

TITLE I
GENERAL

CHAPTER 1

OPERATION OF ENVIRONMENTAL PROTECTION COMMISSION

[Prior to 12/3/86, see Water, Air and Waste Management[900] Ch 2]

567—1.1(17A,455A) Scope. This chapter governs the conduct of business by the environmental protection commission. Rule-making proceedings held as part of commission meetings and contested case proceedings involving the commission are governed by other rules of the department.

567—1.2(17A,455A) Time of meetings. The commission meets at least quarterly, and usually meets monthly. The director, the chairperson, or a majority of the commission may establish meetings. Normally, the time of the next meeting will be determined in the current commission meeting.

567—1.3(17A,455A) Place of meetings. Meetings are generally held in the Henry A. Wallace Building, 900 East Grand Avenue, Des Moines, Iowa. The commission may meet at other locations from time to time; if so, the meeting place will be specified in the agenda.

567—1.4(17A,455A) Notification of meetings. The director of the department shall provide public notice of all meeting dates, locations, and tentative agenda.

1.4(1) Form of notice. Notice of meetings is given by posting the tentative agenda and by distribution upon request. The agenda lists the time, date, place, and topics to be discussed at the meeting. The agenda shall include a specific time for the public to address the commission on any issue related to the duties and responsibilities of the commission, except as otherwise provided in these rules.

1.4(2) Posting of agenda. The tentative agenda for each meeting will be posted at the department's offices on the fourth and fifth floors, Henry A. Wallace Building, normally at least seven days prior to the meeting. Agenda will be posted at least 24 hours prior to the meeting, unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible will be given.

1.4(3) Distribution of agenda. Agenda will be mailed to anyone who files a request with the director. The request should state whether the agenda for a particular meeting is desired, or whether the requester desires to be on the department's mailing list to receive the agenda for all meetings of the environmental protection commission.

1.4(4) Amendment to agenda. Any amendments to the agenda after posting and distribution under subrules 1.4(2) and 1.4(3) will be posted, but will not be mailed. The amended agenda will be posted at least 24 hours prior to the meeting, unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible will be given. The commission may adopt amendments to the agenda at the meeting only if good cause exists requiring expeditious discussion or action. The reasons and circumstances necessitating agenda amendments, or those given less than 24 hours' notice by posting, shall be stated in the minutes of the meeting.

1.4(5) Supporting material. Written materials provided to the commission with the agenda may be examined and copied as provided. Copies of the materials may be distributed at the discretion of the director to persons requesting the materials. The director may require a fee to cover the reasonable cost to the department to provide the copies, in accordance with rules of the department.

567—1.5(17A,455A) Attendance and participation by the public.

1.5(1) Attendance. All meetings are open to the public. The commission may exclude the public from portions of the meeting in accordance with Iowa Code section 21.5.

1.5(2) Participation.

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

b. Items not on agenda. Because Iowa Code section 21.4 requires the commission to give notice of its agenda, the commission discourages persons from raising matters not on the agenda. Persons who

wish to address the commission on a matter not on the agenda should file a request with the director to place that matter on the agenda of the subsequent meeting.

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

1.5(3) Use of cameras and recording devices. Cameras and recording devices may be used during meetings provided they do not interfere with the orderly conduct of the meeting. The chairperson may order the use of these devices discontinued if they cause interference, and may exclude those persons who fail to comply with that order.

¹567—1.6(17A,455A) Quorum and voting requirements.

1.6(1) Quorum. Five or more commissioners present at a meeting constitutes a quorum.

1.6(2) Voting.

a. Voting requirements if eight or nine commissioners are currently appointed. If eight or nine commissioners are currently appointed to the environmental protection commission by the governor, then the affirmative votes of five or more commissioners shall be required to act on any matter within the jurisdiction of the commission.

b. Voting requirements if seven or fewer commissioners are currently appointed. If seven or fewer commissioners are currently appointed to the environmental protection commission by the governor, then the affirmative votes of four or more commissioners shall be required to act on any matter within the jurisdiction of the commission.

c. Voting requirements to close a meeting. Notwithstanding paragraph 1.6(2) “a” or 1.6(2) “b,” a vote to close a meeting shall require the concurrence of six or more members of the commission, or the concurrence of all members present if less than six members are present.

¹ Procedural Objection filed by the Administrative Rules Review Committee at its meeting held August 12, 2008; see text of Objection at end of 567—Chapter 1.

567—1.7(17A,455A) Conduct of meeting.

1.7(1) General. Meetings will be conducted in accordance with Robert’s Rules of Order unless otherwise provided in these rules. Voting shall be by voice or by roll call. Voting shall be by voice unless a voice vote is inconclusive, a member of the commission requests a roll call, or the vote is on a motion to close a portion of a meeting. The chairperson shall announce the result of the vote.

1.7(2) Voice votes. All commission members present should respond when a voice vote is taken. The response shall be aye, nay, or abstain.

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

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

1.7(3) Provision of information. The chairperson may recognize any agency staff member for the provision of information relative to an agenda item.

567—1.8(17A,455A) Minutes, transcripts, and recordings of meetings.

1.8(1) Recordings. The director shall record by mechanized means each meeting, and shall retain the recording for at least one year. Recordings of closed sessions shall be sealed and retained at least one year.

1.8(2) Transcripts. The department does not routinely prepare transcripts of meetings. The department will have transcripts of meetings, except for closed sessions, prepared upon receipt of a request for a transcript and payment of a fee to cover the cost to the department of preparing the transcript.

1.8(3) Minutes. The director shall keep minutes of each meeting. Minutes shall be reviewed and approved by the commission, and retained permanently by the director. The approved minutes shall be signed by the director and the chairperson and secretary of the commission.

567—1.9(17A,455A) Officers and duties.

1.9(1) Officers. The officers of the commission are the chairperson, the vice chairperson, and the secretary.

1.9(2) Duties. The chairperson shall preside at meetings, and shall exercise the powers conferred upon the chairperson. The vice chairperson shall perform the duties of the chairperson when the chairperson is absent or when directed by the chairperson. The secretary shall supervise the preparation of minutes, make recommendations to the commission on approval or revision of the minutes, and act as parliamentarian.

567—1.10(17A,455A) Election and succession of officers.

1.10(1) Elections. Officers shall be elected annually during May.

1.10(2) Succession.

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

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

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

567—1.11(68B) Sales of goods and services.

1.11(1) Prohibition. An official shall not sell, either directly or indirectly, any goods or services to individuals, associations, or corporations subject to the regulatory authority of the department unless the department consents as provided in this rule.

1.11(2) Definitions.

“Association” means any profit or nonprofit entity that is not a “corporation” or an “individual” as defined in this rule, but does not include any “unit of government” as defined in this rule.

“Commission” means the environmental protection commission.

“Corporation” means “corporation” and “foreign corporation” as defined in Iowa Code sections 490.140 and 504A.2, but does not include any “unit of government” as defined in this rule.

“Department” means the department of natural resources.

“Goods” means personal property, tangible and intangible.

“Individual” means a human being and includes any individual doing business as a sole proprietorship.

“Official” means a member of the environmental protection commission.

“Sale” or *“sell”* means the process in which goods or services are provided in exchange for money or other valuable consideration. The term does not include purchases of goods or services, nor outside employment activities that constitute an employer-employee relationship.

“Services” means action, conduct or performance which furthers some end or purpose or which assists or benefits someone or something.

“Unit of government” means “United States,” “state” and “governmental subdivision” as defined in Iowa Code section 490.140.

1.11(3) Application for consent. An application for consent must be signed by the official requesting consent and submitted as specified in subrule 1.11(4). The application must provide a clear statement of all relevant facts concerning the sale, specify the amount of compensation and how compensation is to be determined, and indicate the time period or number of transactions for which consent is requested. The application must also explain why the sale would not create a conflict of interest or provide financial gain by virtue of the applicant’s position within the department.

1.11(4) Consent procedure. Applications for consent must be submitted to the director who will schedule the matter as an informational item at a meeting of the commission. When the informational item is considered, the applicant may explain the application and entertain questions. The director shall schedule the matter to be decided at the second meeting following its consideration as an informational

item, at which time the commission shall consider written comments which have been filed with the director and entertain any oral comments. The commission shall approve or deny the application by voting in the same manner as it determines other matters, except that the applicant shall not vote.

1.11(5) *General conditions of consent.* Consent shall not be given to an official unless all of the following conditions are met:

a. This condition is satisfied if either of the following paragraphs is met:

(1) The duties or functions performed by the official are not related to the regulatory authority of the department over the individual, association or corporation; or

(2) The duties or functions performed by the official are not affected by the selling of goods or services to the individual, association or corporation.

b. The selling of the goods or services by the official does not include acting as an advocate to the department on behalf of the individual, association or corporation receiving the goods or services.

c. The selling of goods or services does not result in the official selling a good or service to the department on behalf of the individual, association or corporation.

1.11(6) *Class prohibitions and consent.*

a. The commission concludes that the sales of goods and services described in this paragraph, as a class, constitute the sale of a good or service which affects an official's functions. The department will not consent to sales which fall within the following categories unless there are unique facts surrounding a particular sale which clearly satisfy the conditions listed in subrule 1.11(5).

Sales which are prohibited by rule:

(1) Sales of department information or the sale of services necessary to gather department information, including but not limited to solicitation lists.

(2) Services utilized in the preparation of applications, reports, or other documents which may be approved or reviewed by the commission.

b. The commission concludes that sales of goods or services described in this paragraph do not, as a class, constitute the sale of a good or service which affects an official's functions. Application and department approval are not required for these sales unless there are unique facts surrounding a particular sale which would cause that sale to affect the official's duties or functions, would give the buyer an advantage in its dealings with the department, or otherwise present a conflict of interest.

Sales for which consent is granted by rule:

(1) Nonrecurring sales of goods and services if the official is not engaged for profit in the business of selling those goods or services.

(2) Sale of farm products at market prices to a buyer ordinarily engaged in the business of purchasing farm products.

(3) Sales of goods to general public at an established retail or consignment shop.

(4) Sale of legal, mechanical, or other services at market or customary prices. However, if an official's client or customer has a matter for decision before the commission, the official shall not participate in the discussion and voting on that matter unless consent has been obtained pursuant to subrules 1.11(3) and 1.11(4).

(5) Sale of goods at wholesale prices to a buyer ordinarily engaged in the business of purchasing wholesale goods for retail sale.

(6) Sale of creative works of art, including but not limited to sculpture and literary products, at market, auction, or negotiated prices. However, if an official's customer has a matter for decision before the commission directly or indirectly involving that good, the official shall not participate in the discussion and voting on that matter unless consent has been obtained pursuant to subrules 1.11(3) and 1.11(4).

(7) Sale of goods to general public at market or franchiser-established prices. However, if an official's customer has a matter for decision before the commission, the official shall not participate in the discussion and voting on that matter unless consent has been obtained pursuant to subrules 1.11(3) and 1.11(4).

1.11(7) *Effect of consent.* The consent must be in writing. The consent is valid only for the activities and period described in it and only to the extent that material facts have been disclosed and the actual

facts are consistent with those described in the application. Consent can be revoked at any time by written notice to the official.

1.11(8) *Public information.* The application and consent are public records, open for public examination, except to the extent that disclosure of details would constitute a clearly unwarranted invasion of personal privacy or trade secrets and the record is exempt from disclosure under Iowa law.

1.11(9) *Effect of other laws.* Neither this rule nor any consent provided under it constitutes consent for any activity which would constitute a conflict of interest at common law or which violates any applicable statute or rule. Despite department consent under these rules, a sale of goods or services to someone subject to the jurisdiction of the agency may violate the gift law, bribery and corruption laws. It is the responsibility of the official to ensure compliance with all applicable laws and to avoid both impropriety and the appearance of impropriety.

These rules are intended to implement Iowa Code sections 17A.3(1)“a,” 68B.4 and 455A.6.

[Filed emergency 6/3/83—published 6/22/83, effective 7/1/83]

[Filed emergency 11/27/85—published 12/18/85, effective 11/27/85]

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[Editorial change: IAC Supplement 8/27/08]

OBJECTION

At its August 12, 2008 meeting the Administrative Rules Review Committee voted to object to the "emergency" adoption of ARC 6921B, amending rule 567 IAC 1.6. This filing was published in IAB Vol. XXX, No. 01 (7-02-2008). The effective of this objection is to terminate the "emergency" filing 180 days following the filing of this objection.

Rule 1.6 relates to the quorum requirements for Commission meetings. Under this emergency filing the required number of affirmative votes for official action will vary depending on the number of commissioners currently appointed by the Governor. Essentially the rule provides that that four votes are sufficient to take action when there are only seven appointed members.

The substance of new quorum requirement is within the authority of the Commission, as set out in Iowa Code §455A.6. Discussion at the Administrative Rules Review Committees' June and July meetings indicated that commission members felt that the emergency adoption was necessary due to unfilled vacancies on the commission which resulted in "delayed Agency action, gridlock, and stalemate, with the minority at times deciding an issue." Rules Committee members felt these problems, while an impediment to efficient Commission operation, did not rise to the level of a true emergency, which would outweigh the value of notice and an opportunity for public participation. The notice and public participation requirements of the rulemaking process are to be construed broadly (see: §§17A.23); this requirement is best served by narrowly applying the grounds for "emergency" rule filing.

Objection filed August 12, 2008