpretive programs; administers park concession contracts; maintains the Iowa natural areas inventory database; provides environmental reviews of proposed construction projects; administers a variety of state grant programs for outdoor recreation facilities; provides staff assistance to the state preserves advisory board; provides coordination with the state historic preservation officer on matters dealing with historical and archeological programs; coordinates with other state and local agencies on matters dealing with recreation and natural resource management; coordinates training and certification of park managers in water and waste management systems; carries on strategic planning within the division; and administers a variety of recreation and resource planning programs.

e. Forests and prairies division. The forests and prairies division is responsible for programs relating to state forests and prairies, and operation of the state forest nursery. The division consists of the state forests and management bureau and the forestry services bureau.

(1) The state forests and management bureau manages state forests on a multiple-use basis; provides professional forestry service to the other divisions of the department; provides nursery stock for forestation, erosion control, and wildlife cover; cooperates with the department of corrections in a rehabilitation program for prison inmates; and manufactures wood products for the department and for limited sale.

(2) The forestry services bureau provides professional forestry assistance to private landowners, political subdivisions, and private wood-using industries; provides surplus federal equipment to local fire departments for fire control; participates with federal agencies in various forestry-related programs; and maintains reports of fruit tree and forest reservations from county auditors.

f. Energy and geological resources division. The energy and geological resources division is responsible for programs related to energy, geologic and hydrogeologic investigations, and oil and gas exploration/production. The division consists of the energy bureau and the geological survey bureau.

(1) The energy bureau develops energy policy for the state that includes energy efficiency and renewable energy to meet the state's environmental and economic objectives. The energy bureau manages the energy programs of the state. The bureau gathers data and establishes a data bank; develops public education and communication programs on energy use and management; coordinates with other states on fuel allocation problems; reduces hardship due to energy supply shortages through allocation of state-owned or state-operated energy supplies in conjunction with the federal set-aside program; investigates and recommends to the department legislation on development and use of alternative sources of energy in Iowa and the reduction of dependence on nonrenewable resources; assesses

information to enable the director to determine when the health, safety, or welfare of the people of the state is threatened by an actual or impending acute shortage of usable energy, notifies the governor what emergency measures are necessary, and utilizes the emergency powers that the governor delegates to the department; administers major federal energy management programs in Iowa; develops financial assistance programs for schools, hospitals, communities, industries and public care facilities; and develops a program to annually give public recognition within each congressional district to innovative methods of energy conservation.

(2) The geological survey bureau collects, interprets, and reports information on basic geologic features and products of the state, including information on the availability and quality of both surface and groundwater; conducts various research programs to advance geologic and hydrogeologic knowledge of the state's mineral and water resources; and promotes and regulates oil, gas, and metallic mineral exploration/production in Iowa through issuance of permits and enforcement of statutes and rules related thereto. The bureau has lead responsibility for development, implementation and maintenance of the department's geographic information system (GIS), including management of databases in the natural resources GIS library.

g. Environmental protection division. The environmental protection division is responsible for programs relating to water pollution control, water supply, flood control, and air pollution control. The division consists of the water quality bureau, the air quality bureau, and the compliance and enforcement bureau.

(1) The water quality bureau is responsible for water pollution control, water supply, and flood control programs. The bureau consists of three sections: wastewater, water resources, and water supply.

1. The wastewater section reviews applications and issues or denies permits for the construction and operation of wastewater disposal systems and discharge of wastewater (including animal feeding operations and stormwater), certifies or denies certification of property as pollution control property, and administers the state revolving fund for wastewater.

2. The water resources section is responsible for developing rules and standards for flood plain management, water pollution control (including nonpoint source management), conducting special studies and evaluating alternative control strategies in surface and groundwater quality and reviewing applications and issuing or denying permits for construction or excavation within a floodway or flood plain, coordinating and approving flood control works, providing flood plain information and technical assistance to local governments, and conducting the department's dam safety program. This section also provides technical expertise to other branches and divisions of the department in matters relating to surface water hydrology and hydraulics, and certifies local programs for qualification under the national flood insurance program.

3. The water supply section reviews applications and issues or denies permits for withdrawal, diversion, storage, or use of water, and for the construction and operation of public drinking water supplies. This section is also responsible for coordination of the allocation of storage for water supply in multipurpose reservoirs constructed with state or federal funds, and performs monitoring and compliance activities related to public drinking water supplies.

(2) The air quality bureau is responsible for air pollution control programs. The bureau consists of four sections.

1. The air construction permits section reviews applications and issues or denies construction permits and tax certifications for air pollution sources and control equipment.

2. The air operating permits section reviews applications for operation of air pollution sources.

3. The air quality program development section develops rules and standards for air pollution control and conducts special studies and evaluates alternative control strategies.

4. The air quality inventory, compliance and monitoring section monitors and seeks to secure compliance with statutes, rules and permit conditions and administers the state's ambient air monitoring program.

(3) The compliance and enforcement bureau conducts investigations of facilities or activities regulated by the division, on its own initiative or in response to citizen complaints, and monitors compliance with the statutes and rules administered by the division. The bureau consists of six field

offices, a legal services group, and an emergency response group. The six field offices, identified in rule 1.4(17A, 455A), provide on-site response to reports of hazardous conditions, natural disasters, and complaints; conduct inspections and make reports on water, air, and waste management facilities; and recommend enforcement actions when necessary and appropriate to fulfill the purpose and function of the division. The legal services group provides legal advice to the department staff and commissions, conducts negotiations, and prosecutes administrative enforcement proceedings to obtain compliance with department statutes and rules; prepares referrals to the attorney general; and drafts or reviews enforcement procedures, legislative proposals, and rules. The emergency response group coordinates department actions and provides technical assistance relating to hazardous conditions.

h. Fish and wildlife division. The fish and wildlife division is responsible for programs relating to wildlife, law enforcement, fisheries, and land acquisition and management. The division consists of the law enforcement bureau, the fisheries bureau, and the wildlife bureau.

(1) The law enforcement bureau enforces conservation laws, primarily those relating to fish and wildlife, boating, and snowmobiling. Other activities include assisting in wildlife and fisheries surveys; providing conservation information to the public; providing hunter safety, boating, and snowmobile safety training; and supervising Iowa's private shooting preserves. This bureau includes six district management offices, identified in rule 1.4(17A,455A).

(2) The fisheries bureau manages the fishery resource. Activities include providing technical advice and assistance on fish management and disease problems in private waters; managing fish populations in public waters; collecting creel statistics; fish hatching and stocking; conducting research studies for the purpose of setting fishing seasons and for scientific knowledge; providing fishing information to the general public; and developing fishing areas and accesses.

(3) The wildlife bureau manages the wildlife resource. Activities include managing wildlife on public lands; advising private landowners on wildlife habitat improvement; conducting research studies for the purposes of setting hunting and trapping seasons and for scientific knowledge; providing wildlife information to the public; and developing and maintaining public wildlife and fishing areas.

i. Land quality and waste management assistance division. The land quality and waste management assistance division is responsible for programs relating to land quality, underground storage tanks, solid waste, hazardous wastes, comprehensive waste management planning, waste management assistance, and siting of some hazardous waste and low-level radioactive waste facilities. The division consists of the land quality bureau and the waste management bureau.

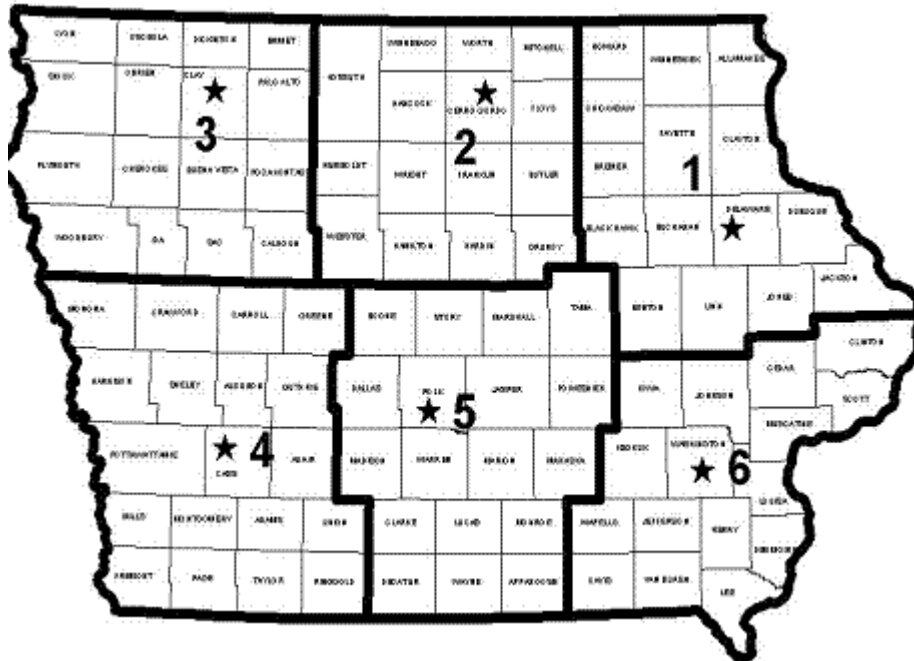
(1) The land quality bureau is responsible for the underground storage tank program and the contaminated sites programs.

(2) The waste management bureau is responsible for the regulatory solid waste program, comprehensive waste management planning, waste management assistance and siting of certain waste management facilities.

561—1.4(17A,455A) Location of offices.

1.4(1) The central office is located on the fourth and fifth floors of the Henry A. Wallace Building, 502 East Ninth Street, Des Moines, Iowa 50319-0034. The general telephone number is (515)281-5145.

1.4(2) The environmental protection division is located in the central office with the following exceptions. The air quality bureau is located at 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322. The water supply section and the emergency response group are located at 401 SW Seventh Street, Suites M and I, Des Moines, Iowa 50309. See the following map for field office locations.



ENVIRONMENTAL PROTECTION DIVISION FIELD OFFICES

Field Office No. 1
 909 W. Main St.
 Manchester, Iowa 52057
 Ph.: (319)927-2640

Field Office No. 2
 2300 15th St. SW
 P.O. Box 1443
 Mason City, Iowa 50401
 Ph.: (641)424-4073

Field Office No. 3
 1900 North Grand Ave.
 Spencer, Iowa 51301
 Ph.: (712)262-4177

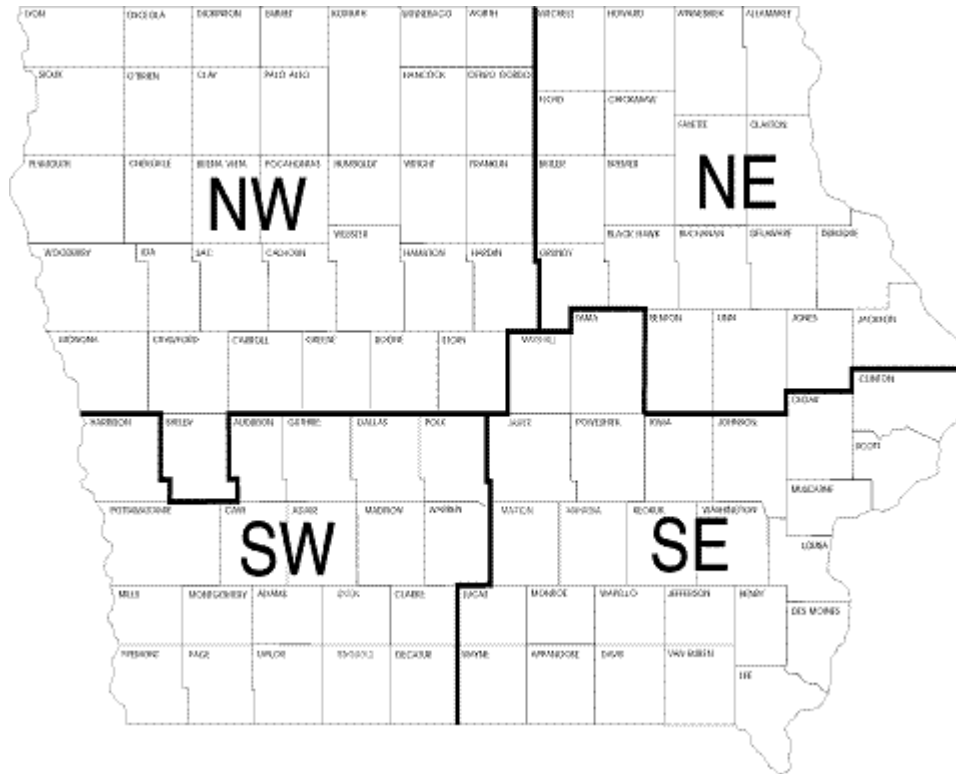
Field Office No. 4
 1401 Sunnyside Lane
 Atlantic, Iowa 50022
 Ph.: (712)243-1934

Field Office No. 5
 401 SW 7th St., Suite I
 Des Moines, Iowa 50309
 Ph.: (515)725-0268

Field Office No. 6
 1004 W. Madison
 Washington, Iowa 52353
 Ph.: (319)653-2135

1.4(3) The state geologist’s office is located at 109 Trowbridge Hall, Iowa City, Iowa 52242-1319, and the telephone number is (319)335-1575.

1.4(4) Parks and recreation bureau district offices.



PARKS AND RECREATION BUREAU DISTRICT OFFICES

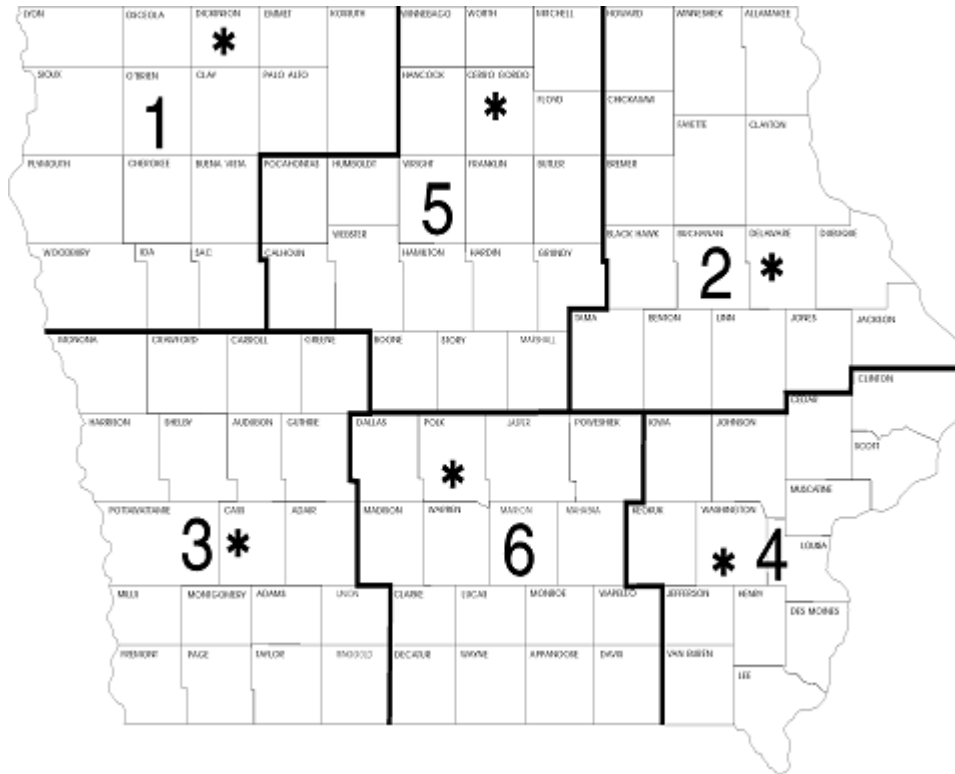
Northwest District Field Office
 Black Hawk State Park
 P.O. Box 619
 Lake View, Iowa 51450
 Ph.: (712)657-2639

Northeast District Field Office
 913 W. Main
 Manchester, Iowa 52076
 Ph.: (319)927-8770

Green Valley District Field Office (SW)
 1480 130th Street
 Creston, Iowa 50801
 Ph.: (515)782-7814

Southeast District Field Office
 Lake Darling State Park
 110 Lake Darling Road
 Brighton, Iowa 52540
 Ph.: (319)694-2430

1.4(5) Fish and wildlife division, law enforcement bureau district offices.



LAW ENFORCEMENT BUREAU DISTRICT OFFICES

District Field Office No. 1
 Spirit Lake Hatchery
 122 252nd Avenue
 Spirit Lake, Iowa 51360
 Ph.: (712)336-1840

District Field Office No. 2
 Manchester Fish Hatchery
 22693 205th Avenue
 Manchester, Iowa 52057
 Ph.: (319)927-3276

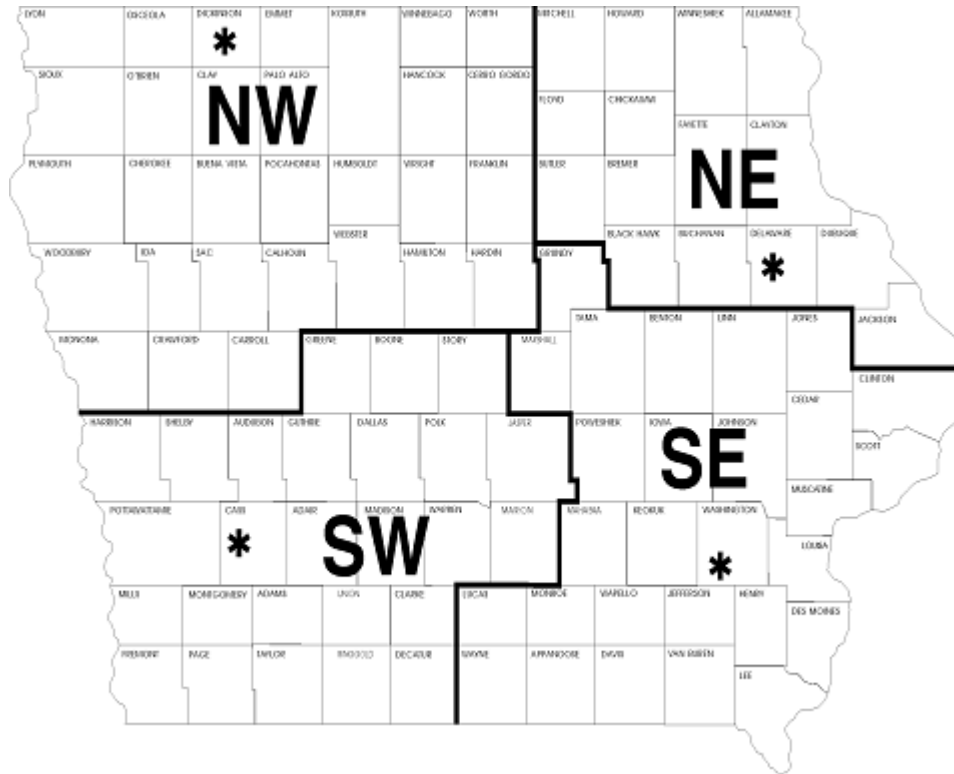
District Field Office No. 3
 Cold Springs State Park
 Lewis, Iowa 51544
 Ph.: (712)709-2587

District Field Office No. 4
 Lake Darling State Park
 110 Lake Darling Road
 Brighton, Iowa 52540
 Ph.: (319)694-2430

District Field Office No. 5
 1203 N. Shore Drive
 Clear Lake, Iowa 50428
 Ph.: (515)357-3517

District Field Office No. 6
 Wallace State Office Building
 Des Moines, Iowa 50319
 Ph.: (515)281-8174

1.4(6) Fish and wildlife division, fisheries bureau district offices.



FISHERIES BUREAU DISTRICT OFFICES

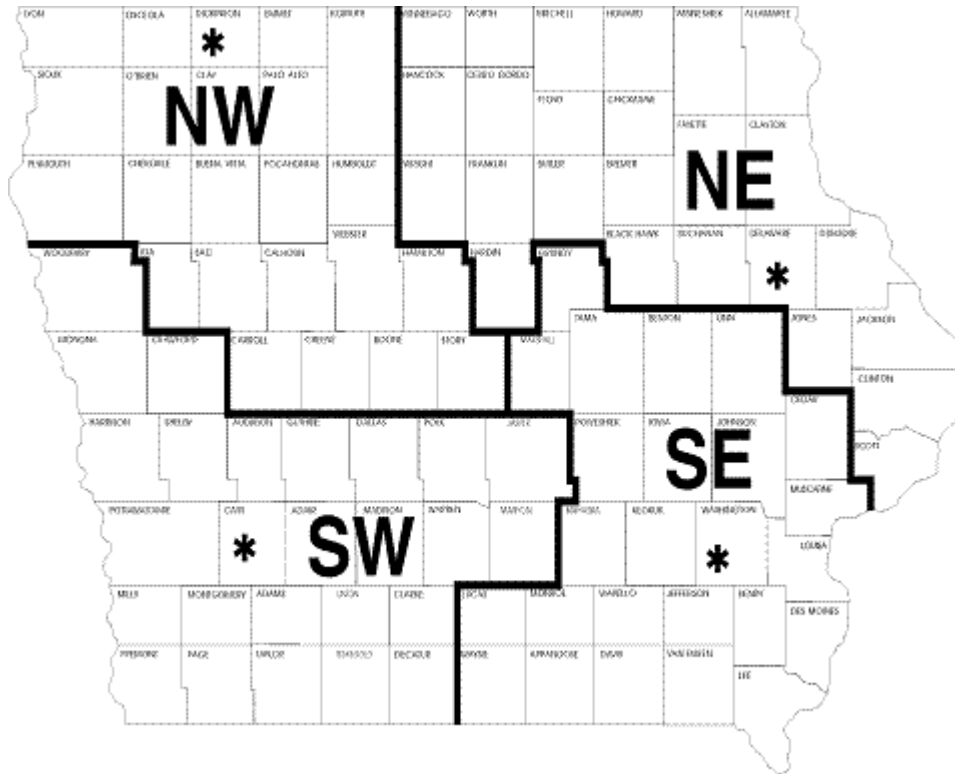
Northwest Field District Office
 Spirit Lake Hatchery
 122 252nd Avenue
 Spirit Lake, Iowa 51360
 Ph.: (712)336-1840

Northeast Field District Office
 Manchester Fish Hatchery
 22693 205th Avenue
 Manchester, Iowa 52057
 Ph.: (319)927-3276

Southwest Field District Office
 Cold Springs State Park
 Lewis, Iowa 51544
 Ph.: (712)709-2587

Southeast Field District Office
 Lake Darling State Park
 110 Lake Darling Road
 Brighton, Iowa 52540
 Ph.: (319)694-2430

1.4(7) Fish and wildlife division, wildlife bureau district offices.



WILDLIFE BUREAU DISTRICT OFFICES

Northwest Field District Office
 Spirit Lake Hatchery
 122 252nd Avenue
 Spirit Lake, Iowa 51360
 Ph.: (712)336-1840

Northeast Field District Office
 Manchester Fish Hatchery
 22693 205th Avenue
 Manchester, Iowa 52057
 Ph.: (319)927-3276

Southwest Field District Office
 Cold Springs State Park
 Lewis, Iowa 51544
 Ph.: (712)709-2587

Southeast Field District Office
 Lake Darling State Park
 110 Lake Darling Road
 Brighton, Iowa 52540
 Ph.: (319)694-2430

561—1.5(455A) Business hours.

1.5(1) Normal business hours. The normal business hours of the central office and the field offices are 8 a.m. to 4:30 p.m., Monday to Friday, except holidays.

1.5(2) Emergency incident reports. The 24-hour emergency telephone number for the reporting of hazardous conditions and radiation incidents is (515)281-8694. During nonbusiness hours this number is answered by staff of the department of public safety, who will obtain the caller's name, telephone number, and information relating to the incident. This information will be forwarded to the staff of the department of natural resources who will contact the caller.

561—1.6(17A,455A) Internet Web site. The department's Internet home page is located at <http://www.state.ia.us/dnr/>.

These rules are intended to implement Iowa Code section 17A.3(1)“a” and chapter 455A.

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[Filed 3/14/01, Notice 1/10/01—published 4/4/01, effective 5/9/01]

CHAPTER 2
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

561—2.1(17A,22) Purpose and scope.

2.1(1) This chapter implements Iowa Code section 22.11 by establishing agency policies and procedures for the maintenance of records. The purpose of this chapter is to facilitate public access to open records. It also seeks to facilitate sound agency determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. This agency is committed to the policies set forth in Iowa Code chapter 22; agency staff shall cooperate with members of the public in implementing the provisions of that chapter.

2.1(2) This chapter does not:

- a. Require the agency to index or retrieve records which contain information about individuals by that person's name or other personal identifier.
- b. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.
- c. Govern the maintenance or disclosure of, notification of or access to, records in the possession of the agency which are governed by the regulations of another agency.
- d. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.
- e. Make available records compiled in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations.

2.1(3) This chapter applies to the department of natural resources.

561—2.2(17A,22) Definitions. As used in this chapter:

"Agency" means the department of natural resources.

"Confidential record" means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the agency is prohibited by law from making available for examination by members of the public, and records or information contained in records that are specified as confidential by Iowa Code section 22.7 or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

"Custodian" means the department of natural resources, or a person lawfully delegated authority by its director to act for the agency in implementing Iowa Code chapter 22.

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

"Personally identifiable information" means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

"Record" in these rules means the whole or a part of a "public record" as defined in Iowa Code section 22.1.

"Record system" means any group of records under the control of the agency from which a record may be retrieved by a personal identifier such as the name of an individual, number, symbol or other unique retriever assigned to an individual.

561—2.3(17A,22) Requests for access to records.

2.3(1) *Location of record.* A request for access to a record should be directed to the custodian or the particular agency office where the record is kept. If the location of the record is not known by the requester, the request shall be directed to the Director, Department of Natural Resources, 502 East Ninth Street, Wallace State Office Building, Des Moines, Iowa 50319-0034. If a request for access to a record

is misdirected, agency personnel will promptly forward the request to the appropriate person within the agency.

2.3(2) Office hours. Open records shall be made available during all customary office hours which are 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

2.3(3) Request for access. Requests for access to open records may be made in writing or in person. The office may also accommodate telephone requests where appropriate. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail or telephone requests shall include the name, address and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

2.3(4) Response to requests. Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4), 22.10(4) or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 2.4(17A,22) and other applicable provisions of law.

2.3(5) Security of record. No person may, without permission from the custodian, search or remove any record from agency files. Examination and copying of agency records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

2.3(6) Copying. A reasonable number of copies of an open record may be made in the agency's office. If photocopy equipment is not available in the agency office where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere.

2.3(7) Fees.

a. When charged. To the extent permitted by applicable provisions of law, the payment of fees may be waived in the case of small requests of five or fewer copies, when the imposition of fees is inequitable, or when a waiver is in the public interest. Charges for examination or copies requested in writing by a person in a capacity as representative of another governmental entity or where copies are provided under provisions of a written agency contract may be waived.

b. Copying and postage costs. Anyone making a request for reproduction of the department's records will pay for services at the following rates, in addition to postage and handling as determined by the agency:

- (1) Photocopies (direct copies on 8½" × 11", 8½" × 14", or 11" × 17" paper)—40 cents per page.
- (2) Paper copy from microfilm records—40 cents per page.
- (3) The actual reproduction cost will be charged for any blueprint, picture, oral tape or any other work product not subject to photocopying.

(4) Fax—\$1 per faxed page.

(5) Computer stored information. Computer stored information is available according to the fee schedule maintained by the administrative services division of the department. The fee schedule shall be available at the following locations: fifth floor record centers, Wallace State Office Building, and on the department's Internet Web site, <http://www.state.ia.us/dnr/administrative>.

c. Supervisory fee. An hourly fee may be charged for actual agency expenses in supervising the examination and copying of requested records when the supervision time required is in excess of one-half hour. The custodian shall prominently post in agency offices the hourly fee to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly wage of an agency clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function.

d. Search fees. If the request requires research or if the record or records cannot reasonably be readily retrieved by the office, the requester will be advised of this fact. Reasonable search fees may be charged where appropriate. In addition, all costs for retrieval and copying of information stored in electronic storage systems may be charged to the requester.

e. Advance deposits.

(1) When the estimated total fee chargeable under this subrule exceeds \$25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

561—2.4(17A,22) Access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 2.3(17A,22).

2.4(1) Proof of identity. A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

2.4(2) Requests. The custodian may require that a request to examine and copy a confidential record be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

2.4(3) Notice to subject of record and opportunity to obtain injunction. After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specified period of time during which disclosure will be delayed for that purpose.

2.4(4) Request denied. When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification that is signed by the custodian and that includes:

a. The name and title or position of the custodian responsible for the denial; and

b. A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to this requester.

2.4(5) Request granted. When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

2.4(6) Notwithstanding any other provision, the following information will not be considered confidential by the department:

a. Emission data;

b. Analytical results of monitoring or public water supply systems;

c. Name and address of any permit applicant;

d. NPDES permits, applications (including any information required by NPDES application forms) and effluent data.

561—2.5(17A,22) Requests for treatment of a record as a confidential record and its withholding from examination. The custodian may treat a record as a confidential record and withhold it from

examination only to the extent that the custodian is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order, to refuse to disclose that record to members of the public.

2.5(1) *Persons who may request.* Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order, authorizes the custodian to treat the record as a confidential record, may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

2.5(2) *Request.* A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the custodian. The request must set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. Requests for treatment of a record as such a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

A person filing such a request shall, if possible, accompany the request with a copy of the record in question from which those portions for which such confidential record treatment has been requested have been deleted. If the original record is being submitted to the agency by the person requesting such confidential treatment at the time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are confidential.

2.5(3) *Failure to request.* Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted business information to the agency does not request that it be withheld from public inspection under Iowa Code section 22.7(3) or 22.7(6), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

2.5(4) *Timing of decision.* A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection is filed, or when the custodian receives a request for access to the record by a member of the public.

2.5(5) *Request granted or deferred.* If a request for such confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

2.5(6) *Request denied and opportunity to seek injunction.* If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8 or other applicable provision of law. However, such a record need not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify the requester in writing of the time period allowed to seek injunctive relief or the reason for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

2.5(7) Processing of business confidentiality claims.

a. Applicability/availability. Businesses which provide information to the department in applications, reports or otherwise in recorded form, or from or about which information is obtained and recorded by the department, may request that information not be disclosed to others for reasons of business confidentiality. Until such time as a request for confidentiality is received by the department, all information not within subrule 2.4(6) will be available to the public pursuant to subrule 2.3(3). If a claim is received after the information itself is received, the department will make such efforts as are administratively practicable to associate the claim with all copies of the previously received information. However, the department cannot ensure that such efforts will be effective, in light of the possibility of prior disclosure or dissemination of the information beyond the department's reasonable control.

b. Form. A business which submits information to the department may assert a business confidentiality claim in the manner prescribed in the application or instruction, if any, otherwise by placing on or attaching to the information, at the time it is submitted, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret," "proprietary," or "company confidential." When only a portion of the information is claimed to be confidential, only that portion shall be deleted from the application, report or other recorded submission, with appropriate reference to a separate claim for business confidentiality, which separate claim shall be submitted as specified above. If a request not to disclose information is filed with the department, the party shall file together with the document a second copy of the document from which has been deleted the information for which such party wishes to claim confidential treatment. The business shall conspicuously indicate on the face of the original document that it is confidential information and shall file a claim for confidential status in accordance with the provisions of 2.5(7) "c."

A business which has reason to believe that the department has received information which the business asserts to be confidential may request that such information, described with reasonable specificity, be maintained as confidential, in the same manner as specified above.

c. Contents of claim. All claims for confidentiality must be substantiated with the following information:

- (1) A statement of all measures the business has taken to protect the confidentiality of the information, and a statement of intent to continue to take such measures;
- (2) Practices and policies of other businesses, if known, regarding confidentiality of similar information;
- (3) A statement that the information is not, and has not been, reasonably attainable without the consent of the business by other persons other than government bodies by use of legitimate means;
- (4) A statement demonstrating that disclosure of the information is likely to cause substantial harm to the business's competitive position;
- (5) A reference to any other determinations of confidential status of the information or similar information.

d. Initial action by department. All claims will be reviewed within ten days of receipt for completeness and applicability of subrule 2.4(6). If the claim does not include the substantiation required by 2.5(7) "c," or if the claim relates to information within 2.4(6), the business making the claim will be so notified by certified mail. If the substantiation or comment regarding the inapplicability of 2.4(6) is not received by the department within ten days of the date on the return receipt, the department will place the information in the public file. Otherwise, all information claimed to be confidential will be treated as such by the department until further notice. A timely response from the notice under this paragraph will be ruled on by the department within ten days, based on the applicability of 2.4(6) or compliance with 2.5(7) "c" as appropriate.

e. Initiation of official determination. All claims not rejected under 2.5(7) "d" shall receive an official determination when a request for disclosure covering such information is received by the department or when the department deems it advisable to make a determination because a request for disclosure is likely to be received or because of administrative burdens in maintaining the information confidential. The procedures and criteria below shall be followed.

f. Substantive criteria for use in confidentiality determinations. Determinations shall hold that business information is entitled to confidential treatment for the benefit of a particular person if:

- (1) The business has taken and intends to continue to take reasonable measures to protect the confidentiality of the information;
- (2) The information is not readily obtainable by others by legitimate means;
- (3) The claim is not unreasonable in view of the nature of the information, the interests, and normal practices of the business, and the practices of other businesses;
- (4) No statute or rule specifically requires disclosure of the information; and
- (5) There is a substantial likelihood that disclosure of the information would cause substantial harm to the competitive position of the business.

Prior determinations by the courts, the department or other agencies on the information or similar information shall be given due consideration and effect.

g. Preliminary determination—opportunity for comment. The department shall transmit its preliminary determination regarding a claim for business confidentiality to the claimant by certified mail, notifying the claimant of the opportunity to provide comments within ten days subject to reasonable extension upon written request, and that failure to comment will be construed to indicate agreement with the preliminary determination. If the determination is in response to a request for disclosure, the person requesting the disclosure shall be sent a similar notice in the same manner within ten days of the request.

h. Final determination. A final decision shall be issued within ten days after the close of the comment period to the preliminary determination. If any substantial comments are received, the final decision shall be made by the director or designee. If no substantial comments are received, the claimant and the person requesting disclosure, if any, shall be notified that the preliminary determination is the final decision.

i. All procedures within this rule shall not be considered contested case proceedings as provided in Iowa Code chapter 17A.

561—2.6(17A,22) Procedure by which additions, dissents or objections may be entered into certain records. Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents or objections entered into, a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any agency proceeding. Requester shall send the request to review such a record or the written statement of additions, dissents or objections to the custodian or to the attorney general. The request to review a written statement must be dated and signed by requester, and shall include the current address and telephone number of the requester or the requester's representative.

561—2.7(17A,22) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records that may be disclosed, and the particular person or class of persons to whom the record may be disclosed (and, where applicable, the time period during which the record may be disclosed). The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed, may be required to provide proof of identity. (Additional requirements may be necessary for special classes of records.) Appearance of counsel on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the agency to disclose records about that person to the person's attorney.

561—2.8(17A,22) Notice to suppliers of information. When an agency form requests a person to supply information about that person, the agency shall notify the person of the use that will be made of the information, which persons outside the agency might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure

to provide the information requested. This notice may be given in these rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally or by other appropriate means. Notice need not be given in connection with discovery requests in litigation or administrative proceedings, subpoenas, investigations of possible violations of law or similar demands for information.

561—2.9(17A,22) Disclosures without the consent of the subject.

2.9(1) Open records are routinely disclosed without the consent of the subject.

2.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

- a.* For a routine use as defined in rule 2.10(17A,22) or in any notice for a particular record system.
- b.* To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record; provided that the record is transferred in a form that does not identify the subject.
- c.* To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.
- d.* To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.
- e.* To the legislative services agency under Iowa Code section 2A.3.
- f.* Disclosures in the course of employee disciplinary proceedings.
- g.* In response to a court order or subpoena.

561—2.10(17A,22) Routine use.

2.10(1) Defined. “Routine use” means the disclosure of a record without the consent of the subject or subjects for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

2.10(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

- a.* Disclosure to those officers, employees and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee or on the custodian’s own initiative, determine what constitutes legitimate need to use confidential records.
- b.* Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action or regulatory order.
- c.* Disclosure to the agency or officer which this office is advising or representing in the matter in question or to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.
- d.* Transfer of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.
- e.* Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.
- f.* Any disclosure specifically authorized by the statute under which the record was collected or maintained.

561—2.11(17A,22) Consensual disclosure of confidential records.

2.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 2.7(17A,22).

2.11(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

561—2.12(17A,22) Release to subject.

2.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 2.6(17A,22). However, the agency need not release the following records to the subject:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. See Iowa Code section 22.7(5).

d. As otherwise authorized by law.

2.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

561—2.13(17A,22) Availability of records.

2.13(1) *General.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

2.13(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Sealed bids received prior to the time set for public opening of bids;

b. Tax records made available to the agency;

c. Records which are exempt from disclosure under Iowa Code section 22.7;

d. Minutes of closed meetings of a government body;

e. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1) "d";

f. Those portions of agency staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases when disclosure of these statements would:

(1) Enable law violators to avoid detection;

(2) Facilitate disregard of requirements imposed by law; or

(3) Give a clearly improper advantage to persons who are in an adverse position to the agency.

g. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 122(c), Fed R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

h. Any other records made confidential by law.

2.13(3) *Authority to release confidential records.* The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 2.4(17A,22). If the agency initially

determines that it will release such records, the agency may where appropriate notify interested parties and withhold the records from inspection as provided in subrule 2.4(3).

561—2.14(17A,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 2.2(17A,22). For each record system, this rule describes the legal authority for the collection of that information, the means of storage of that information and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system. Records maintained by the department of natural resources, the environmental protection commission and the natural resource commission are in accordance with guidelines as set forth by the state records commission's file system. An updated index is maintained by the department and is available for public inspection. Records are collected pursuant to authorities contained in Iowa Code chapters 106, 107, 109, 109B, 110, 110A, 110B, 111, 111A, 111B, 112, 321G, 458A, 460A and Iowa Code Title XI, subtitles 1, 2, 3, 4 and 6. Agency records may include but are not limited to the following:

2.14(1) *Department of natural resources.*

a. Administration, organization, and management.

- (1) Organization and management.
- (2) Planning and programming.
- (3) Administrative reports.
- (4) Insurance and bonding.
- (5) Departmental emergency planning.
- (6) Correspondence and reference materials.
- (7) Information and public relations.

b. Budgets, accounting and financial analysis.

- (1) Budget information.
- (2) Accounting.
- (3) Cost accounting.

c. Office services and facilities management.

- (1) Communications.
- (2) Printing and reproduction.
- (3) Records management.
- (4) Motor pool operations.
- (5) Facilities management.
- (6) Engineering and construction.

d. Equipment, supplies, and services.

- (1) Procurement.
 - (2) Property accountability.
- e. Legislative and legal.*
- (1) Department legislative liaison.
 - (2) Bills, joint resolutions, amendments, messages and reports.
 - (3) Federal government.
 - (4) Administrative procedures.
 - (5) Attorney general opinions and research materials.
 - (6) Claims against the state.
 - (7) Lawsuits filed by the state.
 - (8) 28E agreements.

f. Personnel and payroll.

- (1) Employee personnel/payroll files.
- (2) Merit rules.
- (3) Payroll administration.

- (4) Position classification.
- (5) Preemployment.
- (6) Certification and selection.
- (7) Scheduling, assignments, working hours.
- (8) Grievances.
- (9) Training and education.
- (10) Employee benefits and welfare.
- (11) Employment relations.
- (12) Equal employment opportunity.
- (13) Management improvement programs.
- (14) Delegation of authority and signature authorization.

g. Conservation and environment.

- (1) Geology.
 1. Surface and groundwater monitoring.
 2. Water and mineral resources databases.
 3. Natural resources GIS library.
 4. Oil/gas exploration and drilling.
- (2) Energy conservation.
 1. Building energy management program database.
 2. Technical engineering analysis.
 3. Life cycle cost analysis.
 4. State facilities energy use/energy management data.
 5. Energy suppliers list.
 6. Renewable energy facilities list.
- (3) Water conservation.
- (4) Land conservation.
- (5) Soil conservation.
- (6) Forestry management.
- (7) Fish and game conservation.
- (8) Recreation.
- (9) Environmental technology.
- (10) Air quality monitoring.
- (11) Water quality monitoring.
- (12) Land quality monitoring.
- (13) Hazardous material planning.
 1. Hazardous waste management.
 2. Underground storage tanks.
 3. Leaking underground storage tanks.
- (14) Radioactive materials.
- (15) Environmental—interdisciplinary.

Records are stored on paper, microfilm, microfiche, and, in some cases, automated data processing systems.

2.14(2) *Natural resource commission.*

- a.* Tort claims investigations.
- b.* Numerous licensing files.
- c.* Lifetime licenses.
- d.* Boat registrations.
- e.* Docks, mooring, buoys or raft registrations.
- f.* Snowmobile registrations.
- g.* Miscellaneous mailing list (magazine, etc.).
- h.* Payroll and personnel information system.
- i.* Fur buyer reports.

- j.* Fish and game violations.
- k.* Safety certified students (hunter safety, snowmobile safety, boating safety).
- l.* Special events applications and permits.
- m.* Snowmobile accident reports.
- n.* Boating accident reports.
- o.* Drowning reports.
- p.* Timber buyer reports and bonds.
- q.* Work programs with ISU.
- r.* Timber management and forestry.
- s.* State park ranger violation reports.
- t.* Incident reports.
- u.* Donations.
- v.* Real estate acquisition.
- w.* Encroachments.
- x.* Campground host program.
- y.* Law enforcement intelligence network (LEIN) and turn in poachers (TIP).
- z.* Park leases and concessions.

All the above-listed records are collected pursuant to the authority of Iowa Code chapters 106, 107, 109, 109B, 110, 110A, 110B, 111, 111A, 111B, 112, 321G, 350, 456A, 461A, 462A, 464A, 465C, 481A, 482, 483A and 484A.

Records are stored on paper, microfilm, microfiche, and, in some cases, automated data processing systems.

2.14(3) Energy bureau.

a. *Payroll and personnel information system.* Grants programs. See professional service agreements.

b. *Building energy maintenance program.* All of the above-listed records are collected pursuant to the authority of Iowa Code chapter 473. All are stored in paper form with those noted by an asterisk also stored in electronic form. None of the information can be matched, collated or compared.

2.14(4) Geological survey bureau (Iowa City).

a. Payroll and personnel information system.

b. Professional and scientific employees—employment status information system. Publication mailing lists.

c. Geological core and cutting samplings.

d. Abandoned mine lands inventory. Geological data information.

e. Municipal water supply inventory.

f. National coal resources data.

g. Sedimentology programs.

h. Water resources information.

All of the above-listed records are collected pursuant to the authority of Iowa Code chapters 458A and 460A. All are stored in electronic form. Supplementary records in these categories are stored in paper form or on microfilm or microfiche. Information cannot be matched, collated or compared.

561—2.15(17A,22) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 2.2(17A,22). These records are routinely available to the public. However, the agencies' files of these records may contain confidential information. In addition, some records may contain information about individuals. Records are stored on paper, microfilm, microfiche, and, in some cases, automated data processing systems.

2.15(1) Rule making. Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4.

2.15(2) Commission records. Agendas, minutes and materials presented to the environmental protection commission and the natural resource commission are available from the office of the director,

except these records concerning closed sessions which are confidential under Iowa Code section 21.5(4). Commission records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3.

2.15(3) Publications. News releases, annual reports, Iowa Conservationist, project reports, agency newsletters, etc., are available from the department offices for public information. Brochures describing various department programs are available at local offices of the department. Department news releases, project reports, the Conservationist, and newsletters may contain information about individuals, including department staff or members of the commission or committees.

2.15(4) Statistical reports. Periodic reports for various department programs are available from the department offices for public information.

2.15(5) Grants or loans. Records on persons and institutions receiving grants or loans are available through the institutions, also for public information. The records may contain information about employees of a grantee.

2.15(6) Published materials. The agency uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law.

2.15(7) Policy manuals. The agency employees' manual, containing the policies and procedures for programs administered by the department, is available in every office of the department. Policy manuals do not contain information about individuals.

2.15(8) All other records that are not exempted from disclosure by law. The department maintains a variety of records which do not generally contain information pertaining to named individuals.

2.15(9) All other records that are not exempted from disclosure by law.

These rules are intended to implement Iowa Code section 22.11.

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CHAPTER 3
SUBMISSION OF INFORMATION AND
COMPLAINTS—INVESTIGATIONS

561—3.1(17A,455A) Scope. This chapter provides general guidance concerning the submission of information, supplies special telephone numbers for reporting certain types of information, and sets forth specific procedures for the submission and investigation of complaints.

561—3.2(17A,455A) Submission of information.

3.2(1) *Submission of information generally.* Submissions should be made directly to the division of the department for whose use the materials are intended. Any person who submits materials should enclose a cover letter which states clearly and concisely the use for which they are intended. Although the department will attempt to return unsolicited information if requested, it cannot guarantee return.

3.2(2) *Exceptions.* When information is submitted pursuant to another provision of these rules, the material should be submitted in accordance with any applicable instructions contained in such statute or rule. Some examples of such reporting include report of hazardous conditions pursuant to 567—subrule 131.2(1), wastewater bypasses pursuant to 567—subrule 63.6(2), manure releases pursuant to 567—paragraph 65.2(9)“a,” and excess air emissions pursuant to 567—subrule 24.1(2). Examples of other submissions include requests for confidential treatment of information in rule 561—2.5(17A,22), petitions for rule making in rule 561—5.1(17A), and petitions for declaratory rulings in rule 561—6.1(17A) and complaints.

3.2(3) *Hunting, fishing, and trapping violations.* Suspected violations of hunting, fishing, and trapping laws may be reported at any time by dialing toll-free 1-800-532-2020. Callers remain anonymous.

3.2(4) *Emergency incident reports.* The 24-hour emergency telephone number for the reporting of hazardous conditions as provided in 567—subrule 131.2(1) (Iowa Code section 455B.386) or emergency releases required to be reported in accordance with the Emergency Planning and Community Right-to-know Act as provided in Iowa Code section 30.8 is (515)281-8694. During nonbusiness hours this number is answered by staff of the department of public safety, who will obtain the caller’s name, telephone number, and information relating to the incident. This information will be forwarded to staff of the department who will contact the caller. Also, during nonbusiness hours this number may be used to report wastewater bypasses, manure releases, and excess air emissions.

561—3.3(17A,455A) Submission of complaints—investigations.

3.3(1) *General complaints.* Complaints other than those against department employees must be submitted, and will be investigated, as follows:

a. Submission requirements. Complaints concerning alleged violations of departmental statutes or rules should be submitted in writing to the appropriate field office, district office, or the central office (see rule 1.4(17A,455A)) and the nature of the complaint must be summarized in a concise manner. If the complaint is in the form of a petition, the signature, printed name and address of each petitioner should be included in addition to a concise summary of the complaint; and one representative also must be specified for the purpose of receiving any communication from the department on behalf of all petitioners.

b. Investigation procedure.

(1) **Mandatory investigations.** The department shall investigate the following types of complaints: alleged unauthorized depleting uses of water pursuant to Iowa Code section 455B.274; alleged violations of air or water pollution statutes, rules or permits when requested by any state agency, political subdivision, local board of health, or 25 residents of the state pursuant to Iowa Code subsections 455B.134(8) and 455B.174(1). The appropriate office shall conduct an investigation and notify the complainant of the results of the investigation.

(2) **Discretionary investigations.** Complaints not described in 3.3(1)“b”(1) may be investigated by the department if it appears that an investigation is needed to ensure compliance with applicable departmental statutes or rules. In the case of written complaints, the appropriate office shall notify the

complainant of the results of the investigation or of its decision not to conduct an investigation, unless the complaint is anonymous.

c. Confidentiality. In some cases, names of complainants may be kept confidential by the department pursuant to Iowa Code subsection 22.7(18) (see rule 561—2.5(17A,22)).

d. Anonymous complaints. Complaints may be submitted from anonymous sources and will be handled as discretionary investigations. In these cases, the department will not be able to notify the complainants of the results of the investigations.

3.3(2) Complaints concerning departmental employees.

a. Submission requirements. A party having a complaint regarding the performance of an agency employee is encouraged to discuss the matter with the employee's supervisor. The party also may request the director to investigate the matter by submitting a complaint in writing to the Director, Iowa Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319. The complaint must be made within three months of the incident except for good cause. The complaint must contain the name of the employee; a description of the incident; the names and addresses of possible witnesses; and the signature, address, and telephone number of the party submitting the complaint.

b. Investigation procedure. For the purpose of this paragraph, "director" means the director or the director's designee. Upon receipt of the written complaint, the director shall acknowledge the complaint in writing. If the complaint raises issues which could result in disciplinary action, the director will investigate the complaint. The investigation may include an informal, confidential hearing by the director for the purpose of ascertaining more clearly all relevant aspects of the complaint. No subpoenas or sworn testimony will be taken. The employee, the complainant, and other parties and department staff as invited by the director, may participate in the hearing. Counsel for the employee and the complainant may participate in the hearing. Informal cross-examination of all parties will be allowed. The hearing shall be tape-recorded.

At the conclusion of the investigation, the director will prepare a written response to the complainant; except that the response shall not violate the employee's rights to confidentiality under Iowa Code section 22.7, applicable collective bargaining agreements, or any other applicable statutes or administrative rules.

The written response of the director shall be the final agency action regarding any written complaints received under this subrule. Nothing in this procedure shall be construed to prevent a withdrawal of the complaint based on an informal settlement between the department and the complainant.

These rules are intended to implement Iowa Code chapters 17A and 455A.

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CHAPTER 4
AGENCY PROCEDURE FOR RULE MAKING

The department of natural resources hereby adopts the agency procedure for rule making segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

561—4.3(17A) Public rule-making docket. In lieu of the words “(commission, board, council, director)”, insert “director”.

561—4.4(17A) Notice of proposed rule making.

4.4(3) Copies of notices. In lieu of the words “(specify time period)”, insert “one state fiscal year (July 1 to June 30)”. Also, add the following new sentence: “Subscriptions must be renewed annually by June 15.”

561—4.5(17A) Public participation.

4.5(1) Written comments. In lieu of the words “(identify office and address)”, insert “Compliance and Enforcement Bureau, Environmental Protection Division, Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319”.

4.5(5) Accessibility. In lieu of the words “(identify office and telephone number)”, insert “the director’s office, department of natural resources, (515)281-5385”.

561—4.6(17A) Regulatory analysis.

4.6(2) Mailing list. In lieu of the words “(designate office)”, insert “Compliance and Enforcement Bureau, Environmental Protection Division, Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319”.

561—4.10(17A) Exemptions from public rule-making procedures.

4.10(2) Categories exempt. In lieu of the words “(List here narrowly drawn classes of rules where such an exemption is justified and a brief statement of the reasons for exempting each of them.)”, insert “The only narrowly tailored rules at this time are those specified in rule 567— 62.2(455B).”

561—4.11(17A) Concise statement of reasons.

4.11(1) General. In lieu of the words “(specify the office and address)”, insert “Compliance and Enforcement Bureau, Environmental Protection Division, Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319”.

561—4.13(17A) Agency rule-making record.

4.13(2) Contents.

a. In lieu of the words “Copies of”, insert “Reference to”.

These rules are intended to implement Iowa Code section 17A.3 as amended by 1998 Iowa Acts, chapter 1202.

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CHAPTER 5
PETITIONS FOR RULE MAKING

Insert the petitions for rule making segment of the Uniform Administrative Rules which is printed in the first volume of the Iowa Administrative Code, with the following amendments:

561—5.1(17A) Petition for rule making. In lieu of the words “(designate office)”, insert “Compliance and Enforcement Bureau, Environmental Protection Division, Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319-0034; telephone (515)281-8941”. Also, in lieu of the words “(AGENCY NAME)”, insert “DEPARTMENT OF NATURAL RESOURCES”.

561—5.3(17A) Inquiries. In lieu of the words “(designate official by full title and address)”, insert “Bureau Chief, Compliance and Enforcement Bureau, Environmental Protection Division, Department of Natural Resources, Des Moines, Iowa 50319-0034; telephone (515)281-8941”.

These rules are intended to implement Iowa Code section 17A.3 as amended by 1998 Iowa Acts, chapter 1202.

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CHAPTER 6
DECLARATORY ORDERS

The department of natural resources hereby adopts the declaratory orders segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

561—6.1(17A) Petition for declaratory order. In lieu of the words “(designate agency)”, insert “department of natural resources”. In lieu of the words “(designate office)”, insert “director’s office, department of natural resources”. In lieu of the words “(AGENCY NAME)”, the heading of the petition should read:

BEFORE THE
DEPARTMENT OF NATURAL RESOURCES

561—6.2(17A) Notice of petition. In lieu of “ ___ days (15 or less)”, insert “15 days”. In lieu of the words “(designate agency)”, insert “department of natural resources”.

561—6.3(17A) Intervention.

6.3(1) In lieu of “ ___ days”, insert “20 days”.

6.3(2) In lieu of the words “(designate agency)”, insert “department of natural resources”.

6.3(3) In lieu of the words “(designate office)”, insert “director’s office, department of natural resources”. In lieu of the words “(designate agency)”, insert “department”. In lieu of the words “(AGENCY NAME)”, the heading of the petition should read:

BEFORE THE
DEPARTMENT OF NATURAL RESOURCES

561—6.4(17A) Briefs. In lieu of the words “(designate agency)”, insert “department”.

561—6.5(17A) Inquiries. In lieu of the words “(designate official by full title and address)”, insert “Bureau Chief, Compliance and Enforcement Bureau, Environmental Protection Division, Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319”.

561—6.6(17A) Service and filing of petitions and other papers.

6.6(2) Filing—when required. In lieu of the words “(specify office and address)”, insert “Director’s Office, Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034”. In lieu of the words “(agency name)”, insert “department of natural resources”.

561—6.7(17A) Consideration. In lieu of the words “(designate agency)”, insert “department of natural resources”. Add the following new paragraphs:

An order, including a refusal to issue an order, issued by the director is final unless the issue is within the rule-making authority of one of the department’s commissions in which case the order or refusal is final unless appealed to the commission within ten days of receipt by the petitioner or reviewed by the commission on its own motion. On appeal or review, the commission may:

1. Approve the director’s ruling, in which case the order becomes the final declaratory order of the department, or
2. Reverse or modify the declaratory order, in which case the modified order becomes the final declaratory order of the department, or
3. Request additional information from the petitioner, or
4. Decline to issue an order, as specified in rule 6.5(17A).

The commission’s order or refusal to issue an order shall be made within a reasonable time and shall be sent by certified mail to the petitioner upon issuance.

561—6.8(17A) Action on petition. In lieu of the words “(designate agency head)”, insert “director”.

561—6.9(17A) Refusal to issue order. In lieu of the words “(designate agency)”, insert “department of natural resources”.

561—6.12(17A) Effect of a declaratory order. In lieu of the words “(designate agency)”, insert “department of natural resources”.

These rules are intended to implement Iowa Code section 17A.9 as amended by 1998 Iowa Acts, chapter 1202.

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[Filed 7/9/99, Notice 4/21/99—published 7/28/99, effective 9/1/99]

CHAPTER 7
RULES OF PRACTICE IN CONTESTED CASES

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

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

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

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

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

“*Department*” means the department of natural resources.

“*Director*” means the director of the department or an authorized representative.

“*Party*” means a person named and admitted as a party.

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

“*Proposed decision*” means the presiding officer’s recommended findings of fact, conclusions of law, decision, and order in a contested case in which the agency did not preside.

561—7.3(17A,455A) Time requirements.

7.3(1) Computation. In computing any period of time prescribed or allowed by this chapter or by an applicable statute, the day of the act, event or default from which the designated period begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday or legal holiday; otherwise Saturdays, Sundays and legal holidays shall be included in computing the period.

7.3(2) Change. Except for good cause stated in the record, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments before extending or shortening the time to take any action. When by these rules, or by notice given under them, an act is required or allowed to be done within a specified period of time, the presiding officer may, at any time, exercise discretion and may:

a. With or without motion or notice, for good cause, order the period extended if a request is made before the expiration of the period originally prescribed or as extended by a previous order, or

b. Upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect, except as provided in rule 561—7.13(17A,455A).

7.3(3) Mail. Any documents filed with the department by mail pursuant to these rules shall be deemed filed on the date of postmark.

561—7.4(17A,455A) Appeal.

7.4(1) Time. Any person appealing an action of the department shall file a written notice of appeal within 30 days of receipt of notice of the department’s action, unless a shorter time period is specified by a particular statute or rule governing the subject matter or by the agency action in question. The written notice of appeal shall be filed with the director with a copy to the Bureau Chief, Legal Services Bureau, Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319.

7.4(2) Content. Each appeal shall contain:

a. The name and address of the appellant,

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

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

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

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

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

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

- a. The department receives a notice of appeal from a person other than the department, or
- b. A petition from the department is filed, as provided in subrule 7.5(2).

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

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

- a. Identification of the parties, including the name, address and telephone number of the person who will act as advocate for the agency or the state and identification of all the parties' counsel where known;
- b. A statement of the time, place and nature of the hearing;
- c. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- d. A reference to the particular section of the statutes and rules involved;
- e. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, then initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;
- f. Reference to the procedural rules governing informal settlement;
- g. Identification of the presiding officer, if known, or if not known, then a description of who will serve as presiding officer (e.g., agency head, members of multimembered agency head, or administrative law judge from the department of inspections and appeals);
- h. The time within which a petition or answer must be filed; and
- i. In those cases where the department files the petition pursuant to the provisions of subrule 7.5(2), the notice shall include a copy of the petition and a statement that, in the event an answer is not timely filed in accordance with these rules, judgment may be entered for the relief requested in the petition.

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

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

7.6(1) *Informal settlement encouraged.* Unless precluded by statute, informal settlement of controversies is encouraged when those controversies may culminate in contested case proceedings according to the provisions of Iowa Code chapter 17A and these rules. However, this rule shall not be construed to require any party other than the department to utilize informal procedures or to settle the controversy pursuant to informal procedures.

7.6(2) *Opportunity to pursue informal settlement.* A party to a contested case may request an opportunity to pursue informal settlement. The request shall be in writing and shall be delivered to the director with a copy to the Bureau Chief, Legal Services Bureau, Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319. Upon receipt of the request, further proceedings shall be delayed and no contested case hearing date shall be set, except in the case of emergency orders as provided in rule 561—7.18(17A,455A). Informal settlement negotiations may include verbal or written

communications between or among parties. At the request of any party, the appeal shall be transmitted to the department of inspections and appeals. Settlement negotiations may continue following transmittal.

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

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

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

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

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

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

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

f. The request was not timely filed.

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

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

7.7(3) In a hazardous waste facility site licensing proceeding pursuant to Iowa Code section 455B.446, the hearing shall be before the environmental protection commission, with at least a quorum present, and with an administrative law judge present to assist the commission in ensuring that the requirements of Iowa Code chapter 17A are met.

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

7.8(1) *Grounds for disqualification.*

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

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

c. A member of an agency having jurisdiction of a case shall not participate in the making of a final decision or order if the member is employed by, receives directly or indirectly personal income from, or has other substantial connection with a person subject to permit or enforcement action pending before the agency if that person would be substantially affected by the outcome of the case.

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

7.8(2) *Affidavit asserting disqualification.*

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

b. Any party to a contested case proceeding may file an affidavit alleging a violation of subrule 7.8(1), and the agency shall determine the matter as part of the record in the contested case. When

an agency makes such a determination with respect to any agency member, that determination shall be subject to de novo judicial review in any appeal of the contested case decision.

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

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

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

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

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

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

7.9(3) Communications initiated by parties.

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

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

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

or indirectly relates to any issue of fact or law in the case, shall be transmitted by the presiding officer to the other parties, and the presiding officer shall include the written communication or summary in the record.

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

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

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

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

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

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

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

561—7.11(17A,455A) Intervention.

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

7.11(2) When filed. Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless the result would be inequitable or unjust, an intervener shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely interveners for continuances which would delay the proceeding will ordinarily be denied.

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

- a.* Intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties;
- b.* The movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and
- c.* The interests of the movant are not adequately represented by existing parties.

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

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

7.12(1) Petition.

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

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

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

- (1) The basis for the agency’s jurisdiction over the matter;
- (2) A detailed discussion of the relief demanded and the supporting facts, including any supporting documentation relied upon for relief;
- (3) The particular provisions of the statutes and rules involved;
- (4) The name(s) of the party or parties on whose behalf the petition is filed; and
- (5) The name, address and telephone number of the petitioner and the petitioner’s attorney, if any.

7.12(2) Answer.

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

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

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

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

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

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

7.12(4) Form. All pleadings shall:

a. Contain a caption in the following form:

BEFORE THE IOWA DEPARTMENT OF NATURAL RESOURCES, DES MOINES, IOWA	
IN THE MATTER OF (NAME OF PARTY OTHER THAN THE DEPARTMENT)	(NAME OF PLEADING) NO. _____

b. Be legibly printed or typewritten on white paper. The impression shall be on one side of the paper only and the lines shall be double-spaced, except quotations of two or more lines, which shall be single-spaced and indented. Standard letter-size paper (8½" × 11") shall be used.

c. Be signed by the person filing the pleading.

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

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

561—7.13(17A,455A) Defaults.

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

- a. Fails to file a pleading within the time prescribed for filing of the pleading;
- b. Withdraws a pleading without permission to replead;
- c. Fails to comply with any order of the presiding officer; or
- d. Fails to appear for a contested case proceeding after proper service of notice. If a party fails to appear and participate in a contested case proceeding after proper service of notice, then the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision on the merits in the absence of the party. If a decision on the merits is rendered, the sole remedy to set aside the judgment is a motion to vacate made consistent with the provisions of subrule 7.17(7).

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

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

7.13(4) Setting aside default.

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

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

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

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

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

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

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

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

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

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

7.14(2) *Motions.*

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

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

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

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

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

7.14(3) *Discovery.*

a. In general. The discovery procedures available to parties in civil actions are available to parties to a contested case. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

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

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

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

e. Disclosure of evidence and witnesses. At a prehearing conference or within some reasonable time set by the presiding officer prior to the hearing, each party shall make available, upon request, to the other parties the names of expert and other witnesses the party expects to call, together with a brief narrative summary of their expected testimony and a list of all documents and exhibits which the party expects to introduce into evidence. Amendments and additions to these materials may be made no later than ten days prior to the date of the hearing. However, following a prehearing conference held in accordance with subrule 7.14(5), witnesses, documents or exhibits may be added only if the moving

party can show that they were not readily identifiable with reasonable diligence prior to the prehearing conference and that the addition is necessary to prevent manifest injustice.

7.14(4) Subpoenas.

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

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

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

7.14(5) Prehearing conference.

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

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

(2) The necessity or desirability of amending pleadings;

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

(4) Limiting the number of witnesses;

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

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

(7) The procedure at the hearing;

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

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

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

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

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

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

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

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

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

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

- a. Open the record and receive appearances;
- b. Administer oaths;
- c. Enter the notice of hearing into the record;
- d. Receive testimony and exhibits presented by the parties;
- e. In the presiding officer's discretion, interrogate witnesses;
- f. Rule on objections and motions;
- g. Close the hearing;
- h. Issue an order containing findings of fact and conclusions of law.

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

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

- a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;
- b. The parties shall be given an opportunity to present opening statements;
- c. Parties shall present their cases in the sequence determined by the presiding officer;
- d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;
- e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

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

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

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

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

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

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

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

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

7.15(11) *Recording of hearing.*

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

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

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

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

561—7.16(17A,455A) Evidence.

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

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

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

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

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

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

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

7.16(8) Examination and cross-examination. Witnesses at the hearing shall be examined orally, under oath. Witnesses at the hearing, or persons whose testimony has been submitted in written form, shall be subject to cross-examination by any parties as necessary for a full and true disclosure of facts. The presiding officer may limit the examination or cross-examination or both when necessary for orderly presentation of evidence.

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

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

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

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

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

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

7.17(1) Filing by parties of briefs and proposed findings. Within 30 days after the last evidence is taken, each party may file with the presiding officer proposed findings of fact, conclusions of law, a proposed order or decision complying with subrule 7.17(3), and a supporting brief. Each party may,

within the same period, file with the presiding officer a brief concerning any relevant matters at the hearing. Copies of these documents shall be served upon each of the other parties. Within 20 days thereafter, each party may file a brief which takes specific exception to matters contained in an opposing brief or which contains alternative findings of fact, conclusions of law, and proposed order. The briefing schedule, including waiver of briefs, shall be determined at the close of the hearing.

7.17(2) Final decision or order.

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

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

7.17(3) Decisions and orders.

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

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

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

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

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

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

7.17(4) The record.

a. Content of record. The record shall include:

(1) All pleadings, motions and intermediate rulings;

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

(3) A statement of all matters officially noticed;

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

(5) All proposed findings and exceptions;

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

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

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

a. Time allowed.

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

(2) Agency decision to review. The agency may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of the proposed decision or at the next regular meeting of the relevant commission, whichever date last occurs. The agency shall preside in the case of review of a proposed decision of the administrative law judge or appeal board on motion of the agency.

b. Notice. Appeal is taken and perfected by filing with the director a timely notice of appeal signed by the appellant or the appellant's attorney. It shall specify the parties taking the appeal and the final

decision or order or part thereof appealed. The notice shall set forth, with particularity, the conclusions of law or findings of fact appealed. It shall be the appellant's responsibility to immediately serve the notice of appeal upon all parties of record other than the appellant.

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

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

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

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

7.17(6) Applications for rehearing.

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

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

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

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

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

7.17(7) Motion to vacate.

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

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

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

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

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

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

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

7.17(8) Stays of agency action.

a. When available.

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

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

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

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

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

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

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

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

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

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

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

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

a. Findings of fact,

b. Conclusions of law, and

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

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

a. Personal delivery;

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

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

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

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

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

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

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

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

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

- (2) Whether the requester is likely to prevail on the merits when the appeal of the order is heard,
- (3) Where lies the public interest, and
- (4) Whether the rule or statute upon which the order is founded is clearly invalid.

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

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

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

7.19(1) *Notice.* Except as provided in rule 561—7.18(17A,455A) or in subrule 7.19(3), prior to the suspension or revocation of a license, the department shall give notice of its intent and shall provide an opportunity to be heard at an evidentiary hearing conducted according to the provisions of this chapter. However, according to the provisions of Iowa Code section 455B.219, an evidentiary hearing, and not just the opportunity therefor, must occur prior to revocation or suspension of a license for water treatment.

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

- a. A description of the facts or conduct warranting the suspension or revocation;
- b. A statement of jurisdiction and the provision of law which warrants the intended action; and
- c. A statement that the licensee may show at a hearing that the licensee meets all lawful requirements to retain the license.

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

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

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

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

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

- a. Finds that the public health, safety or welfare imperatively requires emergency action,
- b. Incorporates a finding to that effect in its order,
- c. Complies with the provisions of rule 561—7.18(17A,455A), and
- d. Promptly thereafter provides the licensee an opportunity to be heard.

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

- a. Failure of the licensee to request a hearing within 30 days of receipt of notice of intent to revoke or suspend; or
- b. Upon the issuance of an order suspending or revoking the license after hearing.

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

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

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CHAPTER 8
CONTRACTS FOR PUBLIC IMPROVEMENTS AND PROFESSIONAL SERVICES

561—8.1(17A,455B,456A,461A,473) Contract policy.

8.1(1) All public improvements and professional services contracts with the department shall be awarded on a competitive basis to the maximum practical extent. All contracts shall be in written form and receive approval of the director and the appropriate commission where required by statute or rule of department.

8.1(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.

561—8.2(17A,26,455B,456A,461A,473) Contracts for public improvements.

8.2(1) Definition. As used in these rules, “public improvement” means public improvement as defined by Iowa Code section 26.2. Iowa Code section 73.3, relating to reciprocal resident bidder preference, shall apply to department contracts for public improvements.

8.2(2) Invitation for bids. When the total cost of a public improvement project exceeds the sum of \$100,000 as estimated by the department, the department shall utilize the competitive bid process identified in Iowa Code chapter 26.

8.2(3) Solicitation of quotations. If the estimated total cost of a public improvement is \$100,000 or less, the department must utilize the competitive quotation process identified by Iowa Code section 26.14, as may be amended, unless otherwise provided by this rule. The department must utilize this competitive quotation process for public improvement contracts below the amount designated by Iowa Code section 26.14(2). The department may opt to use the competitive bid process referenced in subrule 8.2(2) instead of the competitive quotation process.

8.2(4) Exceptions to the requirement for bids or quotations. The director may authorize the negotiation of a contract for a public improvement project without first soliciting quotations or advertising for bids only as the law allows.

[ARC 7681B, IAB 4/8/09, effective 3/20/09]

561—8.3(17A,455B,456A,461A,473) Contracts for professional services.

8.3(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.

8.3(2) Notification of professional firms or individuals. The department shall keep a record of professional firms and individuals desirous of providing services and shall encourage from time to time the submission of letters detailing a firm’s or individual’s capabilities.

If a contract is estimated to cost more than \$25,000, firms or individuals shall be invited to notify the department of their interest in and capabilities for providing the service. Such firms or individuals shall be informed by an advertisement in at least one newspaper of statewide circulation, one newspaper published in the county seat of the county in which the work is to be done, and such other means as may be appropriate. Where work is to be done under the contract in more than three counties, the requirement of publication in the county seat shall not be required so long as other means of notice to bidders is given, as in trade journals or other such means. At least one of said advertisements shall be not less than 15 days prior to the date set by the department for the preliminary review of said documents. Based upon this information, the department may select a group of at least five firms or individuals, unless fewer than that number have indicated interest, who shall be invited to submit proposals for the performance of the desired service.

In explaining their capabilities, firms or individuals are encouraged to provide information relative to the number, qualifications, and experience of their professional and technical staff; their performance

records for timeliness, quality, and project management; their geographical location; and any specialized expertise which may be appropriate.

8.3(3) Selection of firm or individual.

a. For any contract for professional services estimated to cost less than \$5,000, the department 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 cost from \$5,000 to \$25,000 at least three firms or individuals who appear to be qualified shall be invited to submit proposals for the performance of the desired service unless fewer than that number have indicated the availability, capability or willingness to perform the desired service.

c. 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 for the cost estimate relating to the entire project. The contract cost for subsequent phases may be established by negotiation.

The proposals shall also contain an hourly estimate of professional services. These fees and associated costs shall be submitted as directed by the department.

d. Upon the acceptance of a proposal by the director and the appropriate commission, if required by statute, 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 or projects that are unrelated but identical in nature. The proposals submitted for those contracts over \$10,000 shall be reviewed, and members of the firms or individuals may be interviewed by a department selection committee established by the director. At least one-third 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.

(7) Total estimated life cycle costs, if appropriate.

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

e. The director 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 advertising for proposals might reasonably be expected to result in serious loss or injury to the state.

561—8.4(17A,455B,456A,461A,473) Approval and award of contracts.

8.4(1) Contract approval. All contracts for professional services in excess of \$25,000 shall be approved by the director and the appropriate commission if required by statute. All contracts for public improvements in excess of \$50,000 shall be approved by the director and the appropriate commission. Professional services contracts for amounts of \$25,000 or less shall be approved by the director and the appropriate commission only if required by statute or rule of the commission.

8.4(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.

8.4(3) Change orders and extra work orders. All change orders and extra work orders shall be approved by the director before the work or service is performed, except in emergency situations, or

where such approval would result in unreasonable delay. In addition, any order or accumulation of orders which increases the amount of the original contract by more than \$25,000 or 10 percent of the original contract, whichever is greater, shall also be approved by the appropriate commission, if required by statute.

[ARC 7681B, IAB 4/8/09, effective 3/20/09]

561—8.5(17A,456A,461A) Contract for sale of timber.

8.5(1) Invitation for bids. When the total cost of a public sale of timber exceeds the sum of \$5,000 as estimated by the state forests and management bureau of the forests and forestry division, the department shall advertise for sealed bids by publishing a notice in at least one newspaper of statewide circulation, one newspaper published in the county seat of the county in which the timber is situated and such other means as may be appropriate in sufficient time to enable prospective bidders to prepare and submit bids, provided that one of said notices shall be not less than 15 days prior to the date set for receiving bids. The notice to bidders (invitation for bids) shall conform as nearly as possible to the provisions of 8.2(3).

8.5(2) Failure to receive a bid or quotation. In the event that no sealed bids or quotations are received, the state forests and management bureau of the forests and forestry division may negotiate a contract with a qualified timber buyer.

8.5(3) Exceptions to the requirement for bids or quotations. The director may authorize the negotiation of a contract for a timber sale project without first soliciting quotations or advertising for bids under the following circumstances:

- a. If the contemplated timber sale is an addition to an existing timber sale.
- b. If no bidders are available.

8.5(4) Bonds. All timber buyers and timber sales agreements must comply in all respects with Iowa Code section 456A.36. For purposes of bond requirements, a timber buyer is the logger who cuts down the tree or who deals with the owner of the tree and is required to have a bond. If the timber buyer exhibits a copy of a contract for lumber sale with a sawmill or other third party who is bonded and responsible for payment to the timber owner, the bonding requirements for the timber buyer are satisfied.

561—8.6(455B) Emergency response. The emergency response officials of the department shall have the authority under the director's supervision to contract with firms and individuals without advertising for bids or solicitation of quotations to clean up hazardous conditions, toxic or polluting substances on public or private property in situations where time is insufficient to allow for advertising for bids or solicitation of quotations in order to prevent further injury to the environment.

561—8.7(573) Interest on retained funds.

8.7(1) Scope. This rule implements Iowa Code subsection 573.12(3) regarding payment to a contractor of interest earned on retained funds. This rule does not address payment of interest under Iowa Code section 573.14.

8.7(2) General requirements.

a. Interest shall be paid pursuant to Iowa Code section 573.12 only on state contracts awarded on or after June 19, 1991.

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 department of processing an interest payment on retained funds in contracts for the construction of public improvements.

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

8.7(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 approved by the chief engineer. Final payment is payment of retained funds less assessed liquidated damages, if applicable.

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

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

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

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

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CHAPTER 9
GROUNDWATER HAZARD DOCUMENTATION

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

9.1(1) Authority. Pursuant to Iowa Code section 558.69, the department is required to adopt rules pertaining to a statement to be submitted to the recorder when recording instruments transferring real property regarding the existence and location of wells, disposal sites, underground storage tanks, and hazardous wastes on the property.

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

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

9.1(4) When groundwater hazard statement is required. A groundwater hazard statement shall be presented to the county recorder along with the real estate transaction documents for any real estate transaction in which a declaration of value is required to be submitted pursuant to Iowa Code chapter 428A. Additionally, a groundwater hazard statement shall be presented at the time of the recording of the following real estate transaction documents which are exempt from the filing of a declaration of value:

a. Any recorded lease of land which has a term of five years or more, except leases related to the construction or maintenance of cell phone, television, radio or similar electronics towers and leases related to the construction or maintenance of electricity-generating wind turbines. Leases or easements reserving rights to the future construction of the tower and wind turbine structures exempted by this subrule are similarly exempted. A lease of land does not include a lease of a portion of a building such as an apartment lease or business location within a mall or other multitenant building.

b. Any voluntary transfer or receipt of real property by governmental entities if title to that property was voluntarily acquired by the governmental entity. Governmental transactions which are exempted from the filing of a groundwater hazard statement include sheriff's deeds, tax deeds, and any other transaction for which the governmental entity did not voluntarily acquire title. A groundwater hazard statement is not required to accompany a clerk's change of title.

[ARC 7588B, IAB 2/25/09, effective 4/1/09]

561—9.2(558) Form.

9.2(1) The transferor or the transferor's agent or attorney shall sign department Form 542-0960, "Groundwater Hazard Statement," which may be obtained from the department or local county recorder. An agent or attorney may sign the form for the transferor, but in doing so the agent or attorney represents that a good faith inquiry of the transferor has been made regarding the information contained in the form and that the information is correct. The department hereby adopts by reference Form 542-0960, "Groundwater Hazard Statement," as amended through April 1, 2009. For all real estate transactions dated July 1, 2009, or later, a county recorder shall accept only the amended and revised form, as adopted by reference. The department authorizes the reproduction of Form 542-0960 by any person through photocopying or electronic means so long as the general format and wording are not altered in the reproduction thereof.

9.2(2) The form shall be submitted to the county recorder, in the form prescribed by the recorder, at the time that a real estate transaction document with which a groundwater hazard statement is required by 9.1(4) is filed with the county recorder.

9.2(3) In all cases, the county recorder shall return the original of the statement to the transferee when the recorded instrument is returned. If the statement submitted reveals that there is a well, a disposal site, an underground storage tank, or hazardous waste on the property, a copy of the form shall be submitted to the department within 15 days after the close of each month. If a standardized electronic format is established by agreement between the Iowa County Recorders Association and the department, then the

department's copy may be submitted electronically in the manner established by the agreement. Forms on which a private burial site is the sole matter disclosed and which do not reveal the existence of a well, disposal site, underground storage tank, or hazardous waste on the property shall not be submitted to the department. Forms shall be retained by the department for a period of five years.

9.2(4) The form shall include the name and address of both the transferor and transferee; the street address of the real estate involved; and the legal description of the real estate involved.

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These rules are intended to implement Iowa Code section 558.69.

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CHAPTER 10
WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES

561—10.1(17A,455A) Applicability. This chapter outlines a uniform process for the granting of waivers or variances from rules adopted by the department. As used in this chapter, the term “director” includes the director’s designee. As used in this chapter, “waiver or variance” means an action by the department 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.

561—10.2(17A,455A) Authority. A waiver or variance from rules adopted by the department may be granted in accordance with this chapter if:

10.2(1) The department has exclusive rule-making authority to promulgate the rule from which waiver or variance is requested or has final decision-making authority over a contested case in which a waiver or variance is requested; and

10.2(2) The waiver or variance is consistent with any applicable statute, constitutional provision, or other provision of law. In addition, this subrule does not authorize the department to waive or vary any requirement created or duty imposed by statute.

561—10.3(17A,455A) Interpretive rules. The principles of statutory construction contained in Iowa Code chapter 4, “Construction of Statutes,” shall be used when determining whether these rules apply to a specific rule.

561—10.4(17A,455A) Criteria for waiver or variance. Upon petition of any person and at the sole discretion of the department, the department may issue a waiver or variance from the requirements of a rule if the director or the department in a contested case proceeding finds, based on clear and convincing evidence, all of the following:

10.4(1) The application of the rule would pose an undue hardship on the person for whom the waiver or variance is requested.

10.4(2) The waiver or variance from the requirements of a rule in the specific case would not prejudice the substantial legal rights of any person.

10.4(3) The provisions of a rule subject to a petition for a waiver or variance are not specifically mandated by statute or another provision of law.

10.4(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 or variance is requested.

561—10.5(17A,455A) Burden of persuasion. The burden of persuasion rests with the person who petitions the department for the waiver or variance of a rule. Each petition for a waiver or variance shall be evaluated by the department based on the unique, individual circumstances set out in the petition. A waiver or variance, if granted, shall be drafted by the department so as to provide the narrowest exception possible to the provisions of the rule. The department may place any condition on a waiver or a variance that the department finds desirable to protect the public health, safety, and welfare. A waiver or variance shall not be permanent unless the petitioner can show that a temporary waiver or variance would be impracticable, and, in any event, shall not exceed one year in accordance with the provisions of Iowa Code section 455B.143. If a temporary waiver or variance is granted, there is no automatic right to renewal. At the sole discretion of the department, a waiver or variance may be renewed if the department finds all of the factors set out in rule 10.4(17A,455A) remain valid.

561—10.6(17A,455A) Special waiver or variance rules not precluded. This chapter shall not preclude the department from granting waivers in other contexts or on the basis of other standards if a statute or other department rule authorizes the director to do so, and the director deems it appropriate to do so.

561—10.7(17A,455A) Administrative deadlines. When the rule from which a waiver or variance is sought establishes administrative deadlines, the department shall balance the special individual

circumstances of the petitioner with the overall goal of uniform treatment of all persons governed by the particular rule.

561—10.8(17A,455A) Filing of petition. A petition for a waiver or variance shall be submitted in writing to the department as follows:

10.8(1) Contested cases. If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding. The department may elect not to rule on the waiver petition until the resolution of the contested case proceeding.

10.8(2) Other. If the petition does not relate to a pending contested case, the petition may be submitted to the director.

561—10.9(17A,455A) Contents of petition. A petition for waiver or variance shall include the following information when applicable and known to the petitioner:

10.9(1) The name, address, and telephone number of the entity or person for whom a waiver or variance is requested, and the case number of any related contested case.

10.9(2) A description and citation of the specific rule from which a waiver or variance is requested.

10.9(3) The specific waiver or variance requested, including the precise scope and operative period that the waiver or variance will extend.

10.9(4) The relevant facts that the petitioner believes would justify a waiver or variance. 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 or variance.

10.9(5) A history of any prior contacts between the department and the petitioner for the past five years, including a description of each affected permit held by the petitioner, and any notices of violation, administrative orders, contested case proceedings, and lawsuits involving the department and the petitioner.

10.9(6) Any information known to the petitioner regarding the department's treatment of similar cases.

10.9(7) The name, address, and telephone number of any public agency or political subdivision of the state or federal government which also regulates the activity in question, or which might be affected by the granting of a waiver or variance.

10.9(8) The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.

10.9(9) The name, address, and telephone number of any person with knowledge of relevant facts relating to the proposed waiver or variance.

10.9(10) Signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver or variance.

561—10.10(17A,455A) Additional information. Prior to issuing a decision granting or denying a waiver or variance, the department may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the director may, on the director's own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the director.

561—10.11(17A,455A) Notice. The petitioner, within 30 days of submission of the petition, shall serve by certified mail notice of the pending petition and a concise summary of its contents upon all persons to whom notice is required by any provision of law. The petitioner shall provide a written statement to the department attesting that the required notice has been provided. The department shall acknowledge a petition upon receipt and, in addition, the department may give notice to other persons.

561—10.12(17A,455A) 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 or variance of a

rule filed within a contested case and shall otherwise apply to department proceedings for a waiver or variance only when the department so provides by rule or order or is required to do so by statute.

561—10.13(17A,455A) Ruling. A decision granting or denying a waiver or variance shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the decision pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

561—10.14(17A,455A) Conditions. The department may condition the granting of the waiver or variance on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

561—10.15(17A,455A) Time for ruling. The department shall grant or deny a petition for a waiver or variance as soon as practicable but, in any event, shall do so within 120 days of receipt of the petition, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the department shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

561—10.16(17A,455A) When deemed denied. Failure of the director or the department in a contested case proceeding to grant or deny a petition within the required time period shall be deemed a denial of that petition by the department.

561—10.17(17A,455A) Service of decision. Within seven days of its issuance, any decision issued under this chapter shall be transmitted to the petitioner or the person to whom the decision pertains and to any other person entitled to such notice by any provision of law.

561—10.18(17A,455A) Public availability. Subject to the provisions of Iowa Code section 17A.3(1)“e,” the department shall maintain a record of all decisions granting and denying waivers and variances under this chapter. All final rulings in response to requests for waivers or variances shall be indexed and available to members of the public.

561—10.19(17A,455A) Voiding or cancellation. A waiver or variance is void if the material facts upon which the request is based are not true or if material facts have been withheld. The department may at any time cancel a waiver or variance if the department finds that the facts as stated in the request are not true, material facts have been withheld, the alternative means of compliance provided in the waiver or variance have failed to achieve the objectives of the statute, or the requester has failed to comply with the conditions of the waiver or variance.

561—10.20(17A,455A) Violations. Violation of conditions of the waiver or variance approval is the equivalent of violation of the particular rule for which the waiver or variance is granted and is subject to the same remedies or penalties.

561—10.21(17A,455A) Defense. After the department issues a decision granting a waiver or variance, the decision is a defense within its terms and the specific facts indicated therein for the person to whom the decision pertains in any proceeding in which the rule in question is sought to be invoked.

These rules are intended to implement Iowa Code chapters 17A, 21, 22, and 455A.

[Filed 8/31/01, Notice 2/21/01—published 9/19/01, effective 10/24/01]

CHAPTER 11
THE IOWA NATURE STORE

561—11.1(456A) Purpose. This chapter establishes the Iowa nature store program. The Iowa nature store offers merchandise for sale to the public in order to promote the mission of the department to the public, to enhance public awareness, and to generate revenue in order to conserve and enhance the natural resources of Iowa.

561—11.2(456A) The nature store. The department shall acquire merchandise that is intended to further the purposes of this chapter as stated in 561—11.1(456A). This merchandise will be offered for resale to the public.

11.2(1) Acquisition. The department may enter into contracts with private vendors for the design, manufacture, or purchase of merchandise for resale.

11.2(2) Sale. Goods obtained by the department pursuant to this chapter shall be offered for resale to the general public at prices to be established at the discretion of the department. Items obtained pursuant to this chapter may be distributed without charge when the department determines that such a distribution serves the purposes of this chapter.

11.2(3) Contracts for services. If the department determines that all or any part of the Iowa nature store program can be best effectuated through the execution of a contract with one or more third parties, the contract shall be awarded pursuant to the provisions of 561—Chapter 14.

561—11.3(456A) Funding. The Iowa nature store shall be funded through the state conservation fund as established at Iowa Code section 456A.17. All revenues generated by the Iowa nature store, whether through the sale of merchandise or any other means, shall be deposited in the state conservation fund.

These rules are intended to implement Iowa Code sections 455A.9, 456A.17 and 456A.24.

[Filed 6/18/04, Notice 5/12/04—published 7/7/04, effective 8/11/04]

CHAPTER 12
SPECIAL NONRESIDENT DEER AND TURKEY LICENSES

561—12.1(483A) Purpose. These rules establish the process by which the department will issue special nonresident deer and turkey licenses to individuals as part of statewide or local efforts to promote the state and its natural resources.

[ARC 7814B, IAB 6/3/09, effective 7/8/09]

561—12.2(483A) Definitions. When used in this chapter:

“Conservation organization” means an organization that is developed and managed pursuant to Iowa Code chapter 504, the revised Iowa nonprofit corporation Act, and whose mission emphasizes natural resource conservation or supports science-based natural resource management. A local or state chapter or division of a national or international conservation organization shall qualify as a conservation organization.

“Coordinator” means the department staff person appointed by the director to administer the process for allocation of special nonresident deer and turkey licenses pursuant to this chapter.

“Department” means the department of natural resources.

“Director” means the director of the department of natural resources.

“Internal committee” means the committee that ranks certain requests for special licenses for consideration by the legislative committee and consists of the coordinator, the administrator of the conservation and recreation division, the chief of the wildlife bureau, and the chief of the law enforcement bureau.

“Legislative committee” means the committee that makes the final selection of recipients of special nonresident deer and turkey licenses and consists of the majority leader of the Iowa senate, the speaker of the Iowa house of representatives, and the director of the Iowa department of economic development, or their designees, as described in Iowa Code section 483A.24.

“Outdoor industry” means a commercial enterprise or venture that promotes or otherwise contributes to the use of natural resources. For purposes of illustration, an outdoor industry may include, but is not limited to, a television or radio show production; a video/DVD production; still and motion photography; an article in the popular print media, such as in a newspaper or periodical; a lecture presentation; the manufacture or acquisition of sporting equipment for resale; or a similar activity. A business that solely provides guide or outfitter services is not an outdoor industry.

“Program” means the review and selection process through which special nonresident deer and turkey licenses are allocated in accordance with Iowa Code section 483A.24 and these rules.

“Special licenses” means the special nonresident deer licenses and special nonresident turkey licenses issued pursuant to these rules.

“Special nonresident deer license” means a deer license issued pursuant to Iowa Code section 483A.24(3).

“Special nonresident turkey license” means a turkey license issued pursuant to Iowa Code section 483A.24(4).

“Sponsor” means an entity that applies on behalf of one or more hunters.

[ARC 7814B, IAB 6/3/09, effective 7/8/09]

561—12.3(483A) Availability of special licenses. The program shall be available to provide not more than the number of special licenses allowed by Iowa Code section 483A.24 to nonresidents through requests submitted by individual hunters or through a sponsor. Sponsors may be located in the state of Iowa.

[ARC 7814B, IAB 6/3/09, effective 7/8/09]

561—12.4(483A) Coordinator duties. The coordinator of the program shall:

12.4(1) Assist the internal and legislative committees in the evaluation and selection of hunters who may receive special licenses.

12.4(2) Develop templates for requests for special licenses and provide the templates to hunters and sponsors upon request.

12.4(3) Convene the internal committee to rank hunters according to the criteria in rule 561—12.7(483A).

12.4(4) Summarize each request received and distribute the summaries to the internal committee and legislative committee.

12.4(5) Provide additional information regarding requesters as needed to aid the legislative committee in the selection process.

12.4(6) Establish the dates on which the legislative committee will select the conservation organizations and hunters who will receive special licenses and inform the organizations and hunters of their selection.

[ARC 7814B, IAB 6/3/09, effective 7/8/09]

561—12.5(483A) Request, review and selection process.

12.5(1) *Submission of requests.* Individual hunters or sponsors shall submit a request, or requests, to the coordinator. A request must be on the form provided by the department and may be submitted to the coordinator at any time during the year.

12.5(2) *Review.*

a. The internal committee shall review the summaries prepared by the coordinator, rank the hunters according to criteria in rule 561—12.7(483A), and forward the rankings to the legislative committee for consideration and final selection.

b. Requests that demonstrate little or no promotion of the state of Iowa or its natural resources, as determined by the internal committee, shall not be included in the rankings forwarded to or considered by the legislative committee.

c. Review of requests shall occur at least once annually but may occur more frequently as needed based upon the number of requests and the dates by which they are received.

12.5(3) *Selection and payment.* Upon notice of selection to receive a special license, the sponsor or hunter shall make payment in accordance with rule 561—12.12(483A) to the department through the coordinator. Payment must be made at least 30 days prior to the hunting season for which the license is valid.

[ARC 7814B, IAB 6/3/09, effective 7/8/09]

561—12.6(483A) Consideration of requests. The legislative committee will determine which conservation organizations and hunters are best qualified to promote the state and its natural resources. In making such a determination, the legislative committee will select hunters and conservation organizations based on their expected ability to promote the state and its natural resources and, if applicable, based on the degree of success special license holders have had in previous years or seasons in promoting the state and its natural resources. By way of illustration, the committee may consider requests from the following:

12.6(1) A hunter who has a direct beneficial impact on the state through an arm's-length business relationship with an Iowa-based outdoor industry.

12.6(2) A conservation organization that will use the special nonresident deer license as a fund-raiser for that organization. A conservation organization shall be limited to one special nonresident deer license per year, whether the organization is a local or state chapter or division of a national or international conservation organization. The organization shall return to the department the greater amount of either one-half of the proceeds from its sale of the special nonresident deer license or the fee for a nonresident deer license as set forth in Iowa Code section 483A.1. The department's proceeds shall cover the cost of the special nonresident deer license. A license made available to a conservation organization in accordance with this subrule may be valid for up to two years after selection of the organization by the legislative committee. The sponsoring conservation organization shall notify the coordinator by July 1 or immediately following the sale of the special nonresident deer license of which year and for what season the special nonresident deer license will be used. The conservation organization shall specifically explain

how and during what period the organization will market the special nonresident deer license for auction or some other legal fund-raiser.

12.6(3) A hunter nominated by the governor, a member of the Iowa legislature or a member of the legislative committee.

12.6(4) A hunter recommended by the department.

12.6(5) A hunter who is a well-known public figure nationally or regionally and who may provide a positive portrayal of the state and its natural resources.

[ARC 7814B, IAB 6/3/09, effective 7/8/09]

561—12.7(483A) Ranking criteria.

12.7(1) The following criteria shall be used by the internal committee to rank individual hunters as identified in subrules 12.6(1), 12.6(4) and 12.6(5). The rankings shall be determined as the average of the following rating points and will be provided to the legislative committee as an aid in determining the selection of hunters.

- a. Ten points if the hunter is directly affiliated with an Iowa-based outdoor industry.
- b. From 0 to 10 points applied to each of the following:
 - (1) The relative size of the hunter's potential audience.
 - (2) The hunter's proposal to promote the state and its natural resources.
 - (3) If the hunter has received a special license in the past, the value of the actual promotion of the state and its natural resources or special services provided as a result.
- c. From 0 to 5 points if the hunter meets the description in subrule 12.6(5).

12.7(2) A conservation organization's request shall be forwarded to the legislative committee if the conservation organization meets the definition in rule 561—12.2(483A) and based on an evaluation of the organization's prior performance, if any, in selling the special nonresident deer license.

12.7(3) Hunters as identified in subrule 12.6(3) shall not be ranked by the internal committee, and their requests will be forwarded to the legislative committee for its determination.

[ARC 7814B, IAB 6/3/09, effective 7/8/09]

561—12.8(483A) Services provided by recipients of special licenses. In addition to promoting the state and its natural resources, recipients of special licenses may improve the ranking they receive for future license requests by providing additional services as specified by the department. Services shall be limited to services which improve communications between the department and outdoor recreationalists and to assistance in marketing outdoor recreation and natural resource conservation.

[ARC 7814B, IAB 6/3/09, effective 7/8/09]

561—12.9(483A) License term. With the exception of the term provided for in subrule 12.6(2), special licenses issued under these rules shall be valid for only the applicable deer or turkey season immediately following allocation of the license.

[ARC 7814B, IAB 6/3/09, effective 7/8/09]

561—12.10(483A) Reporting. Within eight months after a hunter's participation in a hunt with a license issued pursuant to this chapter, the sponsor or hunter shall provide to the coordinator information about the hunt to demonstrate how the hunt will provide or has provided promotion of the state and its natural resources. This information may be in the form of testimonials of the participants, a completed DVD available for retail sale, a DVD copy of the actual television broadcast, an article in a periodical, or other verifiable means that demonstrate the promotional benefits. The legislative committee may consider compliance with this reporting requirement in evaluating future requests.

[ARC 7814B, IAB 6/3/09, effective 7/8/09]

561—12.11(483A) Prohibitions. Photographs, videotapes, or any other form of media resulting from the special licenses issued pursuant to this chapter shall not be used for political campaign purposes.

[ARC 7814B, IAB 6/3/09, effective 7/8/09]

561—12.12(483A) License costs. With the exception provided in subrule 12.6(2) for conservation organizations, a nonresident who obtains a special license issued pursuant to this chapter shall pay the applicable fee as follows:

12.12(1) For a special nonresident deer license, the fee described in Iowa Code section 483A.1 for a deer hunting license, antlered or any sex deer.

12.12(2) For a special nonresident turkey license, the fee described in Iowa Code section 483A.1 for a wild turkey hunting license.

[ARC 7814B, IAB 6/3/09, effective 7/8/09]

561—12.13(483A) Hunter safety requirements. As provided in Iowa Code sections 483A.24(3) and 483A.24(4), the hunter safety and ethics certificate requirement is waived for holders of special licenses issued pursuant to this chapter.

[ARC 7814B, IAB 6/3/09, effective 7/8/09]

These rules are intended to implement Iowa Code section 483A.24.

[Filed ARC 7814B (Notice ARC 7652B, IAB 3/25/09), IAB 6/3/09, effective 7/8/09]

CHAPTER 13
Reserved

CHAPTER 14
CONCESSIONS

561—14.1(456A) Adoption by reference. The department adopts by reference 571—Chapter 14, Iowa Administrative Code, with the following changes:

1. References to parks and recreation areas are changed to state property under the jurisdiction of the department.
2. References to the parks bureau are changed to the chief of the bureau managing the area on which the concession is located.
3. By removing references to approval of permit/leases by the commission and executive council. These rules are intended to implement Iowa Code section 456A.4.

[Filed 3/4/88, Notice 12/30/87—published 3/23/88, effective 4/27/88]

CHAPTER 15
GROUNDWATER PROTECTION PROGRAM EVALUATION

Rescinded IAB 4/4/01, effective 5/9/01

CHAPTERS 16 to 101
Reserved